

Commission report on the implementation of a Passport Union (3 July 1975)

Caption: On 3 July 1975, the European Commission presents its report on the establishment of a working party instructed to review the possibility of the establishment of a Passport Union at Community level.

Source: Bulletin of the European Communities. July 1975, n° Supplement 7/1975. Luxembourg: Office for Official Publications of the European Communities.

Copyright: (c) European Union, 1995-2012

URL: http://www.cvce.eu/obj/commission_report_on_the_implementation_of_a_passport_union_3_july_1975-en-ad88dd3f-3ae3-4d50-9a9c-bf99493b3e70.html

Publication date: 22/10/2012

Commission report on the implementation of point 10 of the final communiqué issued at the European Summit held in Paris on 9 and 10 December 1974

Passport Union

1. Scope of report

This report expands in turn on the three main factors which seem to govern the implementation of point 10.

These factors are set out below under the following headings:

Significance of the Passport Union;

Main problems raised by the establishment of a Passport Union which will have to be studied by the working party;

Composition of the working party.

2. Significance of the Passport Union

2.1 Introduction

The concept 'Passport Union' is a new one. No scheme exists which bears this name. The only known measures towards creating unions embracing several countries for the purpose of carrying out controls of persons have been the establishment of free movement zones entailing abandonment of identity checks at internal frontiers and the transfer of such checks to external frontiers.¹ Neither does 'Passport Union' exist as a theoretical concept.

However, the expression 'Passport Union' is to some extent evocative and calls to mind by a process of association of ideas the concept of Customs Union. Establishing a Passport Union would provide arrangements in respect of individuals similar to those provided by a Customs Union in respect of goods, i.e. free movement within the Union together with transfer of controls to the external frontiers of the Union and confirmation of it as an entity in relation to non member countries in the form of joint action vis-à-vis such countries (common foreign policy).

Even though 'Passport Union' is not a time-honoured expression the word 'passport' is familiar to everyone. It is a document issued by a national administrative body to nationals of the country concerned, attesting to their identity vis-à-vis foreign authorities. A passport establishes the existence of a connection between a legal person governed by public international law and a natural person. In the first place, this connection is affirmed erga omnes by the State issuing the passport with regard to all other legal persons governed by public international law. Secondly, this connection enables the holder of the passport to require from the State to whose territory he has travelled such treatment as has been agreed between that State and the State of which he is a national.

The preceding remarks are not sufficient to give a clear idea of the nature of the Passport Union envisaged in the Paris Communiqué. This can only be obtained from an analysis of the elements regarded by its authors as being central to a Passport Union. At all events the Heads of Government, in contemplating the establishment of such a Union, regarded three measures as essential: prior introduction of a uniform passport, harmonization of legislation affecting aliens and abolition of passport control within the Community. The significance of the Passport Union may be gathered from the scope and interdependence of these three projected developments.

2.2 Uniform passport

To understand the significance of the uniform passport in a Passport Union, the possible nature, uses and

purpose of such a passport must be considered.

2.2.1 The uniform passport will, as the first step towards a Passport Union, be a document issued by each Member State to its own nationals. It cannot be imagined that the Member States would in the near future grant the Community authority to issue passports, and that this authority would be recognized by the international community.² The uniform passport will thus of necessity be initially a national passport which the Member States would agree should have the same appearance so as to demonstrate, in addition to a connection with the country in question, a definite connection with the Community.

2.2.2 As regards its use, the uniform passport is not intended to be a document serving only the purpose of free movement of nationals of the Member States within the Community. The words used by the authors of the Paris Communiqué show clearly that they had in mind a particular kind of identity document, one specifically intended to be used abroad, even though it may play a subsidiary role as a national identity document, so that standardizing passports will entail the joint creation of a new document intended to be used in relations with all non member countries. There would, moreover, be little point in introducing a uniform passport to be used as an identity document solely for travel within the Community, which would be in addition to the identity card held by nationals of five of the Member States out of nine³ and which is currently all that is required for such travel.

