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**Fourth Report on Citizenship of the Union
(1 May 2001 – 30 April 2004)**

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1. INTRODUCTION¹

Article 22 of the Treaty establishing the European Community requires the Commission to report to the European Parliament, the Council and the European Economic and Social Committee every three years on the application of provisions of Part Two of the EC Treaty (Citizenship of the Union). Reports on citizenship of the Union focus consequently on the rights of Union citizens under Part Two of the EC Treaty. This is the Commission's Fourth Report on Citizenship of the Union, which covers the period from May 2001 to April 2004.

The purpose of the Report is to present developments relating to Union citizenship and related rights and to assess the need for other provisions strengthening the rights of Union citizens. With this Report, the Commission fulfils its obligation under Article 22 of the EC Treaty.

2. CITIZENSHIP OF THE UNION

Every person holding the nationality of a Member State is also a citizen of the Union, pursuant to Article 17 of the EC Treaty.

The importance of Union citizenship lies in the fact that the Union citizens have **genuine rights** under Community law. The rights conferred on citizens of the Union by Part Two of the EC Treaty may be grouped in the following four categories:

- a personal right to free movement and residence subject to limitations and conditions laid down in the Treaty and in the secondary legislation (Article 18);
- electoral rights of Union citizens in European parliamentary and municipal elections in the Member State of residence even if they are not nationals of that State (Article 19), which can be seen in the framework of universal suffrage guaranteed by Article 190;
- protection by diplomatic and consular authorities of any Member State in a third country where the citizen's own Member State is not represented (Article 20); and
- access to non-judicial means of redress, through access to the Ombudsman and a right to petition the European Parliament (Article 21).

Furthermore, Article 17(2) of the EC Treaty provides that citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to duties imposed thereby. The most significant of the rights outside Part Two is protection against all forms of discrimination on grounds of nationality under Article 12.

The Commission stresses the importance of **information and communication** concerning the rights conferred by Union citizenship. Citizens are entitled to be aware of these rights. They will feel that the EU is closer them if continuous action is

¹ The annexes can be found in the accompanying Working Paper SEC(2004)1280.

taken to improve their general awareness of their rights, to provide them with easy access to reliable information about their rights and to feed back their experience.

Union citizenship depends on national rules as regards **acquisition and loss of citizenship**. Declaration No 2 on nationality of a Member State appended to the Maastricht Treaty confirms that the question of whether an individual possesses the nationality of a Member State is settled solely by reference to the national law of the Member State concerned. Access to Union citizenship is thus defined through national laws on nationality, including conditions for naturalisation.

Without prejudice to the fact that the Member States alone remain competent in the area of nationality laws, the Commission has presented its views on naturalisation of legal migrants in the Communication on immigration, employment and integration in 2003. [1] The 1999 Tampere Council endorsed a long-term objective that long-term residents should be offered the opportunity to obtain the nationality of the Member State in which they are resident. This would automatically mean gaining citizenship of the Union as well. The Communication sees the acquisition of nationality as a means of facilitating integration of immigrants, and makes a number of recommendations as regards naturalisation.

Community action in the fields of **education, training and youth** contributes to ensuring that citizens are enabled to participate actively in European democratic life and society. In particular, this goal is pursued under the follow-up to the Report on the concrete future objectives of education systems [2], and the Commission White Paper on “A new impetus for European Youth” [3], adopted in November 2001. The main concern is to make citizenship a reality by giving European citizens, particularly young people, the necessary competences and directly involving them in the European integration process.

3. RIGHTS CONFERRED ON UNION CITIZENS IN PART TWO OF THE EC TREATY

3.1. Freedom of movement and the right of residence

The Third Report on Union citizenship already described the need for codification and consolidation of Community legislation on free movement and residence in the context of the Commission proposal [4] for a **Directive on the right of Union citizens and the Members of their families to move and reside freely within the territory of the Member States** [5]. Directive 2004/38/EC [6] was finally adopted on 29 April 2004 and published on 30 April 2004. Member States will have two years, until 30 April 2006, to bring into force the national instruments necessary to comply with the Directive.

The Directive marks a major step forward in terms of freedom of movement and residence in relation to the existing situation in line with the expectations expressed by citizens. It has the potential to make an enormous difference to the lives of the millions of citizens who currently reside in a Member State other than their own and of the many more who will want to do so in the future. It will also encourage mobility of Union citizens across the European Union, which in return will have a positive impact on the competitiveness and growth of European economies.

