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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**DECLARATION  
OF THE RIGHTS  
OF EUROPEAN CITIZENS**

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<b>Declaration of the rights of European citizens</b>
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**Article 1**

1. Citizens of the Union shall enjoy the rights conferred by this Declaration and by the Treaty on European Union and shall be subject to the duties imposed thereby.
2. With regard to matters covered by the treaties, the Union, the European Community and their member States shall be bound to respect the rights conferred by this Declaration.

**Article 2**

1. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall not prejudice the rights attaching to citizenship of Member States.
2. All or some of the rights conferred on citizens of the Union by this Declaration and by the Treaty on European Union may be extended to citizens of other states and refugees and stateless persons normally resident in the territory of the Member States, according to the principles laid down by the European Council and the rules prescribed by the Council acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament, unless the treaties provide otherwise.

**Article 3**

1. The Union and the Member States' systems of government are based on the principles of liberty, democracy, respect for human rights and fundamental freedoms and of the rule of law. Membership of the Union is dependent on respect for these rights.
2. The Union shall respect the national identities of its Member States.

**Article 4**

The Union shall respect fundamental rights, as guaranteed by the international instruments binding Member States and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as an integral part of the constitutional Charter of a Community based on the rule of law.

### Article 5

1. Within the scope of application of the Treaty on European Union, and without prejudice to any special conditions contained therein, any discrimination on grounds of sex, race, colour, nationality, language, religion, political or other opinion, association with a national minority, social origin, property, disability, sexual orientation or any other specific status shall be prohibited.
2. The Council, acting in accordance with the procedure provided for in Article 189c, may adopt rules designed to facilitate the elimination of such discrimination.
3. In order to combat sexism, racism, anti-Semitism, xenophobia, intolerance and exclusion, the Member States shall co-ordinate action taken in accordance with Article K.3 of the Treaty on European Union, without prejudice to any joint positions and joint actions adopted by the Council in accordance with Article K.3 para 2.

### Article 6

1. Every citizen of the Union shall have the right to move and reside freely within the territory of all the Member States, including the one of which he is a national, subject to the limitations and conditions laid down in this Treaty and in the measures adopted to give it effect.
2. Every citizen of the Union shall have the right to supply or receive transfrontier services that do not require the movement of persons.
3. The Council, taking due account of the requirement for balanced and sustainable economic and social progress, in particular the need to strengthen economic and social cohesion, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraphs 1 and 2, without prejudice to the provisions of Article 2 para 2 of this Declaration; save as otherwise provided in the treaties, the Council shall act unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament.

### Article 7

1. Every citizen of the Union shall be entitled to equal access to public services under optimum conditions of universality, quality and continuity.
2. Every citizen of the Union shall have the right to participate in public service and solidarity-based activities and, if appropriate, a voluntary European civilian service scheme.

3. Every citizen of the Union shall have the right of access to information and documents relating to the functioning of the Union, under conditions that ensure a balance between the requirements of confidentiality and the need for transparency in the Union's activities.

#### **Article 8**

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised according to the arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament.

2. Without prejudice to Article 138 para 3 and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised according to the arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament.

3. Every citizen of the Union shall have the right to participate in any referendums that may be organised throughout the Union.

#### **Article 9**

1. Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.

2. The protection provided for in paragraph 1 may be extended to the legal persons referred to in Article 58 of the Treaty establishing the European Community. The Member States shall draw up the necessary rules, which they shall adopt in accordance with their respective constitutional provisions, and shall conduct the international negotiations required to ensure this protection.

#### **Article 10**

1. Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 138d.

2. Every citizen of the Union may apply to the Ombudsman established in accordance with Article 138e.

3. Every citizen of the Union shall have access to an effective judicial remedy in the event of a violation of the rights conferred by this Declaration.

4. The rights conferred by paragraphs 1, 2 and 3 apply without prejudice to the provisions of Article 2 para 2 of this Declaration.

#### **Article 11**

1. Political parties operating at European level shall be recognised in so far as they contribute to forming a European awareness and to expressing the political will of the citizens of the Union and in so far as they respect the rights and principles laid down in this Declaration.

2. Trade unions and other associations and groups shall be recognised in so far as they contribute to forming a European awareness and to expressing the political will of the citizens of the Union and in so far as they respect the rights and principles laid down in this Declaration.

3. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may grant a specific status to these political parties, trade unions and other associations and groups.

#### **Article 12**

Nothing in this Declaration may be interpreted as implying for any institution, Member State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights set forth herein or at their limitation to a greater extent than is provided for in this Declaration.

#### **Article 13**

The Court of Justice of the European Community shall ensure that in the interpretation and application of this Declaration the law is observed.

## **Explanatory memorandum**

### **Article 1 (*general provisions*)**

Article 1 para 1 is based on Article 8 para 2 EC.

Article 1 para 2 makes the provisions relating to citizens' rights mandatory within the areas of responsibility of both the Union (including the common foreign and security policy and co-operation in the fields of justice and home affairs) and the Community. The reference to Member States' duty to respect the rights conferred by the Declaration "with regard to matters covered by the treaties" is designed to incorporate into the Declaration a legal situation already established in the case-law of the Court of Justice (CJEC 13 July 1989 Wachauf, 5/88, Rep 2609; 18 June 1991 ERT, C-260/89, Rep I-2925; 4 October 1991 Grogan, C-159/90, Rep I-4685; 8 April 1992 Commission v Germany, C-62/90, Rep I-2575; 24 March 1994 Bostock, C-2/92, Rep I-955).

### **Article 2 (*definition of citizenship/beneficiaries*)**

The definition of citizenship is based on Article 8 para 1 sub-para 2 EC. The clarification in the second sentence of paragraph 1 is designed to indicate clearly in the Declaration itself that citizenship of the Union is not a substitute for national citizenship (see Reflection Group report, para 41).

The possibility of extending some or all of the guaranteed rights to citizens of other states normally resident in the territory of the Union reflects a concern expressed several times in the European Parliament (see, in particular, the opinion of the Legal Affairs and Citizens' Rights Committee on the Bourlanges-Martin report, EP Doc A4-0102/95/Part II, 212-450/ def/Part II, p 59) and by trade unions and NGOs. Automatic extension would challenge the very concept of citizenship. "Variable geometry" extension is both more logical and more realistic. An explicit - even if redundant - reference to this option seems particularly necessary in connection with freedom of movement (Article 6 para 3) and the right of petition, access to the Ombudsman and effective judicial remedies (Article 10). Conferring these rights on the nationals of non-Member States seems to be a logical consequence of the internal market principle and of the very notion of a Community governed by the rule of law. The same logic governs the inclusion of refugees and stateless persons, within the meaning of the United Nations' conventions, normally resident in the territory of the Member States. It should be pointed out that any extension of these rights must be confined to nationals of other states who are legally resident in the Union and does not, of course, preclude the Council from introducing, in accordance with the appropriate procedures, restrictions concerning the length and continuity of residence.

### **Article 3 (*principles*)**

Article 3 is based on a combination of the third paragraph of the preamble to the Maastricht Treaty and Article F para 1 of the Treaty on European Union (TEU). The modifications are intended to ensure that the democratic principle applies not only to Member States' systems of government but also to the Union, and is consistent with the case-law of the Court of Justice. The reference to the link between respect for the rights set out in this article and membership of the Union implies that compliance with these principles is a precondition of accession to the Union and that serious and repeated violations of the principles would be likely to lead to the loss of membership. The majority of the Reflection Group's members support this view (final report, paras 31 to 33).

The reference to respect for Member States' national identities is taken from Article F TEU.

### **Article 4 (*fundamental rights*)**

The principle of respect for fundamental rights features in Article F para 2 TEU, but in a significantly different form to the wording adopted here. The Treaty is only concerned with the European Convention on Human Rights, thereby ignoring the other international instruments concerned with civil and political, economic, social and cultural rights, whether these be universal instruments drawn up by the United Nations, such as the Universal Declaration, the covenants and specialist conventions, or European instruments, such as the Social Charter and various Council of Europe and other conventions, even though the Court does not exclude them as possible material sources of fundamental rights that it may be called on to enforce. Moreover, Article F only treats these fundamental rights as "general principles of Community law". The wording used here is designed to establish beyond doubt their constitutional force within the Community's and the Union's legal system. As a consequence, the beneficiaries are not only citizens of the Union but also nationals of other states resident in the territory of a Member State.

