



EIN Roundtable Seminar

*The Social Agenda:
the impact of the financial crisis on daily life, employment and incomes*

Monday 26 January 2009, European Parliament, Brussels

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***"European citizens And Community Law
Implementation"***

Executive Summary of a Special Report to the President of the French Republic, 2008

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(Translated from the French)

EUROPEAN CITIZENS AND COMMUNITY LAW IMPLEMENTATION

Executive Summary of a Special Report by Alain Lamassoure MEP to the President of the French Republic

I – THE CITIZENS’ EUROPE IS LAGGING BEHIND

1. The construction of Europe began with the building of a common market. Then, treaty after treaty, it expanded its ambitions and sphere of competence in order, in particular, to address the new problems arising from its own success.

Fifty years later, a worrying imbalance can be observed. Economic integration has gone so far as to achieve the merging of national currencies, while the union of Europe’s peoples and citizens is still in its infancy. The citizens’ space is today still at a stage of development similar to that of the movement of goods prior to the Single European Act (SEA) adopted in 1985: borders are abolished but harmonious living in that common space is impeded by countless obstacles.

The “European preference” is undeniably a success in terms of foreign trade: on average, each European country conducts two-thirds of its trade with its Union partners. An opposite situation prevails in the “People’s Europe”: in most Member States, there are twice as many non-Europeans as Europeans among foreigners; the proportion is identical for bi-national marriages; despite the success of the Erasmus programme, more university exchanges are conducted with the rest of the world than among Europeans; and the major national media devote more air time to US politics alone than to European politics, not to mention the rest of international politics.

2. This situation is sometimes due to shortcomings in European law, though mostly to its very poor implementation.

The first level of explanation is the inadequacy of European law as such.

Regarding professional mobility, the “portability” of social rights and the mutual recognition of degrees and qualifications, reality is very far removed from the principles underlying Community legislation which, though tried and tested, is often outdated and poorly implemented.

Currently applicable European legislation on the co-ordination of social security schemes was passed over 35 years ago in 1971, during which time the very concept of social security evolved drastically. Human resources executives in Paris-based multinationals believe that the cost of an executive’s international mobility inside the European Union and *inside a single group* is two to six times higher than in their country of origin.

Less than 3% of European students are benefiting from the Erasmus programme. And contrary to what was initially hoped for, the universities themselves are still responsible for the mutual recognition of degrees which therefore takes place on a case-by-case basis. As for the recognition of professional qualifications, except for half a dozen regulated professions, this lengthy process is still only in its early stages in the Union and relies entirely on the goodwill of Member States!

Second level of explanation: the transposition of European directives which can only be implemented following their national transposition. The zeal for carrying out transposition varies with each Member State. For a long time, France showed the greatest reluctance in this respect and although it has improved its ranking, it is still the black sheep of the European Commission’s infringement procedures.

Third level: available information on applicable law. Uninitiated European citizens virtually need a magic wand to track down scraps of information, unaware all the while that oceans of it are within reach, though uncharted. There is no coherent information system catering for all citizens, but a mass of information providers accessible to the initiated, the chosen few, who are very few indeed and not very happy at that. The European institutions, national administrations and local governments, consular organisations and specialist associations have created dozens of Internet websites and hundreds of points of contact which are highly disorganised and fail to reach most truly interested people.

Fourth level: the processing of personal files. The evidence gathered from representatives of foreigners in France and from French nationals abroad shows that Europeans living in the Union in a country other than their own face a great many administrative problems everywhere. Thus, the abolition of compulsory residence permits created more problems than it has solved. The reimbursement of medical expenses is erratic. In several countries, including France, registering motor vehicles purchased abroad is a very cumbersome process. There are many exceptions to the possibility of being recruited by a national administration without suffering discrimination, an area in which, unfortunately, France is far from setting the right example. In general, the competent services in host countries often give the impression of being poorly informed themselves or of interpreting Community law in such a way as to favour their own nationals to the detriment of “foreigners”.

Finally, Community law barely deals with an immense area crucial to people’s lives, i.e. civil law, and in particular, family law. The Union, which focuses on the free movement of workers, has underestimated the human consequences of its historic success in achieving “perpetual” peace on the continent, given that travel, migrations and meetings encourage the forging of ties, joint projects, exchanges, communal living, marriages, and contracts, including family contracts. Yet civil law in general and family law in particular are regarded as very closely linked to the history and culture of each country. It is an area therefore in which it has always been felt that subsidiarity ought to prevail in a jealously exclusive way. In categorically rejecting the harmonisation of national laws the Union in this case allows for a degree of mutual recognition of national laws, decisions and legislative measures and focuses chiefly on resolving conflicts of laws (between national and Community law).

Outcome: whenever two or more countries are involved, non-marital unions (naturally very numerous), same-sex (homosexual) marriages or civil contracts, transfer of property, child custody when the parents are separated and cases of legal incapacity may sometimes have to contend with the absence of any legal solution and sometimes with conflicts of laws or conflicts of judges which cannot always be resolved by current Community regulations.