The Directive, firstly, codifies in a single instrument the complex legislative corpus and the rich case-law on free movement and residence, which will make these rights clearer and more transparent for Union citizens and for national administrations. The Directive amends Regulation (EEC) No 1612/68 [7] on freedom of movement for workers and repeals 9 directives [8]. It also replaces Commission Regulation (EEC) No 1251/70 [9], which will have to be repealed by the Commission.

Secondly, it creates a single legal regime for free movement and residence within the context of citizenship of the Union while maintaining the acquired rights of workers.

Thirdly it facilitates the exercise of the right of residence by simplifying conditions and formalities, creating a permanent right of residence and reinforcing the rights of family members.

Union citizens will be able to reside in a Member State for three months without any other condition than the requirement to hold a valid identity card or passport. For periods longer than three months and up to five years, the right of residence remains subject to conditions: Union citizens must either be workers or self-employed persons; or have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State and have comprehensive sickness insurance; or, if they are students, be enrolled in an accredited educational establishment, have comprehensive sickness insurance and assure the relevant national authorities, by means of a declaration or by any equivalent means, that they have sufficient resources not to become a burden for the social assistance system of the host Member State.

However, the requirement for a residence card has been abolished for Union citizens. It is replaced by the possibility for Member States to require Union citizens to register with the relevant national authorities, who will immediately issue a registration certificate.

Another important innovation is the creation of a permanent right of residence, acquired after five years of continued residence in the host Member State. It is no longer subject to any conditions. This will greatly facilitate the lives of Union citizens who are long-term residents. It will also entitle those of them who are inactive, such as retired persons, to full equal treatment with nationals.

The Directive lays down clearly the right for Union citizens and their family members to equal treatment in the host Member State and expressly defines the exceptions from this rule. These are that Member States are not obliged to grant persons other than workers, self-employed persons and their family members, social assistance during the first three months of residence or maintenance assistance for studies prior to the acquisition of the permanent right of residence. The Directive also provides that an expulsion measure may not be the automatic consequence of recourse to the social assistance of a Member State.

The Directive provides, for the first time, that Member States must admit the registered partner of a Union citizen as a family member, provided the host Member State treats registered partnerships as equivalent to marriage. In any case, all Member States have an obligation to facilitate entry and residence of partners with whom the Union citizen has a durable relationship. The Directive reinforces the rights of family

members by granting them an autonomous right of residence in the event of the death or departure of the Union citizen or termination of the marriage.

The Directive better defines the possibility for Member States to restrict the right of residence of Union citizens and their family members on grounds of public policy, public security or public health. It lays down a series of general principles established by the case-law of the Court of Justice, which Member States must respect when adopting any restrictions. In particular it provides that measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. It also introduces a reinforced protection against expulsion in the case of permanent residence or if Union citizens have resided in the host member State for the previous ten years or if they are minor.

Relating to the **implementation of the existing Community legislation on the right of free movement and residence**, the Commission adopted a Communication on 'Free Movement of Workers - achieving the full benefits and potential' in December 2002.[10] In March 2003, the Commission adopted its second Report [11] on the implementation of the three Directives [12] on the right of residence of Union citizens and their family members who are not economically active in the host Member State, covering the period from 1999 to 2002.

The Agreement [13] between the European Community and its Member States and the Swiss Confederation on the free movement of persons entered into force on 1 June 2002. It provides for **the free movement of persons for Union citizens and Swiss nationals** on the basis of the rules applying in the EU. It grants the same living, employment and working conditions as those enjoyed by nationals and covers the fundamental rights of entry, residence, employment, establishment on a self-employed basis, study and the right to social security, on the basis of non-discrimination by nationality and equality of treatment.

Greater intra-Community mobility, including the increasing number of retired Union citizens who reside outside their home country, means that more and more Union citizens are dying in a Member State of which they are not nationals. This raises the problem of **repatriation of mortal remains**. The European Parliament has called on the Commission to see that the standards and procedures applied in the cross-border transportation of mortal remains are harmonised throughout the EU.[14] This subject can be identified as a possible new area for strengthening the right of free movement.

