



27 May 1998

A4-0205/98

REPORT

on the second report from the Commission on citizenship of the Union
(COM(97)0230 - C4-0291/97)

Committee on Legal Affairs and Citizens' Rights

Rapporteur: Mr Willy De Clercq

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|---|---|
| * Consultation procedure
simple majority | **I Codecision procedure (first reading)
simple majority |
| ** Cooperation procedure (first reading)
simple majority | **II Codecision procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to accept a declaration of intended
rejection of the common position and amend the common position or confirm its rejection |
| **III Cooperation procedure (second-reading)
simple majority to approve the common position
majority of Parliament's component Members to reject or amend the common position | **III Codecision procedure (third reading)
simple majority to approve the joint text
majority of Parliament's component Members to reject the Council text |
| ** Assent procedure
majority of Parliament's component Members to give assent
but simple majority under Articles 6a, 105, 106, 130d and 238 EC | |

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By letter of 28 May 1997 the Commission forwarded to Parliament its second report on citizenship of the Union.

At the sitting of 25 June 1997 the President of Parliament announced that he had referred the report to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and the Committee on Institutional Affairs, the Committee on Civil Liberties and Internal Affairs and the Committee on Petitions for their opinions.

At the sitting of 5 November 1997 the President announced that he had also referred the report to the Committee on Petitions for its opinion.

At its meeting of 7 and 8 July 1997 the Committee on Legal Affairs and Citizens' Rights appointed Mr De Clercq rapporteur.

At its meeting of 5 and 6 January 1998 it decided to include the following motion for a resolution in its report:

- B4-0816/97 by Mrs Muscardini, on the safeguarding of privacy, referred on 21 October 1997 to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and the Committee on Culture, Youth, Education and the Media for its opinion.

The committee considered the second report from the Commission and the draft report at its meetings of 26 February, 27 April and 19 May 1998.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: De Clercq, chairman; Garriga Polledo (for Palacio Vallelersundi, pursuant to Rule 138(2)), Añoveros Trias de Bes (for Cassidy), Barzanti, Berger, Buffetaut, Cot, Fabra Vallés (for Lehne, pursuant to Rule 138(2)), Falconer (for David Martin), Gebhardt, Newman, Oddy, Thors, Tsatsos (for Medina Ortega), Ullmann, W.G. van Velzen (for Carlo Casini, pursuant to Rule 138(2)) and Verde i Aldea.

The opinions of the Committee on Institutional Affairs, the Committee on Civil Liberties and Internal Affairs and the Committee on Petitions are attached. The Committee on Culture, Youth, Education and the Media decided on 27 November 1997 not to deliver an opinion on motion B4-0816/97 by Mrs Muscardini, on the safeguarding of privacy.

The report was tabled on 27 May 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
MOTION FOR A RESOLUTION

**Resolution on the second report from the Commission on citizenship of the Union
(COM(97)0230 - C4-0291/97)**

The European Parliament,

- having regard to the second report from the Commission on citizenship of the Union (COM(97)0230 - C4-0291/97),
- having regard to the motion by Mrs Muscardini on the safeguarding of privacy, B4-0816/97,
- having regard to the report from the Commission on the application of Directive 93/109/EC - voting rights of EU citizens living in a Member State of which they are not nationals in European Parliament elections (COM(97)0731),
- having regard to the Communication from the Commission - An action plan for free movement of workers (COM(97)0586),
- having regard to the Green Paper on supplementary pensions in the Single Market (COM(97)0283),
- having regard to the proposal for a Council directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union (COM(97)0486),
- having regard to the proposal for a Council directive on the rights of third-country nationals to travel in the Community (COM(95)0346),
- having regard to the proposal for a directive on the elimination of controls on persons crossing internal frontiers (COM(95)0347) and the proposal for a directive amending 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,
- having regard to the proposal for a Council directive amending Directive 93/148/EEC of 21 May 1993 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 (COM(95)0348),
- having regard to the report by the High Level Panel on the free movement of persons chaired by Mrs Simone Veil (C4-0181/97),
- having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Institutional Affairs, the Committee on Civil Liberties and Internal Affairs and the Committee on Petitions (A4-0205/98),

- A. whereas Union citizenship is by its nature a dynamic institution, a key to the process of European integration, and expected gradually to supplement and extend the rights conferred by nationality of a Member State, without in any way replacing national citizenship,
 - B. whereas European citizenship constitutes, for the citizen, the guarantee of belonging to a political community under the rule of law,
 - C. whereas Union citizenship and its associated rights must make an indispensable contribution to a greater European awareness among citizens and a greater consciousness of living, working and moving freely in one large European economic and political region without internal frontiers,
 - D. whereas the active political participation of citizens in European integration must be encouraged,
 - E. whereas citizens' support for European integration is achieved, inter alia, by means of practical measures on the part of the Union, in particular in the spheres of economic and social policy and environmental protection,
 - F. whereas this support depends on a proper policy of information on the aims of the Union, the means of achieving them and on the powers and workings of the Union institutions,
 - G. whereas the European consciousness of citizens could be strengthened by promoting symbols of belonging to the European Union, by teaching a common syllabus of European history and culture in all the Member States and by creating a European voluntary service,
1. Calls on the Member States to initiate without delay the preparatory work referred to in the Protocol to the Amsterdam Treaty integrating the Schengen acquis into the framework of the European Union;
 2. Points out that the free movement of Union citizens within the territory of the Union can be guaranteed only by abolishing all controls at internal borders and calls on the Council to adopt the proposals for directives drawn up for this purpose which are still pending;
 3. Calls on the Commission to submit, as soon as possible, a legislative proposal abolishing the present inequalities regarding residence in the Member States and properly guaranteeing freedom of movement for Union citizens;
 4. Calls on the Commission to recast the legislative instruments concerning freedom of movement and the right of residence;
 5. Calls on the Member States to initiate negotiations aimed at aligning the educational systems in the various Member States, in particular as regards the level of the syllabus taught and its distribution over each school year, in order to facilitate the mobility of Union citizens who have children of school age;
 6. Calls on the Member States to facilitate the free establishment of Community citizens by simplifying the recognition of their diplomas and vocational training certificates;
 7. Calls on the Commission to take the necessary steps without delay to remove any impediment to the mobility of young people within the European Union, in addition to the current provisions

on the mutual recognition of diplomas. In particular, school-leaving certificates and vocational training certificates and diplomas must be recognized as equally valid in the Member States;

8. Hopes that the proposal for a directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union will be adopted as soon as possible, in order to remove any obstacles to the mobility of workers within the European Union arising from problems relating to supplementary pension rights;
9. Calls on the Commission to continue with the infringement proceedings already initiated and, if necessary, to bring others against Member States which have not transposed the directives on freedom of movement and right of residence;
10. Calls on the Commission to provide further information about the incorrect administrative practices on the part of certain Member States, referred to in its second report on citizenship of the Union;
11. Urges the Commission to remain vigilant in monitoring the transposition of Directive 94/80/EC concerning municipal elections in all the Member States and calls on France and Belgium to adopt the national legal provisions transposing this directive as soon as possible;
12. Calls on the Commission to uphold, in particular in Community courts, the direct applicability of Article 8a of the EC Treaty, to enable citizens to invoke it before national courts, if their right to move freely within the Union is infringed;
13. Calls on the Member States and the Community institutions to decide on the practicalities of providing the European electorate with full information on their rights to vote in and stand as candidates in European elections;
14. Requests the Member States and the Community institutions particularly to ensure that the rights to vote and stand as a candidate in elections to the European Parliament are granted without discrimination and can be exercised by all citizens who in accordance with Article 8 hold the nationality of a Member State and reside in the European Union;
15. Calls on the Member States to set as the deadline for submitting applications to be entered on the electoral roll for the European elections in June 1999 a date which is not unreasonably long before the date of the election itself;
16. Calls on the political parties to accept more Union citizens who are not nationals of the country concerned as party members and candidates on the electoral lists, and to encourage them to take part in political life in their country of residence;
17. Points out that no distinction may be made between the exercise of European and local voting rights, and both rights must be exercised in the same manner and following the same procedure;
18. Considers it essential to provide citizens with more information about the role of the Ombudsman and the right to petition the European Parliament;