If one of the fundamental characteristics of passports is that they may be used in any foreign country, the same would be true of uniform passports. But were these to be introduced, is it possible to imagine that the same authority would issue to the same person two passports having the characteristics of documents issued at national level and yet differing in their appearance? It seems rather that uniform passports should replace immediately or at a time to be fixed the passports of varying design currently issued by the Member States to their nationals, and be valid in the same way as such passports, not only within the Community but also vis-à-vis all non-member countries. In other words they would be used in those non-member countries which require passports, whereas in the remaining non-member countries and in the Community, they would be used by all nationals of those Member States which do not issue national identity cards and by the nationals of Member States which issue such identity cards, whether they do not hold such a document or whether they prefer to use a passport.

2.2.3 Having established that passports of uniform appearance should be used in place of the passports currently issued by Member States, the manner of this replacement and its significance should now be examined.

Although it is true that the creation of a passport of uniform appearance would in no way affect agreements concluded by each Member State with non member countries for the benefit of its nationals, and would leave unaffected the differences in treatment accorded by such countries according to whether a person is a national of one Member State or another, the fact remains that the introduction of such a passport would have a psychological effect, one which would emphasize the feeling of nationals of the nine Member States of belonging to the Community. But to fully appreciate this effect, it should be remembered firstly that for the nationals of five Member States, only national identity cards need be carried to travel to a number of non member countries, and secondly that the replacement of one document by another (in this case, a national passport by a uniform passport) will be felt much more positively and lastingly if accompanied by a change in the statu quo, i.e. if the connection with the Community attested to by the uniform passport produces concrete results with regard to the treatment accorded to its holder by non-member countries.

One should take into account not simply the psychological effect of a uniform passport as justifying its existence but that such a passport might be equally justified by the desire of the nine Member States to affirm vis-à-vis non-member countries the existence of the Community as an entity, and eventually to obtain from each of them identical treatment for citizens of the Community. In the same way that equality of treatment is assured, on the basis of the Community Treaties, between citizens of the Community in the Member State in which they reside, so equality of treatment of Community citizens, whatever their nationality, would be ensured by stages through the Passport Union, when they travel to a non-member country. It would certainly be disturbing to find that two nationals of two different Member States, each

holding a uniform passport, were treated differently by the same non-member country because of their nationality by, for example, requiring one to have a visa and not the other or where discrimination arose by granting one the right to pursue business activities and not the other.

This approach would give uniform passports the status traditionally associated with passports which, in addition to attesting to a connection with a legal person governed by public international law, secure equal treatment as between holders of the same kind of passport by other international entities recognizing that legal person.

Thus in addition to bringing into being a passport of uniform appearance, the Passport Union would have as an objective the task of acquiring for that document the status normally reserved for such documents, thus involving negotiations with each non-member State to secure identical treatment for all citizens of the Community.

If this approach were adopted, the uniform passport would thus have to be viewed as supporting rights to be negotiated to attain identical treatment for all nationals of the Member States by non-member countries and as evidence of the desire of the Member States to undertake such negotiations.

2.3 Abolition of passport control within the Community

In addition to the aspect of the Passport Union concerned with external relations and consisting of the creation of a uniform passport and possible extension of that measure, i.e. negotiations for identical treatment of citizens of the Community by non-member countries, there is an aspect concerned with internal relations which involves, as we shall see, the abolition of passport control within the Community. The actual scope of this may be discerned stage by stage by means of an analysis based on gradual elimination.

2.3.1 Abolition of passport control within the Community can not mean abolishing all checks on identity documents throughout the Community. All the Member States require aliens to carry either a passport or an identity card, and although some do not have a system of identity cards for their own nationals, identity checks have to be carried out in other ways. It is clear that the authors of the Paris Communiqué did not envisage the general abolition of passport checks on aliens. What they had in mind must therefore be checks carried out at frontiers at the time of entry or exit by aliens.

The Member States mutually recognize the right to check the passports not only of aliens but also of their own nationals and these checks are carried out at the frontier on exit or re-entry.

It is thus clear that the abolition of passport control within the Community means the abolition of passport control at Community internal frontiers.

2.3.2 Further, abolition of passport control can not consist only of abolition of control of passports at the internal frontiers of the Community. It must logically extend also to documents which replace passports by agreement between States, such as national identity cards.

In order to be in any way beneficial, abolition of passport control must include abolition of checks on all documents recognized as valid identity documents in the context of international relations.