3.2. **Equal treatment in terms of nationality under Article 12**

The Court of Justice gave a number of major judgments strengthening the protection of Union citizens in the context of Articles 12, 17 and 18 during the reporting period. [15] It attaches particular importance to the principle of non-discrimination on the grounds of nationality in connection with Union citizenship: the fundamental status of Union citizenship enables those who are in the same situation to enjoy within the scope of the Treaty the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for. On the other hand, different situations must not be treated in the same way. Situations falling within the scope of Community law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular of the right of free movement.

3.3. Electoral rights

Elections to the European Parliament are conducted in accordance with principles common to all Member States. These were laid down by Decision 2002/772 [16] amending the 1976 Act [17] concerning the election of members of the European Parliament, which the Council adopted on the basis of Article 190(4) of the EC Treaty. It took effect on 1 April 2004.

During the reporting period, electoral rights in elections to the European Parliament were extended to Gibraltar, when the United Kingdom adopted national legislation enabling the Gibraltar electorate to take part in these elections in May 2003, following the “*Matthews v. United Kingdom*” case [18]. Spain filed a complaint with the Commission against the United Kingdom under Article 227 of the EC Treaty in July 2003. According to Spain, the new UK legislation violates Articles 17, 19, 189 and 190 of the EC Treaty and Annex II to the 1976 Act. In October 2003, the Commission invited the parties to find an amicable solution.[19] Nevertheless, Spain brought an action against the United Kingdom before the Court of Justice in March 2004.[20]

Political parties at European level contribute to forming a European awareness and to expressing the political will of the citizens of the Union (Article 191 of the EC Treaty). Regulation 2004/2003/EC [21] on political parties at European level was adopted in November 2003. It establishes a framework for financing European political parties from the Community budget.

Union citizens have **the right to participate in elections to the European Parliament in the Member State of residence**. The Commission took several actions to prepare for the 2004 elections to the European Parliament under Directive 93/109/EC, including issuing a Communication with a view to ensuring that all Union citizens were able to participate in the June elections.[22]

As regards **electoral rights of Union citizens in municipal elections**, the Commission reported to the European Parliament and the Council on the application of Directive 94/80/EC [23] in May 2002.[24] The Directive was adapted by the Act of Accession of ten new Member States in 2003 to add references to basic local government units of the new Member States to the Annex to the Directive.[25]

As mentioned above, the right to free movement has been extended to cover Switzerland. The free movement of persons is also guaranteed for Union citizens and nationals of Norway, Iceland and Liechtenstein in the European Economic Area. Electoral rights of Union citizens being corollary to the exercise of the right to free movement and residence, the next step could be to **establish the right to vote and stand as a candidate in local elections, through agreements between the Member States and the third countries concerned**. Currently, the right to participate in local elections in the country of residence exists between some Member States and the EFTA countries on the basis of bilateral agreements.

Recurrent petitions, parliamentary questions and public correspondence reveal the concerns of many Union citizens regarding a gap in electoral rights at the present level of Community law: Union citizens may still be deprived of important civic rights as a result of the exercise of the right to free movement, namely **the right to**

participate in national or regional elections. The Member States do not grant electoral rights at national or regional elections to nationals of other Member States residing in their territory. [26] Before enlargement, this situation concerned about five million Union citizens of voting age who resided in another Member State.

3.4. Right to diplomatic and consular protection

Following completion of the requisite legislative procedures by all the Member States, Decision 95/553 [27] regarding protection for citizens of the Union by diplomatic and consular representations of the Member States in non-member countries entered into force in May 2002. The protection offered by embassies may cover assistance in cases of death, serious accident or illness, arrest or detention, violent crime, or the relief and repatriation of distressed citizens of the Union.

3.5. Rights relating to non-judicial means of redress and to language

Union citizens are entitled to **petition the European Parliament** on matters concerning them directly which fall within the sphere of activities of the European Union. Parliament received 1283 petitions in 2001-2002, of which 744 were admissible, and in 2002-2003 it received 1514 petitions, of which 642 were admissible.