19. Calls on the Union institutions to learn from the criticisms levelled against them by the European Ombudsman, while the Ombudsman's work should be further strengthened by expanding national legal advice centres;
20. Welcomes the success of the 'Citizens of Europe' initiative and calls on the Commission to make preparations for introducing a mechanism for permanent dialogue, whilst broadening the range of topics dealt with and examining the most effective ways of disseminating information concerning the rights available to citizens, for which DG X's existing structures in the visitor service must be expanded;
21. Notes that the right to consular and diplomatic protection is still at a theoretical stage and in this context recommends that the Member States should work on a common minimum definition of the protection which any Union citizen may expect from any consular or diplomatic representation of a Member State;
22. Notes the evident and urgent need for legal protection at European Union level against violations of data security, personal freedom and integrity as a result of the misuse of printed and electronic mass media;
23. Instructs its President to forward this resolution to the Commission and, for information, to the Council and the national parliaments.

B

EXPLANATORY STATEMENT

INTRODUCTION

This report, which forms part of the series of documents by the Union institutions on citizenship⁽¹⁾, will be set out as follows:

- I. Citizenship of the Union: from the Treaty on European Union to the Amsterdam Treaty
- II. Article 8: Union citizenship and national citizenship
- III. Articles 7a, 8a, 8b, 8c and 8d: the different rights of citizenship as perceived in the Treaty.
- IV. Information for the citizen
- V. Other questions related to citizenship

I. CITIZENSHIP OF THE UNION: FROM THE TREATY ON EUROPEAN UNION TO THE AMSTERDAM TREATY

A. CITIZENSHIP IN THE TREATY ON EUROPEAN UNION

Union citizenship is a concept which was introduced by Article G (C) of the Treaty on European Union of 7 February 1992 (hereinafter called TEU) which inserted a *Part Two* comprising Articles 8 to 8e, Article 8(1) stating that '*Every person holding the nationality of a Member State shall be a citizen of the Union*'. Article B of the TEU lays down that one of the objectives of the Union shall be: '*to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union*'.

⁽¹⁾ Commission communication to the Council of 24 September 1984 on A People's Europe (COM(84)446 final); reports of March and June 1985 by the Adonnino committee; European Parliament resolution on Union Citizenship of 14 June 1991 (OJ C 183/473 of 15 July 1991 - Rapporteur: Mrs Rosamaria Bindi, draftsman of opinion of the Committee on Legal Affairs and Citizens' Rights, Mr Lode van Outrive); report by Mr Renzo Imbeni on Citizenship of the Union of 21 December 1993 (A3-0437/93), Committee on Civil Liberties and Internal Affairs, opinions by Mrs Mary Banotti and Mrs Rosamaria Bindi for the Committee on Women's Rights and the Committee on Institutional Affairs respectively, in respect of which the rapporteur requested and obtained rejection in plenary in view of the excessive number of amendments which had changed the nature of the report) of the European Parliament on the report by the European Council to the European Parliament on the progress of European Union in 1994 (resolution of 27 March 1996 - OJ C 117/16 of 22 April 1996) and resolutions of the European Parliament on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference (resolution of 17 May 1995 - TO3487) and on the convening of the 1996 IGC (resolution of 13 March 1996 - TO4176).

Articles 8a and 8d refer to other provisions of the Treaty regarding the exercise of the rights they contain. Article 8b refers to the provisions of secondary legislation.

The rights mentioned in these articles are the following: the right to move and reside freely (Article 8a), the right to vote and to stand as a candidate at municipal elections (Article 8b(1)), the right to vote and stand as a candidate in elections to the European Parliament (Article 8b(2)), protection by diplomatic or consular authorities (Article 8c), the right to petition (Article 8d, first paragraph) and the right to apply to the Ombudsman (Article 8d, second paragraph).

A first report was submitted by the Commission on 21 December 1993[Footnote]: Parliament did not deliver an opinion on this report.

B. CITIZENSHIP IN THE AMSTERDAM TREATY

The Amsterdam Treaty did not change much of the content of Articles 8 et seq of the Treaty, the only modifications being the following:

New Article 8(1): ‘ *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.* ’

New Article 8a(2): ‘ *The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 189b. The Council shall act unanimously throughout this procedure.* ’

New Article 8d, second paragraph: ‘ *Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 4 in one of the languages mentioned in Article 248 and have an answer in the same language.* ’

II. ARTICLE 8: UNION CITIZENSHIP AND NATIONAL CITIZENSHIP

As we have seen above, the Amsterdam Treaty lays down that European citizenship is derived from the national citizenship of a Member State.

According to the Court of Justice in its *Micheletti* judgment[Footnote] ‘ *the definition of conditions governing the acquisition and loss of nationality were, according to international law, matters which fell within the competence of each Member State*’. However, in the same judgment, the Court of Justice adds that this ‘ *competence had to be exercised in compliance with Community law*’.

The wording used by the Court does not fully clarify the possible link between Community law and national law in this field.

In its resolution of 14 June 1991[Footnote] on Union citizenship the European Parliament called for ‘the free and unlimited right of movement and residence in the territory of the Union for all citizens, and all persons residing legally in the Community, and for the last vestiges of discrimination, in particular on grounds of nationality, to be outlawed’ (paragraph 11). It also asked for resident aliens

to be granted the rights required to carry on a lawful economic, occupational or social activity, without discrimination.

III. ARTICLES 7a, 8a, 8b, 8c AND 8d: THE DIFFERENT RIGHTS OF CITIZENSHIP AS PERCEIVED IN THE TREATY.

A. THE RIGHT TO MOVE AND RESIDE FREELY (ARTICLES 7a and 8a)

(1) The Schengen Convention

The Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty of Amsterdam, unquestionably represents a step forward, despite the regrettable exemptions for the United Kingdom, Ireland and Denmark.

The Amsterdam Treaty thus incorporates the measures adopted under the Schengen Convention into the area of Community law. Council voting on these measures will, however, have to be unanimous. Under Article 2 of the Protocol, the Court of Justice shall exercise the powers conferred on it with regard to these measures adopted by the Council, but is not empowered to pass judgment on measures or decisions concerning the maintenance of law and order and the safeguarding of internal security. By virtue of a declaration annexed to the Amsterdam Treaty, the Member States will undertake the necessary preparatory work '*in due time*' to enable the Council to adopt the measures by the date of entry into force of the Amsterdam Treaty. Despite the foreseeable problems between Member States on this decision, they should be asked to make headway in order to avoid the Schengen measures being left in the third pillar, including the measures concerning immigration and asylum, although these subjects have been 'communitarised' by the new Title III A added by the Treaty of Amsterdam.

The Member States should be asked to complete the preparatory work to enable the Council to take the measures required to integrate the Schengen '*acquis*' into the Community domain as soon as the Treaty of Amsterdam comes into force.

(2) Arguments in favour of recasting the legislative instruments

The Commission complains about the disparity of the legal bases for the regulation and the various directives relating to the right to reside in another Member State and the excessive number of texts governing this matter. As the Commission correctly points out, '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 free residence'.