2.3.3 Moreover, abolition of identity checks at internal frontiers can not be selective and apply only to nationals of the Member States to enable them alone to move freely within the Community. It is impossible to distinguish nationals of another Member State from those of a non-member country. If identity checks in respect of the former are to be abolished their abolition in respect of the latter must also be accepted.

2.3.4 Finally, abolition of passport control at: internal frontiers can not apply only to identity; documents, allowing checks on documents based on them, such as entry or exit visas, residence permits and work permits to continue. To retain checks on these documents would defeat the object and destroy the advantages of abolishing checks on identity documents.

2.3.5 To sum up, if all the implications of the abolition of passport control within the Community are considered, it is clear that this entails on the part of each Member State abolition in principle of all forms of control of individuals, whatever their nationality, carried out at the internal frontiers of the Community both on their entry into or exit from the country concerned. It should not be forgotten, however, that free movement of persons across internal frontiers cannot be attained solely through the Passport Union. This can only be achieved by ensuring, in addition, that checks are not made on goods or on currency carried by such persons, or on their vehicles.

Moreover, as with the uniform passport, abolition of control of persons at Community internal frontiers provides scope for further action. In the same way that the introduction of uniform passports could lead to negotiations for equality of treatment of nationals of the Member States by non-member countries, abolition of controls of persons could, by reason of their transfer to external frontiers, trigger off developments towards equality of treatment of the nationals of non-member countries by the Member States on the lines of a process exemplified by the Convention on the transfer of control of persons to the external frontiers of Benelux signed on 11 April 1960. A similar development which, when complete, resulted in nationals of one-member country holding the same kind of passport no longer being treated differently by the nine Member States because of their nationality would accord with the concept of a Passport Union which went further than being simply a free movement zone.

2.4. Harmonization of legislation affecting aliens

Introduction of a uniform passport and abolition of controls of persons at internal frontiers are objectives beyond which others, more ambitious, may be discerned. However, harmonization of legislation affecting aliens, like all harmonization of national laws, cannot constitute an objective. In the present case, it would be rather the consequence of abolishing control of persons at internal frontiers. The abolition of such control entails the transfer of controls to external frontiers to some degree, implying harmonization of the national legislation concerned. Moreover, if equality of treatment of nationals of the Member States by non-member countries were negotiated on the basis of the uniform passport, these countries would be bound to request in exchange a similar degree of equal treatment of their nationals by the Member States which would lead in this way to harmonization of the national laws concerned. In both cases however, the relevant part of each Member State's legislation affecting aliens is that which applies to nationals of non-member countries and not that which applies to nationals of the other Member States, which has already been considerably amended in implementation of the EEC Treaty, and in particular Articles 48, 52, 56 and 59 thereof.

If it is true that harmonization of legislation is a question of means rather than ends, it does not seem necessary, for the purpose of defining the possible nature of the Passport Union, to further analyse here the purpose and methods of harmonizing legislation affecting aliens. Annex 2 provides additional information on the national laws governing aliens and about the harmonization of those laws as a consequence of attaining the objectives of the Passport Union.

2.5 Conclusion

It has proved possible to define the Passport Union on the basis of the constituent factors analysed above.

These factors have shown the Passport Union to be a project aimed at confirming the Community as an entity vis-à-vis the rest of the world and capable of reviving the feeling of citizens of the Community of belonging to that entity.

The form this project will take consists firstly in replacing national passports of varying appearance with a uniform national passport, and perhaps in addition in seeking to secure identical treatment of citizens of the Community by every non-member country. In this way, the impact of such identical treatment which would make nationals of the Member States working or travelling outside the Community more aware of their connection with the Community would be added to the psychological effect of having a passport of uniform appearance.

The project also involves abolition of control of persons at Community internal frontiers and some degree of transfer of such control to external frontiers, which could lead to uniform treatment of nationals of non member countries by all the Member States.

This second aspect of the Passport Union will have a considerable impact on public opinion, since it affects citizens of the Community travelling within the Community and all nationals of non-member countries travelling to any of the Member States.

The harmonization of legislation affecting aliens referred to in point 10 of the Paris Communiqué as the third element central to the Passport Union is in fact only the corollary of the other two. It is clear that the greater the extent to which the Member States agree to afford equality of treatment to nationals of non-member countries, whether it be to ensure that a more efficient check is kept on such aliens or to secure equal treatment on the part of non-member countries in exchange, the more extensive and fundamental will be the harmonization of national laws affecting aliens.

