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**Jean Monnet Chair**

**EU Institutions, Rights and Judicial Integration**

Self-training manual

## **European Union Citizenship**

Nikolaos Gaitenidis



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## I. Introduction: Citizenship as an Institution of Public Law: Exploring Legal and Theoretical Dimensions

Citizenship, as a institution within public law, encompasses the legal and sociopolitical integration of individuals into the body politic of a sovereign state. Rooted in historical and contemporary legal discourse, citizenship delineates the rights, duties, and identity of individuals within a given political community. Scholars such as T.H. Marshall (1950) have underscored citizenship as comprising a tripartite framework of civil, political, and social rights, elucidating its multifaceted nature beyond mere legal status. This conceptualization resonates with contemporary debates on citizenship, emphasizing its role in fostering inclusive societies and equitable participation in governance<sup>1</sup>.

The interchangeable use of terms such as "citizenship" and "nationality" belies nuanced distinctions in their historical and legal connotations. While "citizenship" emerged from modern republican traditions, signifying active participation and civic engagement, "nationality" historically connoted feudal obligations and hierarchical subordination. The evolution of terminology reflects shifting paradigms in governance and collective identity formation<sup>2</sup>.

Legal scholars have examined citizenship through the lens of state sovereignty and domestic law. The International Court of Justice (ICJ) in the *Nottebohm* case elucidated citizenship as a "legal bond" predicated on shared attachments and reciprocal rights, highlighting its subjective and contextual nature within international jurisprudence<sup>3</sup>.

Moreover, citizenship acquisition and dual nationality pose complex legal and ethical quandaries. States retain sovereign prerogatives in defining citizenship criteria, resulting in variegated pathways to naturalization and potential conflicts of laws<sup>4</sup>. The Hague Convention on Certain Questions Relating to the Conflict of Nationality

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<sup>1</sup> Isin, E. F., & Turner, B. S. (Eds.). (2007). *Investigating citizenship: An agenda for citizenship studies*. Routledge. Theodoridis, P. & Mantzoufas, P., *Nation and European citizenship, The transformations of citizenship, The Constitution*, 1998

<sup>2</sup> Brubaker, R. (1992). *Citizenship and nationhood in France and Germany*. Harvard University Press. Somers, M. R. (2008). *Genealogies of citizenship: Markets, statelessness, and the right to have rights*. Cambridge University Press. Theodoridis, P. & Mantzoufas, P., *Nation and European citizenship, The transformations of citizenship, The Constitution*, 1998.

<sup>3</sup> *Liechtenstein v Guatemala - Nottebohm - Judgment of 6 April 1955 - Second Phase - Judgments [1955] ICJ 1; ICJ Reports 1955, p 4; [1955] ICJ Rep 4 (6 April 1955)*. Theodoridis, P. & Mantzoufas, P., *Nation and European citizenship, The transformations of citizenship, The Constitution*, 1998.

<sup>4</sup> Shachar, A. (2009). *The birthright lottery: Citizenship and global inequality*. Harvard University Press. Theodoridis, P. & Mantzoufas, P., *Nation and European citizenship, The transformations of citizenship, The Constitution*, 1998.

Laws (1930) provides a foundational framework for mitigating such conflicts, emphasizing principles of effective nationality and diplomatic reciprocity<sup>5</sup>.

Beyond legal formalism, citizenship embodies broader normative ideals of belonging and solidarity. Nussbaum (1996) elucidates citizenship as an ethical practice rooted in empathetic engagement and cosmopolitan values, transcending territorial boundaries and ethnonational affiliations<sup>6</sup>.

**In conclusion, citizenship epitomizes the nexus of law, politics, and identity, reflecting evolving conceptions of rights and belonging in an increasingly interconnected world. By interrogating its legal foundations and normative dimensions, scholars contribute to a deeper understanding of citizenship as both a juridical status and a lived experience in diverse sociopolitical contexts.**

### Synopsis: Citizenship as an Institution of Public Law

- **Citizenship integrates individuals into the political body of a sovereign state.**
- **Historically, "citizenship" signifies active participation, while "nationality" implies feudal obligations.**
- **The International Court of Justice views citizenship as a "legal bond" based on shared attachments and reciprocal rights.**
- **Dual nationality and citizenship acquisition present legal challenges.**
- **Citizenship embodies belonging and solidarity, transcending mere legal status.**

### Comprehension Questions

- **How does the International Court of Justice define citizenship?**
- **How does the concept of European citizenship differ from national citizenship?**

<sup>5</sup> League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, 13 April 1930, available online at: <https://www.refworld.org/legal/agreements/lon/1930/en/17955>, [accessed 23 May 2024].