The Commission would have liked to see a single legal basis for the right to free movement and residence in order to undertake a recasting of the legislative instruments governing this matter. Article 8a, as amended by the Treaty of Amsterdam, does not, however, offer a new single legal basis.

Although the diversity of legal bases certainly does not simplify matters, it does not constitute a major legal obstacle to the recasting of the legislative instruments, as the Commission points out.

The Commission should therefore be asked to propose a recasting of these provisions taking in the essential elements and thereby offering citizens and those professionally concerned (lawyers, magistrates, social workers, etc.) a readable and more usable instrument.

(3) Direct effect of Article 8a

The Commission states that '*logically speaking, (Articles 8 and 8a) 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 basis 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*'.

If it is true that Articles 8 and 8a only constitute supplementary legal bases for the adoption of secondary legislation, the Commission's position regarding the inability of Article 8a to generate entry and residence rights is all the more surprising since the Commission itself maintained the contrary in a recent case⁽²⁾ before the Court of Justice.

In this case the Commission maintained that Article 8a conferred a right of free movement and residence deriving *directly* from the Treaty. Advocate-General La Pergola agreed with this interpretation in his conclusions⁽³⁾, stating that the right of movement and residence of Union citizens was rooted in the Treaty itself and not in the directives⁽⁴⁾. He maintained that these rights are *inseparable* from citizenship of the Union in the same way as the other rights contained in Articles 8b, 8c and 8d. He asked the Court to confirm that any Union citizen can cite their nationality of a Member State and of the Union to avail themselves of the principle of non-discrimination in all areas where Community law is applied. Advocate-General La Pergola had already stated this view on the occasion of a previous case⁽⁵⁾, insisting that the essential objective of the Treaty provisions on citizenship was to create progressive assimilation of the citizens of the Union regardless of nationality. He therefore cited directly Article 8a of the Treaty in the case in question. However, the Court resolved the question by reference to more narrow legal bases, viz Article 48 and Regulation 1408/71.

The Report of the High Level Panel on the free movement of persons chaired by Mrs Simone Veil emphasized (p. 17) that Article 8a was directly applicable and could therefore be cited directly by any Union citizen.

⁽²⁾ Case C-85/96, Maria Martinez Sala/Freistaat Bayern.

⁽³⁾ Presented on 1 July 1997.

⁽⁴⁾ Unofficial translation: 'The right to move and reside freely throughout the Union is laid down as a general rule by primary legislation (Article 8a) and its existence or removal does not depend on whether or not it is limited by other Community provisions, even those of secondary law'.

⁽⁵⁾ Joint cases C-4/95 and C-5/85, Stöber and Pereira/Bundesanstalt für Arbeit, judgment of 30 January 1997, conclusions of the Advocate-General of 6 June 1996, not published; see also CELS (Cambridge) EC Treaty Project, in *European Law Review*, October 1997, pp. 436-442; for an argument against the direct applicability of Article 8a of the Treaty, see the conclusions of the Advocate-General Jacobs, in Case C-297/92, *Instituto nazionale della previdenza sociale versus Corradina Baglieri*, reports 1993, part I, 5211.

The Commission should be asked to support the interpretation that Article 8a is directly applicable and to ensure that the citizen is duly informed of this.

(4) Article 7a and the Amsterdam Treaty

Articles 7a and 8a of the Treaty are in agreement as regards the free movement of Union citizens. It would appear that the free movement of Union citizens on Union territory can only be effectively guaranteed by abolishing checks on any persons (whatever their nationality) crossing an internal frontier.

On 12 July 1995 the Commission submitted three proposals for directives to implement Article 7a of the Treaty⁽⁶⁾.

These proposals, two of which were modified on 20 March 1997 after Parliament had delivered its opinion, encountered difficulties in the Council because they dealt with issues under the third pillar - 'immigration and internal security'.

The Amsterdam Treaty changed the legal basis of the measures referred to in Article 7a of the Treaty, which becomes Article 73j⁽⁷⁾ instead of Article 100 of the Treaty. Article 73j does not change the form of Parliament's consultation compared with Article 100 nor the voting in the Council. However,

⁽⁶⁾ Proposal for a directive on the right of third-country nationals to travel in the Community (COM(95)0346), proposal for a directive on the elimination of controls on persons crossing internal frontiers (COM(95)0347) and proposal for a directive amending 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 and 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 (COM(95)0348).

⁽⁷⁾ Article 73i:

'In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

- (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 7a ...;*
- (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, ...';*

Article 73j:

'The Council, acting in accordance with the procedure referred to in Article 73o shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- (1) measures with a view to ensuring, in compliance with Article 7a, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;*
- (2) measures on the crossing of the external borders of the Member States ...;*
- (3) measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months'.*

Articles 73i and 73j introduce a new deadline of five years after the entry into force of the Amsterdam Treaty for the adoption of the measures referred to in Article 7a of the Treaty.

Although the integration into Title III of the Treaty of the spheres under the third pillar constitutes a step forward, the integration into the internal market of the measures referred to in Article 7a, with a new deadline of five years, is clearly a retrograde step.

The standstill in the Council, mentioned above, seems to have been the subject of a political compromise at Amsterdam, since all the issues concerning the free movement of persons referred to in Article 7a are grouped together under one and the same title. Thus, whilst on the one hand the matters under the third pillar, such as immigration, asylum policy, judicial cooperation and external border controls come under the sphere of the Community, on the other hand these matters are linked to the measures referred to in Article 7a designed to ensure the abolition of all checks on persons, whether Union citizens or third-country nationals, when they cross internal borders.

We must also mention, with regret, the *Protocol on the application of certain aspects of Article 7a of the EC Treaty to the United Kingdom and Ireland*, which authorizes the United Kingdom to continue to carry out checks at its borders with other Member States⁽⁸⁾, and, above all, the *Protocol on the position of Denmark*⁽⁹⁾.

It is indeed regrettable that Member States may refrain from implementing the measures which, according to Article 7a, were to be completed by 31 December 1992. Furthermore, one might have hoped that the compromise which the new Title IIIa of the Treaty represents would have satisfied all the Member States.

The Council should therefore be called upon to adopt the three directives proposed by the Commission aimed at ensuring the free movement of Union citizens within Union territory.

(5) The problems raised by the Commission

The Commission notes various problems related to citizens' freedom of movement and residence. It should be stated once again that a recasting of the legislative instruments could help to resolve these difficulties by making it possible to involve the citizen more closely in the defence of his rights and by filling existing gaps in the law which offer too many opportunities for some national administrations to act contrary to the spirit, if not the text, of Article 8a of the Treaty:

- the transposition in the Member States of certain directives (particularly those on the right of residence of retired persons, students and persons who have ceased to work) has not always

⁽⁸⁾ By virtue of the agreements on the free movement of persons between the United Kingdom and Ireland, these rules shall apply to Ireland for as long as the bilateral agreements are in force.

⁽⁹⁾ This declaration states that '*Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title IIIa of the TEC*' and that '*none of the provisions of Title IIIa of the TEC, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in Denmark ...*'.

been carried out satisfactorily and this has led the Commission to initiate a number of infringement procedures.

- the application of the rights related to the freedom of movement and residence encounter difficulties concerning mainly 'incorrect or particularly restrictive administrative practices' such as making the issuing of a residence permit or a visa to a member of the family of a Union citizen conditional on the presentation of a series of documents which are not stipulated in Community law. It is unfortunate that the Commission does not give more details about 'incorrect administrative practices'.
- Community law is ill-adapted to certain particular situations such as those of trainees and voluntary workers. Here the Commission refers to the Green Paper on 'Education - Training - Research: The obstacles to transnational mobility'⁽¹⁰⁾ without giving further details.

