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DRAFT REPORT

on the EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights
(2011/2182(INI))

Committee on Petitions

Rapporteur: Adina-Ioana Vălean

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights (2011/2182(INI))

The European Parliament,

- having regard to its previous resolutions on the deliberations of the Committee on Petitions,
- having regard to the right of petition enshrined in Article 227 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Part Two of the TFEU, entitled *Non-discrimination and citizenship of the Union*, and Title V of the Charter of Fundamental Rights,
- having regard to Articles 10 and 11 of the Treaty on European Union,
- having regard to the Commission Communication of 27 October 2010 entitled 'EU Citizenship Report 2010. Dismantling the obstacles to EU citizens' rights' (COM(2010)0603),
- having regard to the Commission Communication of 27 October 2010 entitled 'Towards a Single Market Act - for a highly competitive social market economy' (COM(2010)0608),
- having regard to Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community¹,
- having regard to Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States² (hereinafter 'the FMD'),
- having regard to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications³ (hereinafter 'the Qualifications Directive'),
- having regard to Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems⁴,
- having regard to its resolution of 2 April 2009 on problems and prospects concerning European Citizenship⁵,

¹ OJ L 257, 19.10.1968, p. 2.

² OJ L 158, 30.4.2004, p. 77.

³ OJ L 255, 30.9.2005, p. 22.

⁴ OJ L 284, 30.10.2009, p. 1.

⁵ OJ C 137E, 27.5.2010, p. 14.

- having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions and the opinions of the Committee on Constitutional Affairs, the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Internal Market and Consumer Protection and the Committee on Culture and Education (A7-0000/2011),
- A. whereas Union citizens have, *inter alia*, the right to petition the European Parliament, to apply to the European Ombudsman and to address the EU institutions and advisory bodies in any of the Treaty languages¹;
 - B. whereas, seven years after the entry into force of the FMD, too many problems still persist in relation to its transposition and implementation; whereas most complaints focus on the right of entry, the right of residence for more than three months, the validity of residence permits, the retention of the right of residence and right of permanent residence and the rights of family members;
 - C. whereas EU citizens who are habitually resident in the United Kingdom and who apply for certain social security benefits are required to undergo the so-called ‘Right to Reside Test’, which imposes additional conditions on non-UK citizens²;
 - D. whereas the issue of the deportation of Roma people by France in 2010 was controversial not only from the fundamental rights perspective, but also from the standpoint of the right to free movement and that of discrimination on the grounds of nationality and racial and ethnic origin;
 - E. whereas several Member States have decided to introduce or to continue applying transitional arrangements which limit Romanian and Bulgarian nationals’ access to the labour market; whereas such measures can lead to worker exploitation, illegal work and lack of access to social security benefits;
 - F. whereas same-sex couples encounter numerous difficulties when moving between EU Member States owing to the lack of mutual recognition of the status of same-sex partnerships across the EU;
 - G. whereas a large number of petitions revealed problems in the field of accessing social security benefits, mainly involving a lack of cooperation on the part of national authorities, incorrect application of the principle of aggregation, failure to provide correct information on the applicable rules or cumbersome administration of cases;
 - H. having regard to the problems linked to the incorrect implementation of Directive

¹ Article 20(2)d) TFEU.

² The UK rules make no reference to the fact that a former worker who has a child in education has a right of residence in the UK under EU law. As a result, this group of persons will almost certainly be wrongly refused benefits on the basis that they do not have a right of residence. The rules also fail to deal with rights under Article 18 TFEU. This is a complicated area, but it is clear from ECJ judgments that a person who had a right of residence in a Member State in the past should receive equal treatment with nationals of that Member State in terms of access to benefits.

2005/36/EC on the recognition of professional qualifications (compensatory measures, requests for additional documents, unsubstantiated negative decisions by the host Member State, undue delays in processing applications, systematic imposition of specific language tests), which constitute a significant obstacle to the exercise of citizens' rights across the EU;

