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REPORT FROM THE COMMISSION

**Fifth Report on Citizenship of the Union
(1 May 2004 – 30 June 2007)**

{SEC(2008) 197}

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1. INTRODUCTION

More and more European citizens study, get married, live or work in a Member State of which they are not nationals. As of 1 January 2006, there were approximately 8.2 million EU citizens who were exercising their right to reside in another Member State¹.

The results of the 2007 Flash Eurobarometer public opinion survey on European Union citizenship² reveal that Europeans are largely aware of their status as citizens of the Union but would like to be better informed about their rights. More than three-quarters of EU citizens have heard about the term "citizen of the European Union" and are aware that Union citizenship is acquired automatically by being a national of a Member State. 90% know that they are simultaneously Union citizens and Member State nationals.

Over the past 5 years one can note a significant improvement in Europeans' general awareness of their status as citizens of the Union. Compared to 2002, this year approximately 8% more Europeans claim to be familiar with the term "citizen of the Union" and to know what it entails while 15% more respondents are aware that Union citizenship is acquired automatically by being a national of a Member State.

However less than a third (31%) of respondents feel "well informed" about their rights as Union citizens.

The Commission places the citizen at the heart of its policies and will continue to inform citizens of their rights and to ensure that they actually benefit from such freedoms across the Union.

Article 22 of the EC Treaty 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 the provisions of Part Two of the Treaty which deal with Citizenship of the Union. This 5th Report assesses the application of these provisions during the period 1 May 2004 – 30 June 2007 in the light of the development of the Union and considers the need for strengthening the rights conferred on Union citizens.

The report focuses on the legal core of citizens' rights, namely **the right to move and reside within the EU** (Article 18), **the right to vote and stand as a candidate in European and municipal elections in the Member State of residence** (Article 19), **the right to diplomatic and consular protection in third countries** (Article 20), **the right to petition the European Parliament (EP)** and **the right to apply to the Ombudsman** (Article 21). Furthermore, it

¹ Eurostat estimates (see Annex to this report)

² Flash Eurobarometer 213

takes stock of advances in areas closely related to citizenship in the wider sense, such as equal treatment in terms of nationality and the protection of fundamental rights.

2. CITIZENSHIP OF THE UNION

2.1. Problems related to the acquisition and loss of nationality

The EC Treaty provides that every person holding the nationality of a Member State shall be a citizen of the Union and that citizenship of the Union complements and does not replace national citizenship (Article 17(1)). Declaration No. 2, annexed to the EU Treaty, establishes that whether a person has the nationality of a Member State is to be determined solely by reference to the nationality rules of the Member State concerned and the European Court of Justice (ECJ) has confirmed that the acquisition or loss of nationality falls within the competence of the Member States. The Commission has received a number of complaints, NGO reports, petitions and EP questions concerning problems in certain Member States linked to the acquisition and loss of nationality.

In particular, the Commission is aware of questions related to persons belonging to the Russian-speaking minority in **Estonia and Latvia** who are considered to be "**non-citizens**" and to the situation of "**erased persons**" in **Slovenia**. Another issue which has been raised concerns **the extension of citizenship to nationals of another country** on the basis, inter alia, of their membership of an ethnic community.

The Commission has no power to deal with the question of the acquisition or loss of nationality. However, within its remit, the Commission has sought to contribute to solutions linked to this issue by promoting integration and by using the Community instruments at its disposal such as ensuring that Member States strictly implement EC anti-discrimination legislation.

2.2. Access to Union citizenship

Union citizenship is gained through the acquisition of the nationality of a Member State. Without prejudice to the fact that the Member States alone remain competent in the area of nationality laws, the 1999 Tampere Council endorsed *'the objective that long-term legally resident third-country nationals should be offered the opportunity to obtain the nationality of the Member State in which they are resident'*.

In 2004, the Council adopted **Common Basic Principles (CBPs) on integration** to assist Member States in formulating integration policies³. One of these states that the participation of immigrants in the democratic process and in the formulation of integration policies and measures supports their integration. In 2005, the Commission adopted '**A Common Agenda for Integration**' proposing measures to put the CBPs into practice⁴. It put forward suggestions such as, at national level, the elaboration of preparatory citizenship and naturalisation programmes and, at EU level, the promotion of research and dialogue on identity and citizenship questions. The Third Annual Report on Migration and Integration⁵

³ Council Document 14615/04

⁴ COM(2005) 389

⁵ COM(2007) 512

confirms the importance of various forms of participative citizenship for the integration of third-country nationals.