In the light of the above the Commission should pursue the infringement procedures already initiated and start new ones against Member States who have failed to transpose legislation or follow 'good administrative practice'. It would however be desirable for the Commission to provide Parliament with information about the 'incorrect administrative practices' and give some details of the particular situations referred to.

(6) Suggestions by the High Level Panel on the free movement of persons chaired by Mrs Veil

The abovementioned report make interesting recommendations related to free movement and the right of residence⁽¹¹⁾. These include the creation of a short-term residence card. This card is designed for Union citizens who want to stay more than three months but less than one year in a Member State other than their Member State of origin. The card, issued by the Member State of origin, would contain the same data as an identity card and would guarantee that the holder was covered by health insurance and had sufficient means to support himself and any dependents. The host country would recognize this certificate and would have no more obligations towards the holder than towards someone residing less than three months. This would imply adapting Regulation 1408/71 in order to extend health insurance cover beyond three months. A residence card of this kind would facilitate the mobility of students, researchers, artists, trainees, etc.

(7) Obstacles to mobility

When they leave one Member State to reside in another, parents with school-age children often encounter considerable difficulties when enrolling their children in schools, because of the differences in school syllabuses and the lack of coordination between them. Member States should therefore initiate negotiations aimed at aligning school systems, especially as regards the content of syllabuses, in order to facilitate the mobility of Union citizens with children of school age.

The Green Paper on supplementary pensions in the single market⁽¹²⁾ outlines the obstacles to workers' freedom of movement linked to supplementary pensions, echoing what was said in the

⁽¹⁰⁾ COM(96)462 final.

⁽¹¹⁾ We omit the recommendations already dealt with in the opinion by Mrs Thors on the report of the High Level Panel for the Committee on Civil Liberties and Internal Affairs.

⁽¹²⁾ COM(97)283 final.

report by the High Level Panel mentioned above. The Commission submitted a proposal for a directive on the subject⁽¹³⁾, designed to safeguard the supplementary pension rights of employed and self-employed workers moving within the European Union. It should be pointed out that the directive aims to eliminate entirely the obstacles to the free movement of workers linked to supplementary pensions.

B. THE RIGHT TO VOTE AND TO STAND AS A CANDIDATE AT MUNICIPAL ELECTIONS (ARTICLE 8b(1))

It is a matter of regret that Directive 94/80/EC concerning municipal elections has still not been transposed into national law in France and Belgium. The Commission has taken Belgium to the Court of Justice on the basis of Article 169 of the Treaty and is keeping track of the ongoing procedure for the adoption of the relevant law in France. The Commission should be encouraged to remain vigilant in this regard.

C. THE RIGHT TO VOTE AND TO STAND AS A CANDIDATE IN ELECTIONS TO THE EUROPEAN PARLIAMENT (ARTICLE 8b(2))

Directive 93/109/EC was applied to the June 1994 elections and to the first elections held in the three new Member States in September 1995 and October 1996. The turnout in these elections was relatively low. One thing that Parliament should do is raise its profile with the public and deal with their problems in order to boost enthusiasm when elections are held.

The Commission has drawn up a report on the application of Directive 93/109/EC to the 1994 European elections which it adopted on 7 January 1998⁽¹⁴⁾. This report offers a clear and full analysis of the application of the directive. It emerges that a number of problems, such as that of the exchange of information aimed at preventing dual voting (in the country of origin and in the country of residence) would be solved more effectively by means of a uniform electoral system. The uniform electoral code for European elections soon to be adopted by Parliament must contain provisions on the exchange of information between Member States aimed at preventing a dual voting franchise.

It is essential for citizens to be informed of their rights under this directive, both by the Union institutions and by the Member State of residence. Article 12 of Directive 93/109/EEC obliges the Member States to inform Union citizens in good time and in an appropriate way but leaves it up to the Member State to decide how to organize information campaigns. Parliament stressed the need for effective information campaigns, adopting resolutions calling for EU citizens 'to be informed about the European elections on the same basis as nationals of the Member State in question, and in particular to receive letters and notification addressed to them in person ...'⁽¹⁵⁾. It emerges from the Commission report that during the 1994 elections there were great differences between the Member States as regards the level of information supplied to the general public on their rights to vote and stand as candidates in the European elections. It is essential that the European electorate should be fully informed about these rights as regards the European elections and that the Member States and

⁽¹³⁾ COM(97)486 final.

⁽¹⁴⁾ COM(97)731.

⁽¹⁵⁾ Resolution B3-0064/94 of 20 January 1994, OJ C 44, 14.2.1994, p. 159 and resolution B3-0433/94, OJ C 128, 9.5.1994, p. 316.

the European institutions should come to an agreement on the provision of the fullest possible information in all the Member States.

In accordance with Article 9(4) of Directive 93/109/EC, citizens of the European Union residing in another Member State who have been entered on the electoral roll in their Member State of residence for the European Parliament elections of June 1994, will remain on the electoral roll under the same conditions as voters who are nationals, until such time as they request to be removed or they are removed automatically because they no longer satisfy the requirements as regards residence. Other European Union citizens who wish to vote in the Member State of residence at the next European Parliament elections must submit an application to be entered on the electoral roll. It emerges from the Commission report (table 7) that the deadlines set for submitting applications to be entered on the electoral roll vary greatly from one Member State to another and are often unreasonably long before the elections themselves. Thus for the European elections to be held in June 1999, the deadlines set by Greece, France and Luxembourg are 31 March, 30 December and 31 March 1998 respectively. In order to ensure Union citizens' right to vote and stand as candidates in the European elections in 1999, the Member States should be asked to set the deadline for submitting applications to be entered on the electoral roll at a date which is not unreasonably long before the actual date of the election and ask Greece, France and Luxembourg to put the deadline back.

Finally, we should point out the low success rate of non-nationals standing as candidates in their country of residence. In this context, political parties should be encouraged to accept more non-national Union citizens as party members and candidates if they so wish, and encourage them to participate in the political life of their country of residence.

D. DIPLOMATIC AND CONSULAR PROTECTION (ARTICLE 8c)

The right to protection by diplomatic or consular authorities remains very academic. Moreover, as such protection is only given, according to Article 8c, to citizens '*under the same conditions as nationals of (the) State*' represented, the Member States should attempt to draw up a minimum common definition of the protection which any Union citizen may expect from any consular or diplomatic representation of a Member State.

E. THE RIGHT OF PETITION (ARTICLE 8d, first paragraph) AND THE RIGHT TO APPLY TO THE OMBUDSMAN (ARTICLE 8d, second paragraph)

The right to present petitions and to apply to the Ombudsman as referred to in Article 8d concerns '*every citizen of the Union*' but refers to Articles 138d and 138e, which extend eligibility for these rights to '*any natural or legal person residing or having its registered office in a Member State*'. So the determining condition is not political attachment to the Union but residence on the territory of the Union.

The Commission notes that citizens are ill-informed about the specific powers of the Parliament and the Ombudsman. For its part, the Parliament should try to provide the citizen with better information.

The number of cases submitted to the Ombudsman (1041 cases examined in 1996, of which 842 were new cases) shows how necessary the creation of this post was.

Each institution of the Union should learn from the accusations made against it in cases put to the Ombudsman in order to correct its actions where appropriate and to reduce the distance between it and the citizen as much as possible.