- I. whereas discrimination on the grounds of nationality was vigorously denounced by petitioners in the case of the German Youth Welfare Office (*Jugendamt*), which - according to the petitions received - discriminates against the non-German spouse in mixed marriages;
1. Welcomes the EU Citizenship Report 2010, which sets the objective of dismantling the obstacles to EU citizens' rights, and the proposals contained therein; calls on the Commission to ensure that the legislative and non-legislative measures provided for in the report are put forward as soon as possible and approved, so as to ensure that EU citizens' rights become effective and that Member States abolish obstacles to the enjoyment of those rights;
2. Notes that, although the right to petition the European Parliament is expressly provided for in the Treaties, it is not sufficiently well known or used, and therefore calls for citizens to be provided with improved information about the right to petition, in particular through European Parliament offices in the Member States;
3. Considers that the European Citizens' Initiative (ECI), which will apply from 1 April 2012, constitutes the first instrument of transnational participatory democracy and will give citizens the possibility to become more actively involved in the framing of European policies and legislation; calls for the effective implementation of the ECI Regulation, and, in particular, calls on the Commission to take an active role in informing citizens about this new instrument;
4. Calls on the Commission to issue an annual report on the situation of fundamental rights in the European Union, focusing on the application not only of the EU Charter of Fundamental Rights, but also of all EU Treaty articles relating to fundamental rights; calls on the Commission to include in these reports information on the issues raised with it by citizens, how it dealt with them and what concrete follow-up measures it took;
5. Calls on all Union institutions, bodies, offices and agencies to ensure that the right of access to documents, one of the most important rights enjoyed by EU citizens, is guaranteed by improving transparency and making access to documents and information easy and user-friendly, so as to enable citizens to participate more closely in the decision-making process;
6. While recognising the right to information as one of the cornerstones of democracy, considers that greater access to information on infringement files could be provided without jeopardising the purpose of the investigations and that an overriding public interest might well justify access to these files, particularly in cases where fundamental rights, human health and the protection of the environment against irreversible damage may be at stake; would also welcome measures to facilitate access to information on infringement files which is already publicly available;

7. Calls on the Commission to ensure that Member States transpose and implement the FMD correctly, making full use of its power to launch infringement proceedings; calls on Member States to remove existing legal and practical barriers to the free movement of citizens and not to introduce cumbersome, unjustified administrative procedures restricting the application of that right; calls on the Commission, further, to step up its efforts to raise awareness about citizens' right to free movement and to assist them in exercising it, in particular when it is denied or limited;
8. Calls on those Member States which have decided to introduce or to continue applying transitional arrangements restricting access by Romanian and Bulgarian nationals to their labour markets¹ to revise their decisions by the end of 2011;
9. Repeats its previous calls to the Member States to ensure freedom of movement for all EU citizens and their families, without discrimination on grounds of their sexual orientation or nationality²; repeats its call to Member States to implement fully the rights granted under Articles 2 and 3 of Directive 2004/38/EC not only to different-sex spouses, but also to the registered partner, member of the household or partner with whom an EU citizen has a duly attested, stable relationship, including members of same-sex couples, on the basis of the principles of mutual recognition, equality, non-discrimination, dignity and respect for private and family life; in that connection, calls on the Commission to ensure that the directive is strictly applied, drawing on the analysis and conclusions contained in the report of the European Union Agency for Fundamental Rights, and to monitor these issues;
10. Calls on the Commission not to ignore the numerous petitions received on the mutual recognition of civil-status documents and of their effects³ and therefore highlights the importance of making progress as quickly as possible towards ensuring the mutual recognition of the status of same-sex marriages and same-sex and different-sex recognised partnerships across the EU and overcoming discrimination on the grounds of sexual orientation or type of relationship (civil partnership or marriage);
11. Recalls that Directive 2003/86/EC on the right to family reunification and the right to non-discrimination require that children be granted entry and residence rights regardless of their parents' legal status and sexual orientation, and calls on those Member States which do not recognise same-sex marriages or/and partnerships to review their policy, as it may interfere with the right of children to be with both their parents;
12. Highlights the fact that mass expulsions represent a breach of the FMD, in addition to contravening the basic values and principles underpinning the European Union; recalls that, under the FMD, restrictions on freedom of movement and residence on grounds of public policy or public security can be imposed exclusively on the basis of personal conduct, without any discrimination on grounds such as ethnic or national origin, and that lack of economic means cannot be used as the justification for the automatic expulsion of EU citizens (Recital 16, Article 14);

¹ See, *inter alia*, Petitions 0810/2011 and 0900/2011.

² See, *inter alia*, Petitions 0155/2011 and 0381/2011.

³ See, *inter alia*, Petition 0632/2008.