The **Council Conclusions on the strengthening of integration policies in the EU by promoting unity in diversity**, adopted in June 2007, call upon the Member States, supported by the Commission, to explore and clarify the various conceptions of participation and citizenship and to exchange experiences on naturalisation systems.

2.3. Promoting European citizenship

Citizens should be made aware of their European citizenship, its benefits as well as its rights and obligations, if they are to develop a sense of European identity and give their full support to European integration. Initiatives such as the **Community action programme to promote active European citizenship**⁶, which was implemented over 2004-2006 and the **'Europe for Citizens Programme'**⁷ for the period 2007-2013, provide the Union with important instruments to promote active European citizenship.

3. FREEDOM OF MOVEMENT AND THE RIGHT OF RESIDENCE

3.1. Report on the three directives on the right of residence of economically inactive Union citizens

In April 2006, the Commission adopted its third report⁸ on the application of the three Directives⁹ on the right of residence of EU citizens who are students, economically inactive or retired, covering the period from 2003 to 2005.

3.2. Directive 2004/38: reinforcing citizenship

The most important development in this area was the entry into force, on 30 April 2006, of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The Directive:

- codifies in one instrument the complex legislative corpus and the rich case-law of the ECJ and creates a single legal regime within the context of citizenship,
- facilitates the exercise of the right of residence by simplifying conditions and formalities (e.g. by abolishing the system of residence permits for Union citizens),
- reinforces the rights of family members (e.g. by extending family reunification rights to registered partners),
- creates an unconditional permanent right of residence after five years of continuous legal residence in the host Member State and

⁶ Council Decision 2004/100/EC of 26 January 2004

⁷ Decision N° 1904/2006/EC of the European Parliament and the Council of 12 December 2006 establishing for the period 2007-2013 the programme 'Europe of citizens' to promote active European citizenship

⁸ COM(2006) 156 final

⁹ Directives 93/96, 90/364 and 90/365, abrogated by Directive 2004/38

- increases protection against expulsion of Union citizens and their family members on grounds of public policy, public security and public health.

Citizens will only be able to fully exercise their strengthened rights if they are fully informed of them. The "**Guide on how to get the best out of Directive 2004/38/EC**" aims to help to make Union citizens more acquainted with the legislation by translating it into user-friendly language¹⁰. More than 16 000 copies of the guide in 19 languages were distributed throughout the EU.

The **control of the correct implementation of the Directive** is an absolute priority for the Commission¹¹. Between June 2006 and February 2007, 19 **infringement procedures** were opened for **non-communication** of national implementing measures: in June 2007 15 of them were open, 4 of which had been referred to the ECJ. In 2007 the Commission launched a study examining **the conformity of transposition measures**. Certain problem areas of incorrect implementation of the Directive have, however, already been identified on the basis of individual complaints, petitions and EP questions.

Third country family members continue to encounter problems, not only with regard to authorisation of their entry but also with the issuing of residence cards. They have the right to reside with the Union citizens on grounds of their family link alone but some Member States require them to present documents or undergo procedures not allowed by the Directive. The Commission used and will continue to use its powers under Article 226 EC in order to ensure compliance with the Directive.

Many complaints concern obstacles to free movement encountered by Union citizens travelling to another Member State due to the **documents demanded by border authorities and air carriers**. In June 2005 the Commission invited all Member States to verify that national legislation and practice, including the rules and regulations applied to and by airlines, are in accordance with EC law. Following the Commission's intervention, there were essentially no further complaints in this particular area.

In a **number of judgments**¹² the ECJ recalled that the right to reside in the territory of a Member State is conferred directly on every Union citizen by Article 18 EC and underlined the need to interpret the right of free movement in the light of fundamental rights and in particular of the right to protection of family life and the principle of proportionality.

3.3. Transitional arrangements in the field of free movement of workers

Transitional arrangements for a period of maximum 7 years, divided into three distinct phases, currently apply in relation to nationals of 8 Member States that acceded on 1.5.2004¹³ (EU-8) and to Bulgarian and Romanian nationals following their countries' accession on 1.1.2007.

¹⁰ http://ec.europa.eu/commission_barroso/frattini/doc/guide_2004_38_ec_en.pdf

¹¹ COM(2006) 333 final Communication from the Commission to the Council and the European Parliament - Report on the implementation of the Hague programme for 2005

¹² See, inter alia, cases C-200/02 Chen, C-215/03 Oulane, C-157/03 Commission v Spain, C-503/03 Commission v Spain, C-258/04 Ioannidis, C-1/05 Jia, C-50/06 Commission v The Netherlands.