3. Main problems raised by the establishment of a Passport Union which will have to be studied by the working party

Its remit being to study the possibility of establishing a Passport Union, the working party will obviously have to define the elements central to such a project. If it were to arrive at the concept of a Passport Union described above it would have to study the conditions and time limits in which this could be brought into being. In this respect, its work could be organized under the following four headings:

- uniform passport;
- abolition of control of persons at international frontiers in the Community;
- equality of treatment of nationals of Member States by third countries;
- legal implementation of the Passport Union.

3.1 Uniform passport

3.1.1 It should not be particularly problematic to decide on the appearance, content and holders of the uniform passport provided that there is agreement that this passport, although essentially national, will demonstrate, in addition to a national connection, a connection with the European Communities and will replace existing national passports whose appearance varies. It should however be pointed out that the detailed arrangements for replacing existing national passports by a uniform passport could raise some problems of a political nature. This could for example be the case with the British passport issued by the United Kingdom not only to British citizens with the right of abode but also to other British subjects who are citizens of non-member countries.

3.1.2 The time required before the first uniform passports are issued could be relatively short, firstly because the problems involved do not seem unduly numerous, and secondly, because this is in principle a project separate from the abolition of control of persons at internal frontiers.

3.2. Abolition of controls of persons at internal frontiers

It is at present impossible for the Commission to draw up a complete list of the main problems raised by the abolition of control of persons at internal frontiers and to put forward possible solutions to each of them. This is because of lack of information about the legislation in each Member State governing frontiers checks on persons entering or leaving, whether nationals or aliens. Furthermore, there is uncertainty about the conditions under which such legislation is applied in practice. In one and the same Member State legislation and practice may even vary according to the frontier in question.

In these circumstances, the only thing that can be done at present is to draw up a work programme. Five guidelines are suggested under which the problems raised by the abolition of checks at internal frontiers may be listed, then dealt with.

3.2.1 Once the internal and external frontiers in the Communities are determined, it will be necessary to draw up a list of the controls of persons carried out at present by each Member State at internal frontiers, and to establish the extent to which the disappearance of such controls would affect application of the relevant substantive provisions.

In doing so, the importance of frontier checks should not be overestimated. As regards aliens who are nationals of another Member State, these checks are in fact to a large extent superfluous, but are maintained because it is impossible to distinguish such persons from nationals of non-member countries on the basis of physical appearance. Moreover, checks upon entry are, generally speaking, a priori checks the disappearance of which would affect neither the system of a posteriori checks carried out within national territory or the penalties applied when offences are established.

3.2.2 Once cases have been established where abolition of checks at internal frontiers would lead to a considerable reduction in the effectiveness of the relevant substantive provisions, the necessary corrective measures would have to be found. These could consist in:

- adapting the relevant national rules and their application solely by the Member State in question, for example by increasing the number of random checks carried out a posteriori and the severity of the penalties imposed for established offences, or
- establishing close cooperation between the supervisory authorities in the Member States, who would provide one another with the assistance necessary to ensure that the substantive provisions adopted independently by each Member State were respected, or
- amending the national substantive provisions so as to harmonize or even standardize them, possibly granting authority to joint bodies.

Three matters which would call for common action by the Member States come to mind straight away.

The first is the system of card checks on persons entering and leaving

Only certain Member States, namely Ireland and the United Kingdom, have set up a system whereby cards are issued to persons upon entry and collected on departure, thus enabling the length of stay in their territory to be checked. This problem would therefore have to be examined.

The second is the visa aspect

Visa requirements, which are different for immigration than for holiday and business trips, are not the same in the nine Member States. So long as these differences are not integrated into a common foreign policy, they will remain an obstacle to the establishment of a single, lasting visa policy within the Community.

Within Benelux the problem is resolved by a common policy while in the Nordic Union it is achieved through a simple form of administrative cooperation. There are no provisions on this subject in the Understanding but in fact there are few differences between the visa requirements of Ireland and the United Kingdom.