IV. INFORMATION FOR THE CITIZEN

The Commission communication notes the lack of information for Union citizens about Europe and about the rights they enjoy as citizens of Europe and comes out in favour of a permanent 'mechanism' to ensure dialogue between citizens and to inform them of their rights and how to exercise them. In this connection, the Commission and Parliament launched a joint programme in November 1996 called PRINCE (Programme of Information for the Citizens of Europe) covering the programme for the campaign on the euro, the 'building Europe' initiative relating to the preparation of the Amsterdam Treaty and the 'Citizens First' initiative to provide factual information on residence, work, study, purchases, travelling and equality of opportunity in Europe by means of brochures and the '<http://citizens.eu.int>' Internet site.

During the first stage (November 1996-November 1997), more than 75 million people were informed about this initiative. More than one million of them contacted the 'Citizens of Europe' service by dialling free telephone numbers or visiting the Internet site in order to obtain the guides or factsheets on the right to work, reside or study in another Member State. The second stage was launched in November 1997, with three new topics: the purchasing of goods and services in the single market, travel in the European Union and equality of opportunities for men and women at the work place. Brochures were published on these subjects. In the longer term, the Action Plan for the single market, adopted at the Amsterdam Council of June 1997, provides for the introduction of a mechanism for permanent dialogue with citizens, which will be based on experience acquired during the 'Citizens of Europe' campaign. Thus, as the Commission emphasizes, the range of topics dealt with should be broadened and consideration must be given to the most effective ways of disseminating information and making it accessible to the general public.

V. OTHER QUESTIONS RELATED TO CITIZENSHIP

The question of citizenship concerns several other aspects besides those arising within the narrow framework of Article 8 et seq. of the Treaty.

It should be recalled how important it is for the citizen to consider his European citizenship as an extra guarantee of membership of a community ruled by law.

Thus, as regards the inclusion of Article F in the Treaty on European Union, with its provision that the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law, citizens should be informed about and encouraged to use the various instruments available to them to press for respect of these rights (right of petition, ombudsman, national tribunal, ...).

The political participation of citizens should be encouraged in order to ensure that citizenship is a living and tangible concept. For this reason the citizen should be able to perceive a driving force within the Union with which they can identify. The employment crisis and the problems faced by many citizens mean that the (reinforced) Union should be seen as one of the ways of moving forward

towards greater well-being for its citizens. It is therefore important for the Union to generate, participate in and encourage practical action in support of employment, industrial policy, and environmental protection together with the national authorities.

B4-0816/97

Resolution on the safeguarding of privacy

The European Parliament,

- A. whereas the culture of images created by the ideology of the media is now the criterion for values and the yardstick for contemporary society,
- B. noting that the models created and transmitted by the mass media determine and influence public behaviour without being subjected to any ethical or judicial control;
- C. bearing in mind that substantial sectors of society are slavishly attached to this world of images and hence there is an urgent need to check the unregulated use of information, news and images concerning personalities with whom people identify,
- D. having regard to the absence of rules and hence the worrying limits which the unregulated use of images, news items and information can have on the lives of personalities featured in the popular press,
 - 1. Calls for a directive to safeguard privacy;
 - 2. Calls for a directive to redefine ethical behaviour, to which those working in the media must conform;
 - 3. Calls for a directive to oblige the media to give as much prominence and space to statements withdrawing false news items as they do to the false news items themselves.

23 March 1998

OPINION

(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the Second Report from the Commission on Citizenship of the Union
(COM(97)0230 - C4-0291/97)

Report by Mr Willy de Clercq (PE 223.184)

Committee on Institutional Affairs

Draftsman: Mr Olivier Duhamel

PROCEDURE

At its meeting of 27 January 1998 the Committee on Institutional Affairs appointed Mr Olivier Duhamel draftsman.

It considered the draft opinion at its meetings of 4 February 1998, 26 February 1998 and 16 March 1998.

At the last meeting it adopted the following conclusions by 18 votes to 3, with 1 abstention.

The following took part in the vote: De Giovanni, chairman; Lucas Pires, first vice-chairman; Berthu, third vice-chairman; Duhamel, draftsman; Anastassopoulos, Blokland (for Bonde), Bourlanges (for Brok), Cardona, Hager (for Vanhecke), Herman, Izquierdo Rojo, Lööw (for Tsatsos), Manzella, Mendez de Vigo, Neyts, Rack, Salafranca, Schäfer, Spaak, Spiers and Voggenhuber.

INTRODUCTION

1. The Committee on Institutional Affairs has been asked to deliver an opinion for the Committee on Legal Affairs and Citizens' Rights (rapporteur: Mr Willy De Clercq⁽¹⁾) in the context of the consultation of the European Parliament on the Second Report from the Commission on Citizenship of the Union (COM(97)230).
2. The working document currently being discussed in the Committee on Legal Affairs, like the Commission report itself, concentrates on the aspects of citizenship directly specified as such by the Treaty (Articles 8-8e) - first and foremost the free movement of persons - and refers to the importance of an information policy aimed at ensuring that people are properly acquainted with their

(¹) In the context of consultation, the Committee on Legal Affairs has, to date, produced a working document - PE 223.184, fdr 330064.

rights as European citizens. It also envisages developing citizenship by developing the employment, industrial, and environmental protection policies.

3. These considerations are part of an approach to citizenship which is simultaneously too broad and too narrow. It is too broad because, if the various policies referred to above are to be involved - and one might ask why they should be considered as more important than any other Community policy - then the debate on citizenship would cease to have any specific content, and it would ultimately be reduced to a general debate on European integration. It is too narrow because it sees citizens merely as the passive beneficiaries of European integration.

4. In this opinion, the Committee on Institutional Affairs would reaffirm the truly political dimension of the concept of citizenship. Without repeating the substance of the sometimes heated debates on the subject which have taken place in our committee, we would at least recall the essential definition of citizenship proposed by Professor Monar and Professor Bieber⁽¹⁾ who stress its link with the legitimacy of the institutions: 'citizenship of the Union means a relationship involving ties between the citizen and the European Union characterized by rights, duties and political participation'.

5. Our committee therefore feels that, first and foremost, the Committee on Legal Affairs should give more consideration to the idea of promoting active citizenship. From this point of view, in accordance with the advances made in the Treaty of Amsterdam, the crucial importance of transparency and, hence, of information must be emphasized. Could not the Commission, which itself raises this issue, take the idea to its logical conclusion by indicating its intention to submit a proposal based on the second subparagraph of Article 8e? It would, admittedly, be unlikely to be adopted (since unanimity in the Council and ratification by the Member States would be required), but at least the Member States, who agreed in Amsterdam to insert a new Article 191a into the Treaty, would thus be obliged to face up to their responsibilities.

6. The same method could be used with a view to proposing that the right of association at European level should be enshrined as a constituent part of Union citizenship. In view of the work done by NGOs to support European democracy, I believe that this really would constitute significant progress.

7. The transposition of the Treaty provisions on the right of Community citizens to vote and stand as candidates in European Parliament and municipal elections in their place of residence must be completed. Furthermore, in accordance with the spirit of these provisions, all the restrictions on the political activity of non-nationals, which the Commission report says still exist, should be lifted.

8. The limits of 'European awareness' (whilst there are often - but not always - marked forms of 'national awareness') are frequently seen as an obstacle to the emergence of active European citizenship. Europeans will feel more European if they are given the means actually to decide on their common destiny and if the European institutions operate in a transparent manner. But I believe that we can also encourage them to do so by developing the symbolic dimension of citizenship. In particular, we might suggest establishing a non-national, European public holiday; similarly, the various language versions of the European anthem could finally be adopted.

(¹) Study drawn up at the request of the EP entitled 'Citizenship of the Union', DG IV Working Paper, Legal Affairs Series W-5, June 1995, PE 165.568, p.5.