The approach adopted deliberately avoids any reference to the problem of the Community's accession to the European Convention on Human Rights, since the Court of Justice has not yet delivered the opinion requested by the Council and discussion on this matter does not appear to be sufficiently advanced for a consensus to have been achieved.

### **Article 5 (*non-discrimination*)**

Article 6 of the Community treaties (former Article 7 EEC) only explicitly prohibits discrimination on grounds of nationality. Most of the proposals made during the preparations for the IGC emphasise the need for the underlying treaties to include a general non-discrimination clause. The retention of the words "within the scope of application of this

Treaty" is justified by the fact that any discrimination practised by Member States outside the treaties' scope comes within the ambit of their respective constitutional provisions and international obligations. The list of types of discrimination is largely taken from Article 14 of the ECHR, to which have been added distinctions based on disability or sexual preferences, in view of the growing sensitivity to these types of discrimination. The term *discrimination*, which implies an unjustified form of differentiation, has been used in the French version in preference to *distinction*, which occurs in the French version of the European Convention on Human Rights (the English version has always used the term "discrimination").

It has been considered necessary to lay down the procedure for "facilitating" the elimination of discrimination, in order to provide for the adoption of subordinate legislation, which may be required if this Article's objective of equality of treatment is to be fully achieved. The procedure chosen is that provided for in Article 6 para 2 CE, within the more restricted scope of Article 6 CE.

The reference to measures necessary to combat racism, anti-Semitism and xenophobia is intended to give constitutional force to the objectives set out in the 1986 joint declaration of the Council, European Parliament and Commission and the conclusions of the presidency following the Corfu European Council. They are supplemented by the measures to combat sexism and exclusion, which seem essential in the light of changes in European society. The reference to the procedures in Title VI of the Treaty on European Union is necessitated by the lack of any Community authority under the Treaty establishing the European Community and the need to provide for the co-ordination of national policies and possible joint action in this area, under the terms of Article K.3.

#### **Article 6 (*freedom of movement*)**

The provisions relating to the freedom of movement of persons within the European Union are largely based on Article 8a of the Treaty on European Union. The wording used explicitly establishes the principle that Member States may not refuse their own nationals entry or the right of residence and may not deport them (CJEC 4 December 1974, Van Duyn, Case 41/74, Rep p 1337) and serves to justify the link between paragraphs 1 and 3 of Article 6.

Paragraph 2 deals with the possibility of free movement of services in the absence of the movement of persons, which is not explicitly recognised in existing provisions of the treaties, at least in general terms.

Paragraph 3 is the logical extension of individuals' right to remain in the territory of the State of which they are nationals in satisfactory living and working conditions, as laid down in the preamble to the EC treaty. These rights are given substance by linking them to balanced economic and social progress, and in particular to the restated objective of



strengthening economic and social cohesion, which the Single European Act imposes on the Community and the Treaty on European Union on the Union. The prospect of subsequent enlargements of the Union makes this wording even more necessary.

**Article 7 (*public services, public service activities and transparency*)**

Article 7 sets out citizens' rights in their dealings with public authorities.

The first paragraph establishes the principle of equal access to public services, with its corollaries of universality, quality and continuity. Universality encompasses the notion of a minimum level of accessibility of public services for all citizens, irrespective of their geographical location and at a uniform and reasonable cost. Quality signifies a duty to provide appropriate services of a high standard, having regard to technical progress. Continuity presupposes the uninterrupted and effective provision of services adapted to users' needs.

The second paragraph refers to the possibility of developing citizens', and in particular young persons', participation in public service and solidarity-based activities on a European scale, which could take the form of a European civilian service scheme. It is important to recognise the value of such activities as an element of citizenship, even though it is probably not desirable to anticipate further the forms they might take, given the current state of integration in the Union. The majority of the Reflection Group support this view (final report, para 43).