<sup>6</sup> Nussbaum, M. C. (1996). *For love of country: Debating the limits of patriotism*. Beacon Press. Theodoridis, P. & Mantzoufas, P., *Nation and European citizenship, The transformations of citizenship, The Constitution*, 1998.

## II. Introduction to European Citizenship

The concept of European citizenship was formally introduced into Union law with the Maastricht Treaty in 1992.

However, it would be inaccurate to claim that this concept first emerged at that time. Precedents for the establishment of this notion can be found even before the Maastricht Treaty. From the early decades of the European Union, it was evident that individuals subject to Community law enjoyed certain rights and benefits. This realization spurred the creation of the term "Citizens of the Market" or "Community Citizens." The decision by the representatives of the member states in 1976 to elect members of the European Parliament by direct universal suffrage also supported the defense of this term<sup>7</sup>.

With the Maastricht Treaty, the right to free movement and residence was decoupled from the exercise of economic activity and generalized to include all citizens of the member states, as these individuals were granted European Union citizenship. This marked a transition from the "market citizen" to the "citizen of the Union," in an effort to create a "Europe of Citizens"<sup>8</sup>.

Union citizenship brought together a set of political rights, aiming at the recognition of a European populace. According to the provisions established by the Maastricht Treaty, Union citizens are entitled to move and reside freely within the territory of the member states, to vote and stand as candidates in municipal and European Parliament elections in any member state, and to receive diplomatic and consular protection from any member state when in a third country where their own state is not represented<sup>9</sup>.

The evolution of European citizenship reflects an ongoing effort to deepen political integration and foster a collective European identity. By recognizing citizens not only as economic agents but as participants in a political community, the European Union

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<sup>7</sup> Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek). Craig, P., & De Búrca, G. (2011). *EU Law: Text, Cases, and Materials*. Oxford University Press. Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>8</sup> Shaw, J. (2007). *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*. Cambridge University Press. Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>9</sup> O'Leary, S. (1996). *The Evolving Concept of Community Citizenship: From the Free Movement of Persons to Union Citizenship*. Kluwer Law International. Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

aspires to strengthen the ties that bind its diverse populations and promote a sense of common belonging<sup>10</sup>.

## A. Definition of European Citizenship

Under Article 9 TEU and Article 20 TFEU, **every person holding the nationality of a Member State is a citizen of the Union**. Nationality is defined according to the national laws of that State. Citizenship of the Union is complementary to, but does not replace, national citizenship. EU citizenship comprises a number of rights and duties in addition to those stemming from citizenship of a Member State<sup>11</sup>.

European citizenship is not self-defined in a primary sense but is indirectly and derivatively established through the legal orders of the Member States. This dual-layered structure underscores the intricate relationship between national and Union citizenship, where the acquisition of EU citizenship is contingent upon holding the nationality of a Member State<sup>12</sup>.

European citizenship is automatically acquired with the acquisition of national citizenship of a Member State and is automatically lost upon the loss of the latter by any means. No formalities or separate procedures are required for the acquisition or loss of European citizenship; it suffices merely to acquire the nationality of one of the Member States. Consequently, no citizen of a Member State can renounce European citizenship while retaining only their national citizenship, nor can a third-country national acquire European citizenship without first being granted the national citizenship of a Member State<sup>13</sup>.

This legal framework highlights the complementary yet distinct nature of European citizenship within the broader context of international and European law. According to the Treaty on the Functioning of the European Union (TFEU), specifically Article

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<sup>10</sup> Craig, P., & De Búrca, G. (2011). *EU Law: Text, Cases, and Materials*. Oxford University Press. Wiener, A. (1997). Making Sense of the New Geography of Citizenship: Fragmented Citizenship in the European Union. *Theory and Society*, 26(4), 529-560. Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek).