9. In the same spirit, it would be appropriate for a core history syllabus of the European idea to be taught in schools in all the Member States. Perhaps it could be suggested to the Commission, on the basis of Article 8e, that it adopt some of the proposals which were made at the IGC as regards the establishment of a European civilian voluntary service; this would have the advantage of enabling young people to demonstrate their commitment to Europe in a practical way (cf. Declaration 38 annexed to the Treaty of Amsterdam).

10. As regards the development of the citizenship rights set out in Articles 8-8d, I would propose to the Committee on Institutional Affairs that it endorse the approach of the Committee on Legal Affairs by emphasizing, in response to the Veil report, the need to facilitate freedom of movement and freedom of residence through the introduction of short-term residence permits, and by emphasizing the rights of children over 21 years of age and of unmarried couples (which must be explicitly recognized). Nevertheless, without wishing to enter into legal minutiae, I think it is risky to 'bank on' recognition of direct entitlement, and I would prefer to follow the Veil report on this point.

11. The duties of citizenship are a complex issue, since European citizenship, by its very nature and as recognized by the Treaty itself, is something which will develop over time. A citizen's first duty is to respect the law and contribute to common financial costs: as far as Community law and the budget are concerned, it therefore essentially consists in complying with national law and in paying national taxes. However, I would stress once again the importance of informing European citizens about this.

CONCLUSIONS

In conclusion, the Committee on Institutional Affairs, which has been asked for its opinion, calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

- A. whereas citizenship is an essential element of European identity,
- B. whereas the legitimacy of the European institutions depends on the confirmation of true European citizenship as a complement to national citizenship,
- C. whereas the establishment of European citizenship presupposes not only that the specific rights of European citizenship will be guaranteed in exchange for the duties imposed but also that European citizens will be given the opportunity to play a proper part in the definition of those duties,
 - 1. Calls on the Commission to submit, on the basis of Article 8e, proposals aimed at supplementing the section of the Treaty dealing with citizenship by:
 - the right to information;
 - the right of association;
 - the right to undertake political activities;
 - 2. Considers that the European awareness of citizens may be strengthened by:
 - promoting symbols of belonging to the European Union, for example by adopting the words, in the languages of the various countries, of the European anthem and by

introducing a public holiday common to all the Member States with a view to celebrating Europe; that holiday would fall on 9 May since, in accordance with the recommendation of the Milan European Council, that date already marks the occasion, in several Member States of the European Union, of the popular commemoration of the Schuman Declaration, the real starting point for European integration;

- teaching children from an early age in all the Member States a core history syllabus of the European idea and an introduction to the European Union;
 - establishing a European voluntary service;
3. Calls on the Member States concerned to lift the remaining restrictions on:
 - the voting rights of their nationals residing abroad;
 - the right of Community citizens residing on their territory to vote and stand as candidates in municipal and European elections;
 - the political activities of Community citizens residing on their territory;
 4. Expects the actual participation of non-national Community residents in European elections to be promoted by means of information addressed personally and directly to them by the Member States and by means of active information campaigns organized by the Commission and the European Parliament;
 5. Stresses, following the Veil report, that the Treaty establishes freedom of movement and freedom of residence as a general principle and prohibits the lack of implementing measures from being used as a pretext for refusing citizens the right to enjoy these freedoms.

9 January 1998

OPINION
(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the second report from the Commission on citizenship of the Union
(COM(97)0230 - C4-0291/97) (De Clercq report)

Committee on Civil Liberties and Internal Affairs

Draftsman: Mrs Claudia Roth

PROCEDURE

At its meeting of 8 July 1997 the Committee on Civil Liberties and Internal Affairs appointed Mrs Roth draftsman.

It considered the draft opinion at its meetings of 4 November and 9 December 1997 and 19 January and 5 February 1998.

At the last meeting it adopted the following conclusions unopposed, with 2 abstentions.

The following took part in the vote: d'Ancona, chairman; Reding, vice-chairman; Roth (draftsman); Bontempi, Buffetaut, De Esteban Martin, Deprez, Ford, Jean-Pierre, Lehne (for Colombo Svevo), Lucas Pires, Marinho, Mohamed Ali, Nassauer, Palacio Vallelersundi (for Cederschiöld), Pirker, Posselt, Pradier, Schmid, Schroedter (for Orlando pursuant to Rule 138(2)), Schulz, Terrón i Cusí, Van Hecke (for Angelilli, pursuant to Rule 138(2)) and Zimmermann.

INTRODUCTION

As the Commission rightly states (first sentence of p. 6), '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'.

Citizenship of the Union empty of all content makes no sense. If an individual continues to be faced with problems in his daily life, the title of 'European citizen' will discourage him, rather than awakening his pride. Let me stress - and I shall return to this point - that excluding third party citizens legally resident in the Union risks giving citizenship negative, rather than positive connotations.

Three reports are currently being drawn up, almost simultaneously, on matters of interest to citizens: the report on the action plan concerning the internal market, the report on the report by the High Level Panel chaired by Mrs Veil on the free movement of persons, and the Commission's report on citizenship of the Union.

This opinion looks at several aspects of citizenship before drawing a number of conclusions. The Commission's report is very interesting because it covers a longish period: 1994 to 1996 inclusive. It is impossible to ignore, purely and simply, a certain number of problems of varying magnitude, while concluding that progress over this long period has been disappointing.

Freedom of movement and the right of residence

According to the Single European Act, the internal market was to be completed by 31 December 1992 with the establishment of an area without internal frontiers (see p. 17 of the Commission's report and Article 7a of the Treaty). It took the Commission until 24 August 1995 to submit three proposals relating to the free movement of persons, after the European Parliament had taken the Commission to the Court of Justice for failing to comply with an obligation under the Treaty.

Previously the Commission had always maintained that it was for the Member States themselves to establish freedom of movement on a negotiated basis. The Commission takes satisfaction in saying (p. 18) that 'the Schengen initiative has always been aimed at achieving the objective of Article 7a', and it is quite right; but it conveniently forgets that more than 90% of the Schengen Convention consists of 'compensatory' measures.

The report by the Veil group mentions quite a considerable number of problems concerning the right of residence which the Commission says in its report 'stem from the diverse nature of the legal bases' for different categories of persons. It is clear that the Amsterdam Treaty does not provide the stimulus sought by the Commission and that most of the difficulties will have to be overcome using the old legal bases; this, we feel, is perfectly possible. If an item of legislation is not effective because it provides different rules for identical facts, the texts can of course be simplified or standardized. The new provisions of the Amsterdam Treaty and, in certain respects, case law of the Court of Justice (for example, the Vanderelst decision), make it possible to adopt legislation giving third-country citizens rights which hitherto have been granted only at national level, and not in full.

Consular and diplomatic protection

The Commission says that practical implementation of Article 8 of the Treaty should not be underestimated. There has been real progress, but it has often been indistinct, fragmentary and not immediately apparent to ordinary citizens. Although the Member States and the Commission would like to publish a leaflet to make the measures better known, the fact is that those Member States which should have adopted the measures necessary in accordance with the Treaty, have not yet taken sufficient initiatives to constitute implementation of Article 8c. One might wonder whether the alleged practical difficulties are not a pretext for some Member States to drag their feet.

Voting rights

The problems raised by granting rights to citizens are perfectly illustrated in the developments concerning the right to vote in local elections (Article 8b is not concerned solely with elections to 'the local council' but with 'local elections', which is a broader concept). Bearing in mind that some Member States have been dragging their feet, while others have done everything possible to obtain derogations from the Council, it cannot truly be said that the outlook is rosy, particularly as a number of Member States do not, in general, grant equal rights to third-country citizens. The rapporteur believes that rapid progress should be possible in this area.