The third paragraph considers the issue of transparency, as defined in the 17th declaration appended to the Final Act of the Treaty of Maastricht and in the conclusions of the Birmingham and Edinburgh European Councils, the first of which issued the declaration: "a Community closer to the people". The issue has also been the subject of two Commission communications (5 May 1993, OJEC no C 156, 8 June 1993; 2 June 1993, OJEC no L 166, 17 June 1993), a Council and Commission Code of Conduct dated 6 December 1993 (OJEC no L 340 31 December 1993) and a Council decision (OJEC no L 340 31 December 1993). Recent case-law has highlighted the scope of this principle (CFI 19 October 1995 Carvel and the Guardian, T-194/94, Europe December 1995 comm YG no 423). The Reflection Group's report also wants the right to information to become a recognised right of European citizens. It is therefore essential to provide a firmer legal basis to Community citizens' right to information and access to documents by incorporating it in this Declaration. The careful wording used to define the limits to Community institutions' duty to communicate information reflects the approach adopted by the European Court.

**Article 8 (voting rights)**

Paragraph 1 is based on Article 8b EC.

The principle of the right to participate in referendums is intended to cover an eventuality considered in the Reflection Group's progress report. The term "any referendums" (*consultation référendaire* in the French) is used so as not to prejudge the form or scope such a consultation process might take.

**Article 9 (diplomatic and consular protection)**

The first paragraph is largely based on the wording of Article 8c EC, excluding the arrangements for bringing it into force.

The second paragraph provides for the possible extension of diplomatic and consular protection to legal persons with the nationality of one of the Member States. The personal scope of this provision is defined with reference to Article 58 CE, and thus covers legal persons governed by the law of establishment. The introduction of such protection, which affects Member States' sovereignty in the exercise of their right to diplomatic protection as it is recognised in public international law, is a matter for individual States and thus requires an agreement between them which would have to be ratified or approved in accordance with to their respective constitutional procedures.

**Article 10 (petitions, Ombudsman and judicial remedies)**

Article 10 covers all the available remedies to enable Union citizens to enforce their rights. The first two paragraphs, on the right of petition and applications to the Ombudsman, are taken word for word from the Treaty of Maastricht (Article 8d EC).

There are strong grounds for including in the Declaration a formal acknowledgement of the right of appeal to a court, which is inherent in the notion of a Community governed by the rule of law. The right to an effective judicial remedy has been recognised in the case-law of the Court of Justice (in particular, CJEC 15 May 1986 Johnston, 222/84, Rep 1663; 13 December 1991 RTT, C-18/88, Rep I-5941; 3 December 1992 Oleificio Borelli, C-97/91, Rep I-6313). It is equally inherent in Article 13 ECHR. It is also important to establish this principle with regard to violations of citizens' rights provided for in this Declaration, to ensure that such rights are enforceable and thus properly applied.

It seems appropriate to repeat the explicit reference to the extension of certain citizenship rights to nationals of non-Member States, in accordance with the principle laid down in Article 2 para 2, since the rights provided for in this article constitute minimum conditions for the rule of law, whatever the nationality of those demanding protection.

**Article 11** (*political parties, trade unions and associations*)

Any declaration concerned with the rights of European citizens must include a reference to political parties. However, this must be confined to the recognition of political parties operating at the European level, since the status of national political parties comes within the ambit of national sovereignty and Member States' constitutions. The purely declaratory and non-binding wording of Article 138a EC, as introduced by the Treaty on European Union, is important for symbolic reasons. It therefore seems appropriate to establish a legitimacy condition for recognition. European parties' role, as set out in the second sentence of Article 138a EC, also serves to define their functions. While it does not establish a ground of unconstitutionality comparable to that in Article 21 para 3 of the German Basic Law, the duty to respect the rights and principles laid down in this Declaration effectively provides constitutional justification for any conditions that might be attached to a future statute of European political parties.

It seems appropriate to introduce similar provisions regarding the recognition of trade unions and other associations and groups operating at the European level.

The reference to the procedures for implementing the two preceding paragraphs, and in particular the prospect of granting parties, trade unions and other associations and groups a special European status, is necessary if these provisions are to have more than just a declaratory effect. In the absence of specific Community powers, the procedure adopted is the one laid down in Article 235 CE.

**Article 12** (*interpretation*)

Based on Article 17 ECHR.

**Article 13** (*powers of the Court of Justice*)

This final provision is essential if the Declaration is to be enforceable and effectively applied. It is made even more necessary by the fact that, under Article L TEU, Article F TEU is not, in principle, subject to the legal supervision of the Court of Justice.