<sup>11</sup> Kanellopoulos, P. (2010). *The law of the European Union, The Lisbon Treaty*, 5<sup>th</sup> edition. Sakkoulas (in Greek). Anagnostopoulou D., Strengthening the rights of European Citizenship - towards an inclusive European citizenship? In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>12</sup> European Parliament, Factsheets, *The citizens of the European Union* (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024]. Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek).

<sup>13</sup> Kanellopoulos, P. (2010). *The law of the European Union, The Lisbon Treaty*, 5<sup>th</sup> edition. Sakkoulas (in Greek). Anagnostopoulou D., Strengthening the rights of European Citizenship - towards an inclusive European citizenship? In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

**20, EU citizenship is automatically conferred upon any person who holds the nationality of a Member State.** Consequently, the conditions for acquiring and losing national citizenship are determined exclusively by the individual Member States, as affirmed by the European Court of Justice (ECJ) in cases such as *Micheletti v. Delegación del Gobierno en Cantabria* (1992)<sup>14</sup>.

The European Union cannot interfere in matters concerning the terms of granting and revoking national citizenship, as these fall within the core of national sovereignty of the Member States. Consequently, the EU also cannot engage in issues related to the acquisition and loss of European citizenship, as it is inextricably linked to national citizenship<sup>15</sup>.

If an individual acquires European citizenship through the acquisition of the national citizenship of a Member State, then neither any Member State nor the EU has the right to deny that individual the rights derived from European citizenship. This indicates that European citizenship has a subsidiary and complementary character in relation to national citizenship. The objective of European citizenship was not to create a separate status that would absorb national citizenships, but to achieve equal civil rights within the European space, which is the foundation for closer union and cooperation among the peoples of Europe<sup>16</sup>.

Legal scholars argue that this structure reinforces the sovereignty of Member States in determining their own nationality laws while simultaneously creating a unified status of EU citizenship that grants additional rights and protections under Union law<sup>17</sup>. The interdependence between national and European citizenship reflects the EU's supranational legal order, wherein Member States retain their autonomy over nationality but are bound by the overarching principles and rights enshrined in EU treaties<sup>18</sup>.

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<sup>14</sup> C-369/90, *Micheletti v. Delegación del Gobierno en Cantabria*, ECLI:EU:C:1992:295.

<sup>15</sup> Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek). Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>16</sup> Kochenov, D. (2017). *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press. Shaw, J. (2007). *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*. Cambridge University Press. Kanellopoulos, P. (2010). *The law of the European Union, The Lisbon Treaty*, 5<sup>th</sup> edition. Sakkoulas (in Greek).

<sup>17</sup> Shaw, J. (2007). *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*. Cambridge University Press. Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek). Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>18</sup> Kochenov, D. (2017). *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press. Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive*



Moreover, the derivative nature of EU citizenship has significant implications for the rights of individuals, particularly in cases where changes in national citizenship status affect one's EU citizenship rights. The landmark ruling in *Rottmann v. Freistaat Bayern* (2010) exemplifies the ECJ's stance on the proportionality and fundamental rights considerations that Member States must observe when revoking national citizenship, thereby impacting EU citizenship status<sup>19</sup>.

**In essence, European citizenship exemplifies a unique and evolving legal construct that intertwines national sovereignty with supranational identity, fostering a complex yet cohesive framework of rights and obligations for individuals within the EU.**

In Case C-135/08 *Janko Rottmann v Freistaat Bayern*, Advocate General Poiares Maduro at the CJEU explained the difference (paragraph 23 of the Opinion)