CONCLUSIONS

The Committee on Civil Liberties and Internal Affairs calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

1. Points out that Union citizenship, which the Treaty of Maastricht introduced, is by its nature a dynamic institution, a key to the process of European integration, expected gradually to supplement and extend the rights conferred by membership of a Member State, without in any case taking the place of national citizenship;
2. Points out the importance of ensuring that citizens see European citizenship as an extra guarantee that they belong to a community based on the rule of law; and accordingly insists on action to promote the information campaigns required;
3. Calls on the Member States to enable citizens from third countries legally resident in the European Union who have stated their intention of remaining in the European Union to acquire the appropriate nationality, and to make this easier for them by promoting measures for that purpose;
4. Welcomes the fact that Articles 138d and 138e of the Treaty entitle citizens of third countries legally residing in the European Union to address petitions to Parliament and put complaints to the Ombudsman, and draws attention to the importance of these provisions for their integration into European society;
5. Believes it is particularly important to implement the provisions of Article 8e of the Treaty whereby the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to strengthen or to add to the rights already laid down by virtue of European citizenship and which may be submitted to the Member States for adoption;
6. Takes the view that, of the Treaty objectives in Article B of the EU Treaty, freedom of movement for persons is to Union citizens a particularly practical and tangible aspect of European unification;
7. Endorses the report's condemnation of the problems that still affect the movement and residence of European citizens. Believes that recasting the legislative instruments of derived law, which look alarmingly diverse at present, would help to solve these difficulties and provide citizens with a more intelligible view of the legal system;
8. Reminds the Commission of its function as guardian of the treaties; accordingly requests it to defend the direct applicability of Article 8a of the Treaty and to investigate and oppose the incorrect administrative practices occurring in some Member States, such as not transposing, or incorrectly transposing, certain directives on movement and residence, to which its report refers;
9. Regrets the fact that on 1 January 1997 Directive 94/80/EC on the right to vote and stand in municipal elections had still not been incorporated by two Member States, and urges the Commission to use all the mechanisms laid down by the Treaty to remedy the situation;

welcomes the Commission's decision to take action pursuant to Article 169 against Member States failing to adopt the requisite measures;

10. Points out with concern that there are disparities in the law of the various Member States on the right to vote of their nationals resident in another Member State; and insists that the relevant institutions put this matter right;
11. Looks forward to the report drawn up by the Commission on the application of Directive 93/109/EC on the right to vote and stand in the 1994 European Parliament elections;
12. Demands emphatically that when taking legislative decisions the Council hold its meetings on principle in public, in accordance with general parliamentary tradition;
13. Stresses that submitting petitions to the European Parliament and complaints to the Ombudsman affords citizens the possibility of presenting their problems at a European level, but citizens should also explore the possibility of submitting a complaint to the Commission to induce it to take Member States or the Council before the Court of Justice for failing to comply with Community law;
14. Notes that in its report the Commission comments on the lack of information for Union citizens on the rights protecting them under the treaties and derived legal acts. Believes that there is an urgent need to set up permanent and effective machinery involving all the Union institutions to provide for dialogue with citizens and inform them of their rights and how to exercise them; points out that machinery of this kind would supplement the Prince Programme, which was set up on Parliament's initiative;
15. Urges the Council to promote the definition of a minimum common core of consular and diplomatic protection as laid down in Article 8c of the Treaty for every citizen of the Union.

10 February 1998

OPINION
(Rule 147)

for the Committee on Legal Affairs and Citizens Rights (report by Mr Willy De Clercq)

on the Second Report from the Commission on Citizenship of the Union
(COM (97)0230 final - C4-0291/97)

Committee on Petitions

Draftsman: Mr Wolfgang Ullmann

PROCEDURE

At its meeting of 23 and 24 July 1997 the Committee on Petitions appointed Mr Wolfgang Ullmann draftsman.

It considered the draft opinion at its meeting of 24 and 25 of November 1997.

At that meeting it adopted the following conclusions unanimously.

The following took part in the vote: Fontana, chairman; Newman, vice-chairman, Ullmann, vice-chairman and draftsman; Thors, vice-chairman; Barros Moura, Camisón Asensio, Heinisch, Kellett-Bowman, Kuhn, Malangré, Perry, Smith, Wieland and Wolf (for Ahern).

CITIZENSHIP OF THE UNION

1. Introduction

The Commission's second report on citizenship of the Union⁽¹⁾ was submitted to the Council and Parliament on 27 May 1997. In this report, drawn up in accordance with Article 8e of the EU Treaty, the Commission examines how the provisions on Union citizenship have been applied and the progress made in implementing the rights specifically related to citizenship. The Commission recognizes the importance of citizenship of the Union but notes that problems have arisen in implementing the rights that citizenship confers. These problems were also pointed out in the Commission's first report on citizenship of the Union published on 21 December 1993⁽²⁾

In that report, which appeared a few months after ratification of the Maastricht Treaty, the Commission pointed out that 'the provisions of Part II of the EEC Treaty are not static, but are

⁽¹⁾ COM(97)0230 final.

⁽²⁾ COM(93)0702 final.

essentially dynamic in nature. This is plainly spelt out in Article E itself, insofar as it envisages that these provisions be strengthened or supplemented in the future⁽¹⁾.

The Member States, with the 1984 with the Fontainebleau European Council, and the Commission, with its communication on a people's Europe⁽²⁾, had launched an important initiative to revive waning public interest in the European Parliament elections. However, if we compare the situation on the eve of the millennium with the objectives set in 1984 and agreed in the Single European Act, for example on the free movement of persons, it can be seen that although the free movement of goods, capital and services was achieved as long ago as 1993, the freedom of movement for individuals envisaged at the same time is still far from being a reality. Article 8a(1), which stipulates that 'every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect' has still not been put into effect.

2. From citizens of the Union to Union Citizenship

Before entry into force of the Single European Act decisions taken at Union level were of direct or indirect concern to citizens of the Union only in their capacity as nationals of the Member States. Even elections for the European Parliament were subject to national legislation and many citizens of the Union were prevented from voting because they did not live in the Member State of which they were nationals. This situation has changed with the introduction of Union citizenship and the possibility for Union citizens to vote in local (Directive 94/80/EEC⁽³⁾) and European elections (Directive 93/109/EEC)⁽⁴⁾ in a country in which they are legally resident. The experience of the last European elections, emphatically confirmed by the local elections, nonetheless shows that a great deal still has to be done in the Member States to implement these provisions democratically. The Commission's second report on citizenship of the Union ⁽⁵⁾ shows that participation by a non-national voters in their Member State of residence in the last European elections varied from 1.55% in Greece to 44.11% in Ireland with an average turnout of 11.81%. These figures are extremely low despite the fact that the electoral laws are fairly similar.

However, far greater problems have arisen with the implementation of the directive on local elections since these not only vary from one Member State to another but in one Member State the provisions even differ from one region to another. In some regions there are even formal obstacles applying solely to those Union citizens who want to vote in their place of origin. It is therefore no wonder that the turnout is not particularly high.

The rights of Union citizens have evolved noticeably through the advances made in the areas of the environment, social affairs, industry, consumer protection and freedom of movement despite the fact that these matters are not linked to Union citizenship. A large number of actions in the Court of Justice relate to these areas and the many judgments in favour of Union citizens vividly illustrate a trend which is borne out by the work of the Petitions Committee and the petitions it receives.

⁽¹⁾ COM(93)0702 final, p.2.

⁽²⁾ COM(84)0446 final.