3. On paper, there are many ways for citizens to exercise their rights: the automatic right of appeal before the Community authorities, referral to the national or European Ombudsman, right of petition to the European Parliament, appeal to judges to seek a ruling from the Court of Justice of the European Communities in Luxembourg. But procedures are little known, generally lengthy, and focused on case-law work rather than on the practical processing of individual problems, which is another matter altogether.

II – POSSIBLE REMEDIES

1. The Citizens’ Europe calls for a radically new approach.

Let’s go back to square one, to the average European citizen, the man in the street, the anonymous and disorganised citizen. Professional sociologists and polling institutes long ago perfected scientific methods to establish cross-sections of given populations, and qualitative interview methods. A cross-section of this kind obviously has no legitimacy to *decide* but provides better *evidence* than a group of

activists. Rather than commission an impact assessment of a project conceived in Brussels, let's listen to what one or several panel(s) of citizens and invited Internet users have to say about their personal experience, and to their suggestions about a specially dedicated website. The purpose of this is not to legislate at all cost, but to find the right practical solution to the problems that arise.

2. The transposition of Directives is a question of political will. In this respect, France must aim to mount the podium of the three best implementing countries by the end of its Presidency and to stay on the podium. The *Comité Balladur* (Balladur Committee on institutional reform) proposed that a simplified legislative procedure be used every time national law must be used.

3. The information system architecture must be overhauled, from the bottom up, also bearing in mind the concrete grassroots needs. The entire process should be guided by the four following principles:

- A single source of information. In a virtual world, "single window" means that, from a single gateway, the specialist site can be accessed by clicking five times at the most for it to be able to deal with a user's specific problem. In the real world, the single network of single windows should be easy to spot by citizens, whether administration users, consumers, correspondents, tourists or Internet surfers: we need a simple, amusing logo like that of the French *Bison Futé* road safety, information and navigation website, with which people would be familiar Europe-wide. Ulysses, caught on his odyssey between the rock of Community administration and the hard place of national bureaucracies, would be a good symbol.
- Simplicity of use: the single gateway should be a front office for referring matters to the back office that is to remain out of reach. The aim is not to give helpless citizens systematic access to the workings of the administration's behind-the-scenes machinery, but to assure them that their action will set that machinery into operation without their having to master the software behind it.
- Swift processing: given the legal and administrative difficulties specific to Europe's multinational space, one should seek to provide equitable solutions pending final and sometimes lengthy decisions.
- State-of-the art services: while there is no better alternative to direct contact, we should also be capable of using the new possibilities of modern technologies, or of showing imagination when using tried and tested technologies such as dedicated websites, live radio and television broadcasts, etc.

4. The simplicity requirement means that no more than one official should be designated in each European institution, each government, and each administration, namely a Commissioner in charge of relations with citizens, a European Parliament Committee in charge of monitoring legislation, a competent Minister within each government, and a civil service correspondent of the "Ulysses" network attached to each Prefect.

5. Pending an ambitious reform, the Commission has launched a pilot project of dispute investigation accelerated procedure aimed at guaranteeing that all complaints are processed under ten weeks. Fifteen Member States have responded by expressing interest. France was the only country that expressly refused to participate in this project. Would it be possible to reconsider this position which is hardly compatible with the example to be set by a country holding the Presidency of the Union?

6. Similarly to the European blue card under consideration for third-country nationals, harmonised documents could make it much easier for mobile Europeans to carry out formalities and for competent administrations to study their personal files.

Initial progress would be made by turning the European health insurance card into a genuine *European social security card* covering also family welfare, employment injuries, and retirement insurance.

Why not go further by creating a *European Citizen Card*? The idea would be to gather in a single, simply presented document the information and certificates a European national might need in France, concerning their identity, nationality, place of residence, marital status, labour law status and, possibly, social housing access status, qualifications, social security coverage, pension rights, and social welfare rights (universal health coverage (CMU), basic guaranteed income (RMI), disabled adults' allowance (AAH), etc.). The *European Citizen Card* would be issued by a "one-stop shop" and serve as a permanent residence permit, a work permit, a certificate of nationality, a health card, and a social security card. This true "judicial passport" would facilitate procedures in a great many cases.

7. The implementation of Community law and its adaptation will benefit in particular from two Treaty of Lisbon innovations, in the interest of citizens:

- The introduction of a full-time President of the European Council. It would make sense to ask candidates for this new and original function to express in advance how they view the role of the position's holder in this field, as in all others.
- The Citizens' Initiative, under the terms of which one million citizens "who are nationals of a significant number of Member States" may refer to the Commission a matter falling within the area of Community competence. The implementing acts should be drawn up so as to allow full use of this right, in particular by mobile Europeans.

III – SPECIFIC AREAS

1. Regarding health problems in the European area, the first choice to be made by the French Presidency of the EU will concern the legal basis. Should a maximum of problems be addressed in the Implementing Regulation of the 2004 Basic Regulation on Social Security or, on the contrary, be the subject of a special Directive on health services?