The third is the question of deportation

Here there are differences from country to country found not only in written rules (objective grounds for deportation), but also in concepts and policies. All countries aim to uphold law and order and public security and reserve the right to deport aliens on these grounds, but these concepts are differently constituted from one country to another and the Member States retain untrammelled power to define them. These constituent parts are not harmonized in respect of aliens from another Member State even in the Community context. It has not been possible to do more than to lay down certain limits (for example, prohibition on relying on economic reasons or previous convictions) and to strengthen safeguards through the courts. Moreover the strictness with which deportation measures are applied varies greatly from one Member State to another; the differences in attitude are largely dependent on the economic, social and political factors prevailing at the time. To resolve this problem Benelux and the Nordic Union make cases for deportation subject to a consultation procedure. The Understanding makes no provision for such cases.

3.2.3 Once the working party has established, in particular by examining the above three questions, which checks should be carried out by each Member State on behalf of all others at the external frontiers, it should then consider to what extent such checks are compatible with the agreements entered into by the Member States with a particular non member country and designed to simplify or abolish controls of persons.

Where such checks are found to be incompatible there are three possible solutions: the Member State party to such an agreement repudiates it, the agreement is extended to all Member States of the Community, or lastly the agreement is amended in such a way that the Member State party to it is able to provide the other Member States with adequate guarantees regarding the control of persons it carries out on behalf of all.

3.2.4 The working party would also have to establish, by weighing the advantages and disadvantages, whether checks should be abolished at all the internal frontiers of the Communities or whether this should not apply to the non-European territories of Member States.

3.2.5 Finally, the working party will have to undertake examination of all checks carried out at internal frontiers which are liable to impede the free movement of travellers, so as to verify that the various sectoral measures already taken or in the process of being taken in fact result in complete freedom of movement.

In this respect, the working party would have to extend its investigations to checks carried out not only on persons themselves (identity, right of entry, etc.) but also, for example, on articles or currency carried.

These are the lines along which the working party could structure its work on the abolition of controls on persons. It will moreover find aspects to consider in the various projects and actual developments referred to in Annexes 1 and 3.

In the absence of precise information about the main problems to be resolved, it is difficult to estimate the time within which abolition of control of persons could become effective at the internal frontiers of the Community. However long this may be it will be considerably lengthened if abolition of controls is linked to the introduction of an identity card cum passport.

3.3 Equal treatment of nationals of Member States by non-member countries

Achievement of this objective, if adopted by the working party, is in essence independent of the abolition of control of persons at internal frontiers. It implies long term action which would commence after the introduction of the uniform passport and which would lead to major changes for the Communities.

3.3.1 As is shown by the example of Benelux, abolition of control of persons at internal frontiers can lead to the gradual development of a common visa policy vis-à-vis non-member countries. If this is done, by granting reciprocal rights, the Member States would be induced to negotiate with such countries with a view to abolishing visas for all their nationals.

3.3.2 Although on this particular point regarding visas a certain degree of equality of treatment of nationals

of Member States by non-member countries can be achieved through developments resulting from the abolition of checks at internal frontiers, nevertheless such equality of treatment as a whole is an objective that can be achieved through a separate programme that would constitute one of the possible developments opened up by the creation of the uniform passport. This programme would probably have to be spread over a number of years since equal treatment of nationals of all Member States by all non-member countries implies the replacement of existing bilateral agreements by joint agreements according to a process which could be similar to that by which the common commercial policy is gradually being introduced at present. Moreover, through the grant of reciprocal rights, these renegotiations would raise directly the problem of Member States accord equality of treatment to nationals of non-member countries thus supplementing the initial results obtained in this connection by means joint action following abolition of checks at internal frontiers of the Community.

3.3.3 It is clear that such a process would gradually give non-member countries the feeling that here were the beginnings of Community citizenship. For this reason, if the working party were to carry its proposals regarding equality of treatment of nationals of Member States by non-member countries thus far it would have to take into account, firstly the grant of special rights envisaged in point 11 of the Paris Communiqué which by granting political rights aims to confirm on an internal basis the existence of Community citizenship and secondly, the European Union proposals which are being drawn up at present.

3.4. Legal implementation of the Passport Union

If the working party concludes that a Passport Union is feasible and establishes in sufficient detail the conditions and detailed arrangements under which it could be brought into being it, will then have to consider how the relevant agreements should be legally formulated.

Since the Community Treaties contain no provisions giving an immediate power to act with regard to political rights, even under Article 235 of the EEC Treaty, the legal instrument to be employed would have to be an ad hoc act, which could be a new treaty governed by international law or - if necessary - an amendment to the EEC Treaty pursuant to Article 236 by addition of the necessary provisions, e.g., in the form of a Protocol.