¹³ Except Cyprus and Malta

By May 2007, nine out of *fifteen* Member States¹⁴ had opened their labour markets to the nationals from EU-8 Member States and ten out of *twenty-five* Member States have opened their labour markets to Bulgarian and Romanian nationals¹⁵. Other Member States restrict access of workers from these countries under national law by applying a work permit scheme, albeit often with modifications and simplified procedures.

The Commission presented a **report on the functioning of the transitional provisions**¹⁶ in 2006. The Commission concluded that mobility flows had been very limited and such flows were found to have had positive effects on the economies of EU-15 Member States. The Commission recommends considering carefully whether the continuation of restrictions is needed, in the light of the situation of their labour market and of the evidence of the report.

3.4. Other issues

Many Union citizens availed themselves of the possibility to benefit from rights of free movement similar to those applicable in the EU also in **Switzerland** under the Agreement between the EC and its Member States and the Swiss Confederation on free movement of persons¹⁷. Since 1 June 2007, Union citizens from EU-15 Member States, Cyprus and Malta can move to Switzerland and reside there without any restrictions. The negotiations concerning adaptation of the EEA Agreement that would make Directive 2004/38 applicable in the EFTA Member States (Liechtenstein, Norway and Iceland) are ongoing.

With regard to the issue of **repatriation of mortal remains**, raised on several occasions by the EP and in the 4th Citizenship Report, funeral services are included in the scope of the Directive on Services in the Internal Market (**Directive 2006/123**). While this does not represent an EU-wide provision uniformly governing the repatriation of mortal remains, it will make it easier for providers to carry out such activities cross-border.

4. ELECTORAL RIGHTS

4.1. Reporting on the 2004 EP elections and preparing for the 2009 elections

In December 2006 the Commission adopted a **report on the 2004 EP elections**.¹⁸ Whereas the general tendency is a drop in the participation in EP elections (45% in 2004, 50% in 1999 and 56% in 1994), an increase of participation of Union citizens living in a Member State other than their State of origin can be noted. More than one million Union citizens registered to vote in their State of residence in 2004, representing nearly 12%, compared to 5,9% in 1994 and 9% in 1999. The **increase in participation** is explained by citizens' greater mobility within the EU and by Member States' efforts to inform them of their rights. However, **fewer of them are standing as candidates**: 62 in 1999 versus 57 in 2004 (of whom three were

¹⁴ Finland, Greece, Ireland, Italy, Portugal, Netherlands, Spain, Sweden and United Kingdom

¹⁵ Cyprus, Czech Republic, Estonia, Finland, Latvia, Lithuania, Poland, Slovakia, Slovenia and Sweden

¹⁶ COM(2006) 48 final

¹⁷ OJ L 114, 20.4.2002

¹⁸ COM(2006)790 Communication from the Commission – European elections 2004 - Commission report on the participation of EU citizens in the Member State of residence (Directive 93/109) and on the electoral arrangements (Decision 76/787 as amended by Decision 2002/772)

elected). Possible explanations for the low number of non-national candidates include the onerous procedure for filing candidacies currently provided for in Directive 93/109¹⁹.

In an effort to solve the problems identified by the Report, the Commission simultaneously proposed to amend Directive 93/109 by introducing measures that **lighten the burden on candidates and Member States** while providing the necessary guarantees against abuses²⁰.

4.2. Developments in case law

In its judgments of 12.9.2006²¹ the ECJ stressed that it is currently for Member States to regulate aspects of EP electoral procedure not harmonised at Community level, and in particular to define the persons entitled to vote and stand as candidate. However, in doing so they must respect EC law, including its general principles. This precludes differences in treatment of nationals who are in comparable situations, unless that difference is objectively justified.

4.3. Political parties at European level

In June 2007 the Commission adopted a proposal to allow the establishment of European political foundations. The proposal amends Regulation (EC) No 2004/2003 on political parties at European level and their funding. It is based on Article 191 EC, which recognises that political parties at European level are an important factor of integration and contribute to forming European awareness and to expressing the will of the Union citizens. A total of ten political parties at European level receive funding via the Regulation, which is administered by the EP. The budget for the purposes of the political parties at European level was fixed at EUR 10.4 million in 2007.