**Any attempt at an answer presupposes a sound understanding of the relationship between the nationality of a Member State and Union citizenship. Those are two concepts which are both inextricably linked and independent. Union citizenship assumes nationality of a Member State but it is also a legal and political concept independent of that of nationality. Nationality of a Member State not only provides access to enjoyment of the rights conferred by Community law; it also makes us citizens of the Union. European citizenship is more than a body of rights which, in themselves, could be granted even to those who do not possess it. It presupposes the existence of a political relationship between European citizens, although it is not a relationship of belonging to a people. On the contrary, that political relationship unites the peoples of Europe. It is based on their mutual commitment to open their respective bodies politic to other European citizens and to construct a new form of civic and political allegiance on a European scale. It does not require the existence of a people, but is founded on the existence of a European political area from which rights and duties emerge. In so far as it does not imply the existence of a European people, citizenship is conceptually the product of a decoupling from nationality. As one author has observed, the radically innovative character of the concept of European citizenship lies in the fact that 'the Union belongs to, is composed of, citizens who by definition do not share the same nationality'. On the contrary, by making nationality of a Member State a condition**

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European citizenship? In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>19</sup> C-135/08, *Rottmann v. Freistaat Bayern* ECLI:EU:C:2010:104. European Parliament, Factsheets, *The citizens of the European Union* (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

for being a European citizen, the Member States intended to show that this new form of citizenship does not put in question our first allegiance to our national bodies politic.<sup>20</sup>

Moreover, the EU's role in safeguarding the rights of its citizens, as delineated in the Treaties and interpreted by the ECJ, reflects its commitment to ensuring that the benefits of EU citizenship are uniformly recognized across all Member States. This approach aims to foster a sense of solidarity and equality among EU citizens, reinforcing the broader goals of European integration and cooperation<sup>21</sup>.

## B. Historical Background

European citizenship has its roots in the post-World War II period, where the devastation caused by the war prompted European leaders to seek ways to foster peace and cooperation among nations. Here's an overview of the evolution of European citizenship:

**Post-World War II Reconstruction:** After the devastation of World War II, European leaders recognized the need for a new approach to prevent future conflicts and promote peace and prosperity on the continent. The idea of European integration gained traction as a way to achieve these goals. Initiatives such as the European Coal and Steel Community (ECSC) in 1951 and the European Economic Community (EEC) in 1957 were born out of this vision<sup>22</sup>.

**Treaty of Rome (1957):** The Treaty of Rome, signed in 1957, marked a significant milestone in European integration. The Treaty established the European Economic Community (EEC), laying the groundwork for closer economic and political cooperation among member states. The EEC aimed to create a common market and remove trade barriers, while Euratom focused on cooperation in the peaceful use of nuclear energy. Although the concept of EU citizenship was not yet in place, this

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<sup>20</sup> C-135/08, Rottmann v. Freistaat Bayern. Opinion of Advocate General, ECLI:EU:C:2009:588. European Parliament, Factsheets, The citizens of the European Union (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

<sup>21</sup> Kochenov, D. (2017). *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press. Shaw, J. (2007). *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*. Cambridge University Press. Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek). Papagiannis, D. (2016). *European Law*, 5<sup>th</sup> Edition. Nomiki Vivliothiki (in Greek).

<sup>22</sup> Encyclopaedia Britannica. (2023). *European Coal and Steel Community (ECSC)*. Available online at: <https://www.britannica.com/topic/European-Coal-and-Steel-Community>, [accessed 25 May 2024]. Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek). Papagiannis, D. (2016). *European Law*, 5<sup>th</sup> Edition. Nomiki Vivliothiki (in Greek).

treaty laid the groundwork for future integration by promoting the free movement of workers and services among member states. This was a crucial step towards economic integration, allowing nationals from member states to move and work freely across borders within the EEC. This principle was vital for the later development of EU citizenship, which would formally recognize the rights of individuals to live and work anywhere within the EU<sup>23</sup>.

**Van Gend en Loos v Nederlandse Administratie der Belastingen** (1963) Case 26/62 was a landmark case of the European Court of Justice which established that provisions of the Treaty Establishing the European Economic Community were capable of creating legal rights which could be enforced by both natural and legal persons before the courts of the Community's member states. This is now called the principle of direct effect. The case is acknowledged as being one of the most important, and possibly the most famous development of European Union law<sup>24</sup>.