⁽³⁾ OJ L 368, 31.12.1994.

⁽⁴⁾ OJ L 329, 30.12.1993, p. 34.

⁽⁵⁾ COM(97)0230 final.

The European Ombudsman has an institutional role in safeguarding the rights of European citizens. Although the Member States decided in Amsterdam to fund the work of the Ombudsman from the Union budget, giving him a degree of economic independence, a decision has yet to be taken on reinforcing his powers. This issue is linked to the outstanding question of institutional reform of the Union. Without such reform it will not be possible to strengthen the Ombudsman's role.

3. Autonomous Union citizenship

There are many arguments in favour of giving Union citizenship greater autonomy. In the provisions adopted at Amsterdam it is stated that 'Citizenship of the Union shall complement and not replace national citizenship' (Article 8(1) TEC) but it should not be inferred from this that Union citizenship has no independent legal force. The Commission is thus completely right in its assessment of the new legal nature of Union citizenship when it says that 'the rights flowing from citizenship of the Union are in effect granted constitutional status by being enshrined in the treaties themselves. These rights are to be construed broadly and exceptions to them are to be construed narrowly in accordance with the general principles of Community law recognized by the Court of Justice. Thus, in so far as these provisions relate to rights which were already laid down in Community law, the status of these rights has now been fundamentally altered'⁽¹⁾. Union citizenship already derives independent legitimacy from decisions taken at Union level and the associated case law but it also constitutes an important point of reference for European citizens by making them aware that the economic and political rights and duties at Union level go hand in hand with and are safeguarded by civil rights. There are, however, further convincing arguments for making Union citizenship more autonomous.

There are currently 17 million immigrants and refugees from non-member countries living in the Union. For various reasons, they do not have the nationality of the country where they may have been living for years or may even have been born, but still hold their parents' nationality. These people are not only denied the political rights enjoyed by Union citizens, but also the social and economic rights applying at Union level, such as freedom of movement. There is no valid reason why a worker or businessman who has been born and brought up in the Union should be deprived of the fundamental rights guaranteed by the Union. In some Member States it is extremely difficult for this group of people to become naturalized so there is all the more reason why they should be able to acquire Union citizenship, provided they have been legally resident in the Union for five years or more. Five years is a long time, given that several Member States allow immigrants and refugees who have been resident for three years to take part in local elections. In Sweden they can even vote in general elections. A five-year residence requirement is appropriate for Union citizenship since most of the Member States require five years' residence for naturalization. Union citizenship would give new legal certainty to this group in society who, for various reasons, do not hold citizenship of a Member State. It would also overcome the problem of legal distinctions within families, which arise when Union citizens marry nationals of non-member countries. Other citizens who have been resident in the Union for generations but are not nationals of one of the Member States could also benefit in terms of legal certainty from being included in Union citizenship.

The groups concerned already enjoy the Union's right of petition. Under Article 138d of the Treaty, any natural or legal person residing or having its registered office in a Member States is entitled to petition the European Parliament. Citizens of non-member countries living in the Union make full use of this right, which is also governed by Rule 156(9) of the Rules of Procedure. During the

⁽¹⁾ COM(93)0702 final p.2.

1996-97 session of Parliament, 151 petitions were received from nationals of non-member countries, outnumber only by petitions from German nationals. There is thus no reason why the Member States should not extend to these groups the other rights conferred by Union citizenship.

4. Institutional reform, Union citizenship and the right of petition

The Schengen Agreement was the first initiative taken by the Member States to pursue European integration in a new form of intergovernmental cooperation. In 1985, five Member States agreed to introduce security measures necessitated by completion of the internal market, the removal of internal borders and the abolition of frontier checks on individuals. Since then, an additional agreement and implementing provisions have been adopted creating a comprehensive agreement which has no institutional or legal connection whatsoever with the Union. The European Parliament, the Court of Justice and the Court of Auditors have no jurisdiction over the activities of Schengen bodies, which directly affect the freedoms of individuals in the Member States. In a protocol to the Amsterdam Treaty, the Schengen Agreement, which has since been signed by 9 Member States, has been incorporated into the European Union framework without any clarification of the institutional and legal issues of judicial and parliamentary scrutiny referred to earlier.

All the Member States have, however, signed agreements and conventions modelled on Schengen in the highly sensitive areas of asylum policy and police cooperation. The Dublin Convention on asylum policy involves the EU Member States taking over the Schengen provisions in this area but with the same institutional flaws as in the Schengen Agreement. Moreover, in adopting the Europol Convention, the Member States have taken the biggest step so far towards communitarizing police cooperation without tackling the question of parliamentary and judicial control.

These developments have a direct impact on citizens' right of petition. Under Article 138d of the Treaty on European Union, petitions must concern matters coming within the Union's field of activities, which means that the activities of the Member States in second or third pillar matters fall within the remit of the Petition's Committee. Petitions are declared admissible if they relate to matters falling within the treaties or the work of a Community body or other institution of the Union. In the event of further reform of the Union, this could provide a blueprint for the rights of the European Parliament and the Court of Justice.

The experience of recent years clearly demonstrates that citizens are keen to use their right of petition. Over the past five years the number of petitions to the European Parliament has risen to well over a thousand (1992: 852, 1993: 1051, 1994: 1254, 1995: 1259, 1996: 1067)⁽¹⁾. The petitions come from all the Member States of the Union although the number bears no relation to population size. In the period 1996/97, as in previous years, social affairs and the environment were the areas of life which prompted the greatest number of petitions - 350 and 234 respectively. The Petitions Committee's reports show how petitions are used to gain access to all Union bodies.

The right of petition has developed into an effective instrument of Union policy. It is therefore important to bridge the gap between Union citizenship and Union policy and to develop Union citizenship into a legal form that will involve citizens politically and legally in all the important issues decided at Union level. This would be a historic development helping to create a new subsidiary

⁽¹⁾ Petitions Committee report for 1996/97 (A4-1090/97).

citizenship, extending from the municipalities, via national citizenship to Union citizenship and allowing citizens to exercise their rights in full.

CONCLUSIONS

Having examined the Commission's second report on citizenship in the Union, the Committee on Petitions calls on the Committee responsible to take the following conclusions into account in its motion for a resolution:

1. Recalls that the introduction of Union citizenship is an important step towards democratizing the Union and provides a framework for involving citizens in political and institutional decisions in the event of future reform of the Union;
2. Calls on the Member States to examine to what extent the drafting of a specific Union bill of rights might enable citizens of the Union to take legal action in the European Court of Justice to assert their rights on the basis and within the framework of Union law;
3. Calls for all citizens living legally in the Union to be granted the rights conferred by Union citizenship in addition to their nationality provided that they have economic, social and family ties with the Union; considers that citizens of non-member countries residing legally in the Union should obtain this right after a five year-period of residence in the Union.
4. Points out that, in accordance with the principle of subsidiarity, Union citizenship should cover all policy and legal areas which are decided or regulated at Union level.
5. Notes that it would decisively enhance the transparency of action taken by the Union and its bodies, and the opportunities for information of EU citizens, if all institutions of the Union drafted and published rules on access to their documents;
6. Notes that Union citizens' right of petition has proved its worth but that in the course of further reform of the Union the right of petition, the role of the Ombudsman and judicial control of decisions taken by the Union institutions should be strengthened; further stresses the need for continuing publicity by all European bodies and institutions, and by the Member States, aimed at informing EU citizens of their rights of petition and complaint;
7. Points out that bringing decisions in the area of justice and home affairs within the parliamentary and judicial control of the Union requires further consideration as regards the guarantee and protection of the fundamental freedoms and civil rights in the Union.