13. Urges Member States to abolish policies that discriminate, either directly or indirectly, against the Roma and other minority groups on the grounds of race and ethnicity, and calls on them to stop all instances of persecution, eviction and expulsion; calls on all Member States and the EU to take joint responsibility for promoting the integration of Roma, in keeping with the Roma Strategy and ‘An EU Framework for National Roma Integration Strategies up to 2020’, and to promote and protect their fundamental rights; calls on the Commission to link social inclusion priorities to a clear set of objectives that include protection of citizens against discrimination in all areas of life and the promotion of social dialogue between Roma and non-Roma people in order to combat racism and xenophobia; calls on the Commission, as guardian of the Treaties, to ensure that the relevant legislation is implemented in full and that appropriate penalties are imposed for racially motivated crimes¹;
14. Calls on the Commission to monitor the correct application by Member States of regulations on the coordination of social security systems, with a focus on the new aspects introduced by the Regulations 883/2004 and 987/2009, which came into force on 1 May 2010;
15. Is concerned at the fact that many petitioners were required by the UK authorities to undergo the ‘Right to Reside Test’ in order to gain access to social housing or other benefits, such as the jobseeker’s allowance²; draws particular attention to the fact that this requirement introduces indirect discrimination on the grounds of nationality, contravening Article 3 of Regulation 1408/71; urges the United Kingdom to bring its legislation into line with EU law;
16. Considers that a modernised Qualifications Directive should focus on streamlining the sources of information currently available to professionals and ensure coordination with the ‘Your Europe’ portal;
17. Points out that citizens of the 12 new Member States, in particular healthcare professionals (doctors, midwives and nurses), reported encountering problems relating to the recognition of their qualifications or of their acquired rights in a Member State other than their own³; urges those Member States which have not yet done so to set up the system of compensation measures required under Article 10 of the Qualifications Directive, in the framework of the General System;
18. Recalls that one of the oldest outstanding petitions concerns the discriminatory treatment that foreign-language lecturers (‘lettori’) have been suffering in several Italian universities⁴; calls on the Commission to investigate further the current so-called ‘Gelmini reform’, which entered into force in December 2010; calls on the Italian authorities and the respective universities to resolve this case as a matter of urgency;
19. Recalls that Regulation (EC) No 2201/2003⁵ lays down the principle that children should

¹ See, *inter alia*, Petitions 1351/2008, 0945/2010 and 1300/2010.

² See, *inter alia*, Petitions 0401/2009 and 1119/2009.

³ See, *inter alia*, Petition 112/2009.

⁴ See, *inter alia*, Petitions 511/1998 and 689/1998.

⁵ Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No

be able to maintain their relationships with both parents after the latter have separated, even if they live in different Member States; points out that, although access rights are currently regulated by Member State laws, Member States must respect Community legislation when exercising their jurisdiction, in particular the Treaty provisions concerning the freedom of all EU citizens to travel and reside in another Member State¹;

20. Draws attention once again the problems faced by those EU citizens who decided to exercise their right of establishment under Article 49 TFEU and legally bought properties in Spain, which were subsequently illegalised without due process or proper compensation; urges the Spanish authorities to thoroughly revise the way the Ley de Costas (Coastal Law) is implemented in order to avoid affecting the rights of individual property owners;
21. Recalls the key priority in the Committee on Petitions: to find a solution to the longstanding property concerns in countries such as Spain, Cyprus and Bulgaria; points out that both nationals of those Member States and expatriates have had a number of problems with property transactions and the violation of property rights, which has contributed to a lack of confidence in the cross-border property market and to Europe's economic problems; on the basis of the conclusions reached by a number of property law experts and members of the Committee on Petitions, calls for the EU's consumer-protection and free movement principles to be extended to cover property;
22. Stresses the need to ensure the mutual recognition of civil-status documents issued by national administrations and of their effects across the EU², and calls on the Commission to put forward appropriate legislative proposals as a matter of urgency;
23. Considers that the establishment of the one-stop shop for citizens, 'Your Europe', is of great importance for citizens seeking advice or redress; acknowledges that the problem-solving networks set up by the Commission are important partners in the settlement of complaints regarding malfunctions in the internal market; calls on the Commission to promote these online and accessible services more actively by involving the existing EU level assistance and problem solving services;
24. Encourages the Commission to cooperate with the Committee on Petitions in drafting a new citizenship report in 2013;
25. Welcomes the Commission's proposal to declare 2013 as the 'European Year of Citizens', which would mark 20 years since the introduction of the 'European citizenship' concept and would enhance awareness of the rights attaching to Union citizenship; calls on the Commission to use this opportunity to strengthen its efforts to protect and promote citizens' rights;
26. Instructs its President to forward this resolution to the Council, the Commission, the European Ombudsman and the governments and parliaments of the Member States.