Health and social security are also an area in which developing administrative co-operation between Member States is the most necessary step.

2. If we want to obtain a change in the scale of university exchanges by, for example, increasing tenfold the present rate of students concerned, we should look beyond the sole Erasmus programme. All the Member States award scholarships to their students with modest means: why should it be more expensive, exclusive of travel expenses, to study in a neighbouring country rather than in one's home country? Could we not consider student and teacher exchanges between neighbouring or comparable countries at a relatively low, or virtually no cost, on the basis at least of bilateral agreements?

3. The temporary labour system applicable to ten of the "new Member States" is facing practical difficulties. It wouldn't cost France much, and do it credit, if it agreed to lift a needlessly vexatious procedure a few months earlier than scheduled.

4. A further matter to resolve: the posting of workers system. The French Presidency of the EU could spotlight this highly sensitive issue to which too many interests seem prepared to turn a blind eye. Do we have confidence in the quality of European legislation? If we don't, why not amend it? If we do, in which countries is it incorrectly implemented and why? The unions and public opinion cannot be kept in the dark about such an issue that is central to the Social Europe project as a whole.

5. The French Presidency has every reason to be ambitious about family law. In the entire history of *Eurobarometer* surveys, no issue has ever been supported by such an overwhelming majority of the citizens polled: more than nine out of ten called for judicial co-operation in civil matters, notably in family matters.

The priority now is to put into effect the proposed Rome III Regulation on the applicable law and jurisdiction in divorce matters. In addition, it will be necessary to specify which areas of private law should respectively be subject to:

- harmonisation: there is little provision in the Treaty of Lisbon for extending the scope of private law in this area. But initiatives could be taken by a number of key countries;
- mutual recognition of positive law and jurisprudence: this is provided for in principle in the Treaties, but is proving difficult to put into practice;
- a “28th regime” that consists in offering contracting parties the choice between national law or an optional European regime

6. Strong impetus should be given to co-operation between cross-border local authorities. A great many bi-national urban areas are being built before our very eyes and almost without our knowing. The French Presidency would be well-placed to tackle this issue about which its territorial communities have a head start over those of our partners.

7. The training of national judges in Community law is a very important issue about which all Community institutions are now mobilising. The recently established *European Judicial Training Network* could prove a key instrument in this respect. It can only be of interest to France to support progress in this field, all the more so as a vast proportion of foreign judges who have expressed interest in such training have requested to attend French language courses.

IV – ISSUES FOR THE FUTURE

1. How can we organise the peaceful co-existence of sovereign prerogatives that have remained national ones?

If we wish to establish a genuine space for everyday life throughout the Union in order to help resolve the practical problems facing mobile Europeans and prevent social and legal competition among the Member States while retaining domestic jurisdiction in areas relating to work contracts, social security, and civil and family law, we will need to introduce further policy and legal innovations – i.e. put in place a “28th regime”, harmonise “public policy exceptions”, draw up a Charter of the correct transposition of Community law, and seek to conclude agreements restricted to countries prepared to take action together.

2. What scope should be given to the European citizenship concept? The right to nationality will inevitably become a topic of conversation, discussion and then negotiation between the 27 Member States. What makes European citizenship different from the 27 added nationalities and prevents it from being the 28th one? Could we agree a common list of residence rights and individuals’ rights? Before finding a reply to this question, could we not take concrete action to gradually increase the granting of dual nationality?

3. How can the European Parliament's electoral system be adapted to the Parliament's new responsibilities?

Under the present voting system, the Members of the European Parliament are appointed by their parties rather than elected by European citizens. This state of affairs is somewhat incompatible with the new Treaty which has finally made the Strasbourg Assembly into a true legislative Parliament.

4. The principle of subsidiarity should be supplemented with the principle of simplicity.

Like companies which simply want to work, on equal terms, in the internal market, EU citizens need a minimum of identical rules to live and fulfil their ambitions in the single European area. "Sedentary" Europeans who stay in their home country, and even in their region, keep asking again and again for subsidiarity. "Nomadic" Europeans, however, ask for uniformity. And, "united in its diversity", the Union hesitates...

At the same time, while the effects of decentralisation combine with those of the Union's construction, how can we prevent laws from piling up on the unfortunate citizens of a continent with far too many levels of policy-making? Have pity on EU citizens! Have pity on EU "administration users", who are not merely taxpayers! In addition to the "fiscal shield", let's give them an umbrella as protection against the deluge of legislation. Let's set out the *principle of simplicity* alongside the principle of subsidiarity. We ought to devise a policy, administrative, judicial and social organisation designed to relieve the human person, the individual, of the burden of the inevitable complexity stemming from the progress of our societies.

Vis-à-vis its citizens, the European Union has given rise to more dreams than projects, more projects than laws, and more laws than concrete implementations. The time has come to frame more adequate policies and laws founded on European realities, at the risk of having to reconsider projects and forsake our dreams.