**Flaminio Costa v ENEL** (1964) Case 6/64 was a landmark decision of the European Court of Justice which established the primacy of European Union law (then Community law) over the laws of its member states. This groundbreaking case established the principle of supremacy in EU law, which is an independent source of law that cannot be overridden by domestic laws<sup>25</sup>.

**The Schengen Agreement**, signed in 1985 near the town of Schengen, Luxembourg, aimed to eliminate internal border checks between member states. Initially involving five of the ten European Economic Community (EEC) members—Belgium, France, Luxembourg, the Netherlands, and West Germany—the agreement laid the groundwork for what is now known as the Schengen Area. This area allows for passport-free movement across member countries, facilitating greater freedom and economic cooperation within Europe. The Schengen Agreement was further solidified by the Schengen Convention in 1990, which detailed measures for the complete abolition of internal border controls and introduced a common visa policy. This agreement became part of the European Union (EU) law with the Treaty of

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<sup>23</sup> Kanellopoulos. P. (2010). *The law of the European Union, The Lisbon Treaty*, 5<sup>th</sup> edition. Sakkoulas (in Greek). Tsadiras. A. (2022). *Introduction to the Law of the European Union*. Sakkoulas (in Greek).

<sup>24</sup> Case 26-62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*, ECLI:EU:C:1963:1. Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>25</sup> Case 6-64, *Flaminio Costa v E.N.E.L*, ECLI:EU:C:1964:66. Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

Amsterdam in 1999, making the Schengen rules binding for EU members without specific opt-outs<sup>26</sup>.

**The Single European Act (1986):** Over the following decades, European integration continued to progress through various treaties and agreements. The Single European Act (SEA) was a significant milestone that aimed to complete the single market by 1992. It introduced measures to harmonize regulations and eliminate barriers to trade and investment among member states. This period also saw discussions about the need for closer political union to complement economic integration<sup>27</sup>. The Single European Act played a crucial role in the development of European citizenship by setting the stage for a more integrated and cohesive European Community, which later evolved into the European Union (EU). While the SEA itself did not explicitly create European citizenship, it set in motion the legislative and political changes that would make such a concept possible. The Act's focus on creating a borderless Europe implicitly supported the idea that citizens of member states should enjoy rights beyond mere economic benefits. This broader understanding of integration helped pave the way for the Maastricht Treaty, which formally introduced the concept of European Union citizenship<sup>28</sup>.

**Treaty of Maastricht (1992):** The Treaty of Maastricht, signed in 1992, was a pivotal moment in the history of European integration. It established the European Union (EU) as a political and economic union, in addition to the existing European Communities. The Treaty introduced three pillars: the European Communities (now European Union), Common Foreign and Security Policy (CFSP), and Justice and Home Affairs (JHA). One of the key innovations of the Maastricht Treaty was the introduction of European citizenship, which aimed to strengthen the ties between citizens and the European Union. With the Treaty of Maastricht, the concept of European citizenship was formally introduced, granting citizens of EU member states additional rights and privileges beyond those provided by their national citizenship. European citizenship aimed to promote mobility, integration, and a sense of belonging among citizens of the European Union. This included the right to live and work in any EU member state, the right to vote and stand in European Parliament elections, and access to consular protection and social benefits<sup>29</sup>.

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<sup>26</sup> Kanellopoulos. P. (2010). The law of the European Union, The Lisbon Treaty, 5<sup>th</sup> edition. Sakkoulas (in Greek). EUR-Lex (2024), The Schengen Area. Available online at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33020> [accessed 25 May 2024].

<sup>27</sup> Dinan, Desmond. Europe Recast: A History of European Union. Basingstoke, Palgrave Macmillan, 2014. Papagiannis. D. (2016). European Law, 5<sup>th</sup> Edition. Nomiki Vivliothiki (in Greek).

<sup>28</sup> Tsadiras. A. (2022). Introduction to the Law of the European Union. Sakkoulas (in Greek).

<sup>29</sup> Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek). Tsadiras. A. (2022). Introduction to the Law of the European Union. Sakkoulas (in Greek). Papagiannis. D. (2016).