1347/2000, OJ L 338, 23.12.2003, p. 1.

¹ See, *inter alia*, Petition 1614/2009.

² See, *inter alia*, Petitions 1721/2008 and 1128/2010.

EXPLANATORY STATEMENT

The ‘*EU Citizenship Report 2010. Dismantling the obstacles to EU citizens’ rights*¹’ was published by the European Commission in October 2010. Starting from the suggestion included in the European Parliament’s report on ‘Problems and prospects concerning European citizenship’ of 20 March 2009², the Commission consulted civil society and drew up a scoreboard of the most important obstacles that the citizens face in the exercise of their rights across borders.

The ‘EU Citizenship Report 2010’ is also more comprehensive than its predecessors, which mainly provided a descriptive summary, required by Article 25 TFEU, of the major developments regarding EU citizenship in the relevant three-year period. It identifies 25 obstacles that citizens face in different roles (as private individuals, consumers, residents, students, tourists and professionals or political actors) and puts forward solutions for overcoming them.

This draft report scrutinises the actions proposed by the European Commission from the perspective of petitions received by the Committee on Petitions during the reference period 2008-2011 which allowed taking into account the most recent developments. For this purpose, more than 300 relevant petitions received were analysed.

Petitions provide first-hand feedback from citizens on the implementation of different policies and gauge the degree of satisfaction with the European Union. Petitioners attend committee meetings and are given the opportunity to engage in a transparent, direct dialogue with Members of the European Parliament.

Over the last years, an increasing number of petitions have been registered with respect to problems encountered by EU citizens who exercise their right to free movement. Statistics included in the annual reports of the Committee on Petitions show that issues related to free movement account for approximately 25% of the total number of petitions received.

The case law of the Court of Justice of the European Union has given increasing substance to European citizenship and placed free movement at the forefront, as the basic right which gives rise to a wide array of other essential rights. Free movement is one of the EU’s most cherished achievements. A recent Eurobarometer survey found ‘the right most familiar to EU citizens continues to be the right to free movement and residence’, with 88% of people recognising this right³.

Yet, the freedom of movement of people is the least developed of the four freedoms laid out in the Treaties (i.e. free movement of goods, capital, services and people). Although considerable progress has been achieved in this respect, following the entry into force of the

¹ COM(2010) 603 final.

² <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0204&language=EN&ring=A6-2009-0182>.

³ Eurobarometer, *European Union citizenship – analytical report*, (Flash EB Series #294, October 2010).

‘Citizenship Directive’¹, numerous petitions bear witness to the fact that there are still many problems related to the implementation of the directive.

Some Member States do not fully recognise the rights of third country family members. For instance, several petitions showed that the United Kingdom did not allow non-EU family members to enter without a visa, even though they had residence cards issued by another Member State. The UK authorities asked for an excessive number of documents, processed applications with excessive delays and retained the original documents. Following the intervention of the European Commission, based on many complaints and petitions received, some improvements in the administrative practices have been initiated.

Some countries issued residence cards with a limited duration (in contravention of article 11 (1)) or infringed the principle of ‘equal treatment’ (as enshrined in art. 24), by treating European citizens residing in their territory pursuant to the Directive less favourably than their own nationals.

In Sweden, decisions to reject the application for a residence card are not subject to review and thus citizens are deprived of basic redress rights. Dutch nationals living abroad experience difficulties in having their travel documents renewed.

Citizens often have difficulties accessing social security entitlements especially because the relevant legislation is complex, difficult to understand and sometimes incorrectly applied by the relevant authorities. They frequently do not fill in the right forms or miss the deadlines for submitting the appropriate documentation because they have not been properly informed or they have not found the necessary instructions before leaving their home countries.

Several petitions were received by UK citizens resident in another EU country concerning the refusal by the UK Government to grant them benefits such as Disability Living Allowance, Attendance Allowance or Carer’s Allowance, despite the fact that the Court of Justice of the European Union had classified them as exportable sickness benefits in cash².