The **European Ombudsman** investigates complaints about maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. Mr Jacob Söderman served as European Ombudsman during the reporting period until the end of March 2003. By Decision 2003/158 [28] the European Parliament appointed Mr Nikiforos Diamandouros as European Ombudsman in January 2003 and he took office in April 2003. The number of the complaints received by the Ombudsman has risen steadily during the reporting period: 1874 complaints were received in 2001, 2211 in 2002 and 2436 in 2003. [29] The vast majority of the complaints come from private individuals (e.g. in 2002, 2041 complaints were sent directly by individual citizens), but either fall outside the mandate of the Ombudsman or are inadmissible (e.g. 29% of the complaints examined in 2001 appeared to be within the mandate).

The **right to use one's own language** is a reflection of the general principle of good administration. Correspondence from the general public to the Commission is handled in accordance with the Code of Good Administrative Behaviour, which refers to Article 21 of the EC Treaty as regards correspondence.[30]

4. REINFORCING CITIZENSHIP OF THE UNION THROUGH THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

There is a close link between Union citizenship and the fundamental rights included in the Charter of Fundamental Rights of the European Union [31]. By establishing citizenship of the Union, the Union placed the individual at the heart of its activities. The Charter applies the concept of Union citizenship in several provisions [32], and it contains a specific Chapter, Chapter V Citizen's rights, including the rights listed in Part Two of the EC Treaty.

On 2001, the Commission decided that any proposal for a legislative instrument or any rules and regulations which it adopted would be checked at the drafting stage for compliance with the Charter. [33]

In September 2002 a **Network of fundamental rights experts** was set up in response to a request from the European Parliament. Its objective is to ensure a high degree of expertise in relation to each of the Member States and the European Union as a whole. The Network produces an Annual Report on how fundamental rights are safeguarded in practice. It submitted its first report, the Annual Report 2002 to the Commission in March 2003. The Annual Report 2003 was delivered in April 2004.

To **promote information actions** relating to fundamental rights, a budget line of 1 million euros was established in the Union budget in 2002. Part of it has been used for the contract concerning the above-mentioned Network. With the rest, the Commission has financed projects to promote awareness of fundamental rights in Greece, Italy, Poland, Sweden and the United Kingdom.

The question of the **legal status** of the Charter, that is whether to make it mandatory, featured prominently in the debate of the Convention on the Future of Europe. It culminated in the incorporation of the Charter as Part Two of the Constitutional Treaty, which will make it legally mandatory.

The Treaty of Nice improved the procedure for detecting a clear danger of a Member State committing a serious breach of fundamental rights under **Article 7 of the EU Treaty**. In the Communication of October 2003 on 'Article 7 of the Treaty on European Union'[34] the Commission stressed the need for a proactive policy to safeguard common values and examined the material and formal conditions for implementing Article 7 in the event of a serious and persistent breach or the clear risk of such breaches of common values. The European Parliament Resolution of April 2004 supported an inter-institutional dialogue on a set of common criteria and the principles governing the opening of the Article 7 procedure. [35]

A further strengthening of fundamental rights is planned through the establishment of an **Agency of Fundamental Rights**, which will be an extension of the existing European Monitoring Centre on Racism and Xenophobia in Vienna. [36] A public consultation on the future mandate and tasks of the Agency is being launched at the moment.

5. CONCLUSIONS

Citizenship of the Union has developed over twelve years of existence into a source of real and concrete rights.

The Commission finds that the provisions of Part Two of the EC Treaty concerning rights of Union citizens are applied on the whole correctly and without serious problems. The Member States have implemented the existing secondary legislation in all areas covered by Part Two. The problems identified are mostly due to bad application and incorrect practices rather than to failure of national legislation to comply with Community legislation. Information concerning the proper interpretation of Union rules and the proper application of citizens' rights is crucial.

Information and communication activities must be targeted both at Union citizens and at national authorities administering the issues relating to the rights in question.

The need to strengthen the rights of Union citizens must also be assessed in the light of the results of Intergovernmental Conference that agreed on the Constitutional Treaty, Article III-13 of which corresponds to the existing Article 22 of the EC Treaty. In any case, the following issues can be raised as potential subjects for strengthening the rights of Union citizens:

- The Commission draws attention to complaints related to the lack of **the right of non-national Union citizens to vote and to stand as a candidate in national or regional elections in the Member State of residence**. However, decisions concerning possible measures to be adopted under Article 22(2) of the EC Treaty still require careful consideration.
- The principle of the free movement of persons has been extended to Switzerland, and it is also guaranteed in the European Economic Area. The next step could be to establish **the right of citizens of the contracting parties to vote and to stand as a candidate in local elections in their country of residence**. This can be achieved through an agreement between the Member States and the third countries concerned.
- There is no EU-wide provision uniformly governing **the repatriation of mortal remains** from one Member States to another. The relevant standards and procedures could be harmonised throughout the Union. The Commission will consider the possible actions needed, on the basis of Article 18 of the EC Treaty.
- Article III-11 of the Constitutional Treaty would transfer decision-making powers concerning **measures to facilitate diplomatic and consular protection** of Union citizens to the Union and thus strengthen the position of these rights. Measures on the basis of this provision would replace measures based on Article 22(2) of the EC Treaty.