4.4. Effective participation of Union citizens in the political life of their Member State of residence

To ensure that Union citizens are able to exercise their electoral rights in their Member State of residence in municipal and European elections, under the same conditions as nationals, the Commission is assessing the legislation of those Member States whose **national legislation does not allow non-national Union citizens to become members of political parties and/or to found political parties**. The exclusion of Union citizens from founding or becoming members of, a political party in their Member State of residence could obstruct them in the effective exercise of their right to stand as a candidate. The Commission will request the Member States concerned to eliminate such restrictions and will, where necessary, use its powers under Article 226 EC.

Previous reports on citizenship highlighted the concerns of many Union citizens about the fact that in most Member States, non-national Union citizens are deprived of **the right to participate in national or regional elections** in their country of residence. Citizens' concern was confirmed by recurrent EP questions and public correspondence during the reporting

¹⁹ Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and to 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

²⁰ COM(2006)791

²¹ C-145/04 Spain v UK and C-300/04 Eman and Sevinger

period. The Commission invites Member States to examine this issue in order to promote participation of Union citizens in the political life of their country of residence.

4.5. Electoral rights in municipal elections

Finally, with regard to electoral rights in municipal elections, Directive 94/80 was adapted by Directive 2006/106 which added references to basic local government units of the new Member States.

5. DIPLOMATIC AND CONSULAR PROTECTION

The acquis in the area of diplomatic and consular protection is very limited. Apart from Decision 96/409/CFSP on the establishment of an emergency travel document, it consists of **Decision 95/553 regarding protection for citizens of the EU by diplomatic and consular representations** which only came into force in May 2002 due to the cumbersome legislative procedures required for its adoption in Member States.

Union citizens are increasingly travelling to and living in third countries. EUROSTAT²² has estimated the number of trips made in 2005 to destinations outside the EU to be approximately 80 million. Half of Union citizens expect to travel to a third country in the next 3 years.²³ The **limited representation of Member States** in third countries (in 107 out of 166 third countries a maximum of 10 Member States are represented) and the experience gained from recent crises (namely the Asian tsunami and the Lebanon crisis) illustrated that there is **room for improvement in cooperation** between consular and diplomatic authorities.

Following the adoption of the Commission's **Green Paper on diplomatic and consular protection of Union citizens in third countries**²⁴ on 28.11.2006, the Commission has presented an **Action Plan for the years 2007-2009**²⁵ proposing a series of measures to enhance this protection and a **Recommendation** to Member States to include the text of Article 20 in passports²⁶.

6. THE RIGHT TO PETITION THE EP AND TO APPLY TO THE OMBUDSMAN

Union citizens, as well as any natural or legal person residing or having its registered office in a Member State have the right **to petition the EP** on a matter which comes within the sphere of activity of the EC and which concerns the petitioner directly (Articles 21 and 194 EC). The EP received 1002 petitions in 2004 (623 of which were admissible), 1032 petitions in 2005 (628 admissible) and 1021 petitions in 2006 (667 admissible). Between one quarter and one third of petitions are linked or give rise to, infringement proceedings.

Complaints may also be sent to the European Ombudsman concerning instances of maladministration in the activities of the Community institutions or bodies (Articles 21 and

²² Database on population, section on tourism. Data includes holiday and business trips of more than one day in 2005.

²³ Eurobarometer No 118 of July 2006.

²⁴ COM(2006)712

²⁵ COM(2007)767 final

²⁶ C(2007)5841 final

195 EC). The Ombudsman has continued to witness an increase in complaints, largely due to the accession of the new Member States: 3726 complaints were received in 2004, 3920 in 2005 and 3830 in 2006. A large majority of complaints continue to be deemed to fall outside the Ombudsman's mandate or to be considered inadmissible while the vast majority of them (an average of 94.5% over the period 2004-2006) are sent by individuals.²⁷

By **Decision 2005/46**, the EP attributed to M. Diamandouros a second mandate in the quality of European Ombudsman, as from 11 January 2005.

7. EQUAL TREATMENT ON GROUNDS OF NATIONALITY

The ECJ delivered several important judgments²⁸ in this area during the reference period. It recalled that **Union citizenship is destined to be the fundamental status of nationals of Member States** enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for and that Union citizens legally resident in a Member State can rely on Article 12 EC in all situations which fall within the material scope of EC law, including those involving the right to move and reside freely in another Member State.

The right to equal treatment has been further clarified by **Directive 2004/38**. Article 24(2) allows two exceptions to this rule: During the first three months of residence, or for a longer period in the case of job seekers, Member States are not obliged to grant entitlement to social assistance to Union citizens other than those who are workers, self-employed persons or who retain such status or their family members. Member States are also not obliged to grant maintenance aid for studies consisting of student grants or student loans, prior to the acquisition of the permanent right of residence, to these same persons.