If the solution of a new treaty governed by international law were adopted, a number of questions would arise such as whether or not such a convention would have to contain self executing provisions, whether or not provision should be made for uniform interpretation of it, etc.

3.5 Conclusions

The problems raised by the projected developments specifically referred to in point 10, of which, such as the endeavour to secure identical treatment of Community nationals by every non-member country and its corollary through the grant of reciprocal rights, i.e., negotiations to secure identical treatment of nationals of every non-member country by Member States, would logically result from one of these projected developments, namely the uniform passport, have indicated by their scale, and having regard to past and current experience, which of the projected developments could be put unto effect within a reasonable time and without too great difficulty.

These projected developments are the introduction of a passport of uniform appearance provided it is not technically sophisticated, abolition of checks at internal frontiers and their transfer to external frontiers based on the relevant experience of six Member States and harmonization of legislation affecting aliens confined to measures regulating tourist and business visitors.

The objectives of securing uniform treatment of Community nationals by every non member country and, through the grant of reciprocal rights of uniform treatment of nationals of such countries by the Member States would be more difficult and take longer to achieve. In addition to the need to harmonize the visa and immigration policies of the Member States, which is bound up with the aspect of reciprocity, non-member countries would have to agree to regard the Nine as a single entity and European citizenship as a reality. It

must be acknowledged that the Community does not at present have jurisdiction over the rights of persons, with the exception of economic and social rights, and that European citizenship, which does not exist at present, will take the first step towards becoming a reality only with the election of the European Parliament on the basis of universal suffrage and the implementation of point 11 concerning special rights. In any event, even if this objective were adopted, it would not be so pressingly important as those outlined earlier since it affects only nationals of Member States who leave the Community and its attainment would be mainly appreciated by those few who spend long periods in non member countries.

4. Composition of the working party

4.1 Point 10 makes no mention of the nature of the legal instruments whereby the Passport Union could be brought into being or the procedure to be adopted for its implementation; it merely states that a working party will be set up to study this and to submit a draft to the Governments of the Member States.

It appears that there are two possible approaches with regard to legal implementation of the Passport Union: firstly a separate Treaty governed by international law and secondly a revision of the EEC Treaty. In fact, the fundamental objective of any liberalization is, as has been shown, to secure freedom of movement entirely devoid of any controls within the Community, other aspects being more or less corollaries or consequences of this basic principle, particularly with regard to the transfer of controls on aliens to the external frontiers of the Community, harmonization of legislation and the joint conclusion of agreements with non-member countries on treatment of their nationals by the Member States. Thus, although the Passport Union is not essential to achievement of the objectives of the EEC Treaty as it stands at present and since it is therefore not possible to rely on Article 235, it remains true that it is a natural extension of the principles of free movement which constitute one of the foundations of the Community.

Whichever means are chosen, it is clear that the abolition of identity checks at the internal frontiers of the Communities, which is one of the objectives of point 10, is in keeping with abolition of all types of controls at such frontiers and would follow on logically from what has been achieved already under the Community Treaties with regard to freedom of movement of persons.

In these circumstances, to ensure that the work to be carried out is consistent with the objectives attained under the Community Treaties and to ensure their continuity the Commission proposes that it should itself provide the chairman of the working party which will be made up of persons designated by the Member States and will be required to submit a report to the government representatives meeting within the Council, and should also be responsible for the secretariat. Once the working party has been set up, the Commission will take the necessary steps to see that it meets without delay.

(1). Such zones involving Member States of the Community have been established between the Scandinavian countries and Finland, between the United Kingdom, Ireland, the Channel Islands and the Isle of Man, and between the three Benelux countries. A comparative description of these three zones is given in Annex 1, p. 17.

(2). The Community institutions have at present the right merely to issue laissez-passer to their officials and servants (cf. Article 7 of the Protocol on the Privileges and Immunities of the European Communities). The holders of such laissez-passer may travel freely within the territory of the Community and non-member countries which recognize them (currently only Switzerland) without being required to present any further proof of identity.

(3). In France and Italy, national identity cards are generally carried, although they are optional. They are compulsory in Germany, Belgium and Luxembourg.