Lastly, the Commission underlines the value of confirming the rights of Union citizens in the Constitutional Treaty by **incorporating the Charter of Fundamental Rights** with mandatory legal status.

ANNEX: REFERENCES

[N.B. The references are currently available in the English, French and German versions of the Report. The other language versions follow without delays.]

- (1) COM(2003)336.
- (2) COM(2001)59.
- (3) COM(2001)681.
- (4) COM(2001)275.
- (5) COM(2001)506, p. 8-9.
- (6) European Parliament and Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/365/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004. p. 77.
- (7) OJ L 257, 19.10.1968, p. 2.
- (8) Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.
- (9) OJ. L 142, 30.6.1970, s. 24.
- (10) COM(2002)694.
- (11) COM(2003)101.
- (12) Directives 90/364/EEC, 90/365/EEC and 93/96/EEC.
- (13) OJ L 114, 20.4.2002, p. 6.
- (14) Resolution 2002/2032(INI), adopted in the plenary 4.12.2003.
- (15) See inter alia Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31; Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 28, and Case C-148/02 *Garcia Avello* [2003] ECR I-0000, paragraphs 22 and 23.
- (16) OJ L 283, 21.10.2002.
- (17) The Act is annexed to Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, OJ L 278, 8.10.1976, p. 5.
- (18) Judgement of the European Court of Human Rights of 18 February 1999.
- (19) PV(2003)1632, see Commission press release IP/03/1479 of 29 October 2003.

- (20) Case C-145/04 *Spain v. UK*, action brought on 18 March 2004, OJ C 106, 30.4.2004, p. 43.
- (21) European Parliament and Council Regulation (EC) No 2004/2003 of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding, OJ L 297, 15.11.2003, p 1.
- (22) Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329, 30.12.1993, p. 34. The Commission's actions included the adoption of a Report on granting derogation pursuant to Article 19(2) of the EC Treaty in January 2003 (COM(2003)31); measures to support the application of Article 13 of the Directive on exchanging information to prevent citizens voting more than once and the above-mentioned Communication of April (COM(2003)174) recommending that new Member States should transpose the Directive without delay and urging all Member States to take the necessary measures to ensure that Union citizens and nationals of new Member States residing in their territory are entered on the electoral rolls for the 2004 elections well beforehand, even before the official date of accession if needed.
- (23) Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in municipal elections for citizens of the Union residing in a Member State of which they are not nationals, OJ L 368, 31.12.1994, p. 38.
- (24) COM(2002)260.
- (25) Annex II.2.D to the Act of Accession, OJ L 236 of 23.9.2003, p. 334.
- (26) With the exception of the UK and Ireland as regards Irish citizens residing in the UK and vice versa.
- (27) Decision of the Representatives of the Governments of the Member States meeting within the Council of 18 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations. OJ L 314, 28.12.1995, p. 73.
- (28) OJ L 65, 8.3.2003.
- (29) See Annual Reports 2001, 2002 and 2003 of the European Ombudsman.
- (30) The Code of Good Administrative Behaviour for the Commission was established by Commission Decision 2000/633/CE, CECA, Euratom, OJ L 267, 20.10.2000, annexed to the Rules of Procedure.
- (31) OJ C 364, 18.12.2000, p 1.
- (32) See e.g. Article 12(2), 15(2), 39(1), 40, 42, 43, 44, 45(1) and 46.
- (33) SEC(2001)380.
- (34) COM(2003)606.

- (35) Resolution adopted on 20 April 2004 on the Commission communication on Article 7 of the Treaty on European Union, PE 335.128.
- (36) Conclusions of the Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003. Annex to Presidency Conclusions of Brussels European Council of 12 and 13 December 2003. 5381/04, p. 27.