In the *Garcia Avello* case²⁹ the ECJ ruled that Articles 12 and 17 EC preclude national authorities from refusing to grant an application for a change of surname made on behalf of minor Union citizens with double nationality that would enable them to bear the surname to which they are entitled according to the law and tradition of their second Member State of nationality. The Commission examined measures adopted by Member States to comply with the judgment and opened in this respect three infringement procedures between October 2005 and 2006.

8. RENDERING CITIZENS' RIGHTS EFFECTIVE

Correspondence received from citizens constitutes a vital means of detecting infringements of EC law by Member States. The Commission continues to receive numerous questions based on alleged violation of their rights, in particular the right of free movement. While the rights of free movement and residence are perhaps two of the most tangible rights available to Union citizens, the multitude of national authorities which are susceptible to limit the effective exercise of such rights (from border guards to immigration authorities to local councils) means that the implementation of EC law is often uneven across the EU.

In this respect, the success of the **SOLVIT** mechanism,³⁰ established by the Commission and the Member States in July 2002, should be mentioned. SOLVIT helps Union citizens and

²⁷ The European Ombudsman's Annual Reports may be found at <http://www.ombudsman.europa.eu/report/en/default.htm>

²⁸ See in particular Cases C-456/02 Trojani and C-209/03 Bidar

²⁹ C-148/02

³⁰ See <http://ec.europa.eu/solvit> and the Annual SOLVIT report SEC (2007)585

businesses find fast and pragmatic solutions to problems arising from the incorrect application of EC law by national administrations, within a deadline of ten weeks. SOLVIT centres were created in all 27 Member States as well as in Iceland, Liechtenstein and Norway. All centres are part of the national administrations while the Commission monitors and facilitates the work of the network.

Since its creation, SOLVIT case flow has increased from 12 to 70 new cases per month. The average resolution rate is around 80% and case handling time over the period 2004-2007 has been around 65 calendar days. The majority of complaints (66%) are submitted by citizens and concern residence rights, visa, social security, recognition of professional qualifications and taxation. SOLVIT performs very well but Member States need to ensure that their national SOLVIT centres are sufficiently staffed, which is currently not the case in almost half of the centres.

While the Commission will continue to monitor the uniform application of EC law by the Member States and to use its powers under Article 226 EC to urge the Member States to comply with EC law as quickly as possible, it will continue to encourage alternative dispute mechanisms which can be particularly effective, efficient and less cumbersome in the resolution of citizens' problems.

9. CITIZENSHIP AND FUNDAMENTAL RIGHTS

The Commission places fundamental rights at the heart of all its policies. In this context, since 2004 the **Group of Commissioners on Fundamental Rights, Anti-Discrimination and Equal Opportunities** drives policy and ensures the coherence of Commission initiatives in these areas as well as in the area of integration of minorities.

While most rights enshrined in the **Charter of Fundamental Rights of the EU** are not limited to Union citizens, certain rights are linked to citizenship of the Union, i.e. electoral rights (Articles 39 and 40), the right to move and reside freely (Article 45) and the right to diplomatic and consular protection (Article 46).

9.1. The Fundamental Rights and Citizenship Programme 2007-2013

The Council created a major instrument in the field of citizenship on 19 April 2007, when it adopted **Decision 2007/252/EC establishing for the period of 2007-2013 the specific programme 'Fundamental rights and citizenship'** as part of the General programme 'Fundamental Rights and Justice'³¹. The Programme constitutes a new boost for the EU fundamental rights and citizenship policies, one of its main aims being the promotion of a European society based on respect of fundamental rights, including the rights derived from Union citizenship. Community funding under the Programme may be either in the form of grants or through public procurement contracts.

9.2. The European Union Agency for Fundamental Rights

The European Union Agency for Fundamental Rights came into existence on 1 March 2007³², replacing the European Monitoring Centre on Racism and Xenophobia. The objective

³¹ OJ L 110, 27.4.2007, p. 33, corrigendum OJ L 141 of 2.6.2007, page 83.

³² **Regulation (EC) No 168/2007** of 15 February 2007

of the Agency is to provide assistance and expertise relating to fundamental rights to the relevant Community institutions and its Member States when implementing EC law. Its three main tasks relate to information and data collection, analysis and dissemination, the formulation and publishing of advice and reports and the fostering of dialogue and awareness-raising with civil society.