A case brought forward by a petitioner³ was also the subject of a request for a preliminary ruling, which resulted in a land mark ruling of the Court of Justice of the European Union (C-503/09), delivered in July 2011. The ruling stated that such a past presence test can only be imposed in the absence of some other proper linking to the UK’s social security system.

The Court of Justice laid great emphasis on the concept of citizenship and on the rights attached thereto. It underscored that it would be incompatible with the citizenship rights if citizens were to receive in the Member State of which they are nationals treatment less favourable than that which they would enjoy if they had not availed themselves of the opportunities offered by the Treaties.

¹ 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 ([2004] OJ L158/77).

² Case C-299/05 of 18.10.2007.

³ Petition 0876/2008 by Miss Lucy Jane Marie Stewart (British), on her right to incapacity pension when residing in another EU member state than the one she is a national of.

The Committee on Petitions has strongly supported the petition since its receipt in 2008 and has engaged in a constructive dialogue with the competent British authorities and the European Commission on this issue. In November 2009 the petitioner and her family had the opportunity to attend a committee meeting and fully explain her case before Members of the Committee and representative officials of the European Commission.

Petitioners have also given an account of problems related to the recognition of their diplomas or qualifications and sometimes of poor transposition or implementation of Directive 2005/36/EC¹.

The Code of Conduct created for the application of Directive 2005/36/EC appears to not be well known or properly observed by competent authorities. In certain cases, the authorities requested applicants to submit additional documents to the ones mentioned in the annexes or imposed disproportionate language tests. Delays in transposition of the Directive were denounced in several countries. Pharmacists with qualifications from another Member State complained against being refused access to the management of new pharmacies in the United Kingdom, due to a restrictive interpretation of Article 21 (4) of the Directive.

The plethora of competent authorities, at national or local level creates confusion about the appropriate organism to which petitioners should address themselves. Lengthy procedures and red tape also can also act as deterrents.

Blatant discrimination on grounds of nationality was revealed on numerous occasions in the case of foreign language teachers ('lettori') in Italy, who have been struggling for decades against discriminatory treatment with respect to security of tenure, career development, pensions and social security.

Petitioners have expressed concerns about the obstacles faced by people with disabilities when they exercise their right to free movement, such as the lack of appropriate transport facilities.

Problems in the field of family law were revealed mainly with respect to child custody in case of divorce or recognition of partnerships registered in another Member State.

Regarding trans-border divorces, petitioners primarily complained about the enormous costs involved, protracted proceedings, the lack of adequate information on applicable laws and jurisdictions.

Several petitions illustrate problems related to the non-recognition of civil status documents. Procedures for the recognition of documents can be extremely time-consuming and involve many costs, especially linked to translation or authentication. Some petitioners reported problems regarding the linguistic transposition of their names according to the culture of the country they moved to. Others complained about the difficulties they encountered when trying to register their newly born children in their new state of residence. It was revealed that Polish authorities refuse to issue certificates of civil status to persons who intend to engage in a

¹ Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications.

same-sex partnership or marriage in another Member State.

Several petitions are pending already for several years calling for a solution to problems related to the mutual recognition of the marriages and recognised partnerships of the same-sex couples, which brings about discrimination of several fundamental rights granted to EU citizens on grounds of sexual orientation.

Mass expulsions on the basis of ethnic or national origin have been heavily criticised and especially the lack of the National Roma Integration Strategies has been pointed out as one of the causes of the problem.

The report puts the focus on the importance of informal problem-solving networks (Solvit, the 'Your Europe' website) and an enhanced communication policy, which should aim at ensuring that citizens fully enjoy their rights laid out in the Treaties.

Although citizens' rights are clearly enshrined in the EU legal acts, they are not always upheld in practice. Therefore many people feel disenchanted with the European project. The Committee on Petitions attempts to rectify these shortcomings by placing citizens at the heart of its activities. Turning to good account its political influence, it enters into direct dialogue with national or regional authorities in the Member States concerned and tries to find quick, non-judicial remedies to the issues raised with it. In instances bringing forward allegations of serious infringements of European law, which merit further consideration by the Court of Justice of the European Union, the PETI Committee closely cooperates with the European Commission for the initiation of infringement proceedings. Consequently, citizens' rights are constantly promoted and secured through the petitions process.