**Amsterdam Treaty (1997):** Signed on October 2, 1997, and effective from May 1, 1999, the Amsterdam Treaty reinforced EU citizenship by emphasizing the protection of fundamental rights. It aimed to simplify and enhance the rights associated with EU citizenship, such as improving consular protection and extending the non-discrimination principle across the EU<sup>30</sup>.

**Nice Treaty (2001):** The Treaty of Nice, signed on February 26, 2001, and effective from February 1, 2003, made institutional changes to prepare the EU for further enlargement. While not directly focused on citizenship, it supported the broader framework within which EU citizenship rights were exercised, particularly in an enlarged Union<sup>31</sup>.

**Lisbon Treaty (2007):** The Lisbon Treaty, signed on December 13, 2007, and effective from December 1, 2009, further solidified EU citizenship. It incorporated the Charter of Fundamental Rights of the European Union into EU primary law, ensuring that the rights and freedoms it enshrined were legally binding. This treaty also expanded the political rights of EU citizens, allowing them to participate more directly in EU governance through the Citizens' Initiative, which enables citizens to request new legislation if supported by at least one million signatures from a significant number of member states<sup>32</sup>.

### Rationale behind the introduction of European Citizenship

**Economic Integration:** The primary rationale was to support the broader goals of economic integration within the European Union. The establishment of a single market, facilitated by the free movement of goods, services, capital, and people, required a legal framework that would enable citizens to move and reside freely across member states. European citizenship was thus seen as a means to complement and strengthen the economic union<sup>33</sup>.

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European Law, 5<sup>th</sup> Edition. Nomiki Vivliothiki (in Greek). Anagnostopoulou D., Strengthening the rights of European Citizenship - towards an inclusive European citizenship? In L. Papadopoulou / D. Anagnostopoulou (ed.), Towards an inclusive European citizenship, Athens: ed. Papazisi 2019.

<sup>30</sup> Tsadiras. A. (2022). Introduction to the Law of the European Union. Sakkoulas (in Greek).

<sup>31</sup> Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek).

<sup>32</sup> Tsadiras. A. (2022). Introduction to the Law of the European Union. Sakkoulas (in Greek). Papagiannis. D. (2016). European Law, 5<sup>th</sup> Edition. Nomiki Vivliothiki (in Greek). Anagnostopoulou D., Strengthening the rights of European Citizenship - towards an inclusive European citizenship? In L. Papadopoulou / D. Anagnostopoulou (ed.), Towards an inclusive European citizenship, Athens: ed. Papazisi 2019.

<sup>33</sup> Kochenov, D. (2009). "Ius Tractum of Many Faces: European Citizenship and a Difficult Relationship between Status and Rights". *Columbia Journal of European Law*, 15, 169-194. Anagnostopoulou D., Strengthening the rights of European Citizenship - towards an inclusive European citizenship? In L.

**Political Unity and Identity:** Another significant rationale was to foster a sense of political unity and a shared European identity. The EU sought to promote a common identity among its citizens, which would help solidify the political foundation of the Union. By granting rights and privileges through European citizenship, the EU aimed to create a closer connection between the Union and its citizens, fostering loyalty and solidarity<sup>34</sup>.

**Enhancement of Rights and Freedoms:** European citizenship was introduced to enhance the rights and freedoms of individuals within the EU. It provided citizens with additional rights, such as the right to vote and stand in European and local elections in any member state, and the right to consular protection from any member state when outside the EU. This extension of rights was intended to strengthen the democratic legitimacy of the EU and empower its citizens<sup>35</sup>.

### Driving Forces

**Institutional and Legal Reforms:** The driving forces behind the introduction of European citizenship included various institutional and legal reforms aimed at deepening European integration. The Maastricht Treaty (1992), which formally introduced EU citizenship, was a key milestone in this process. It was part of a broader effort to enhance the political and social dimensions of the EU, complementing the economic integration achieved through previous treaties<sup>36</sup>.

**European Parliament and Policy Makers:** The European Parliament and other EU policymakers played a crucial role in advocating for the introduction of European citizenship. They recognized the need for a legal and political framework that would not only facilitate economic integration but also promote democratic values and citizen participation within the EU<sup>37</sup>.

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Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>34</sup> Lister, M. (2008), *European citizenship and European identity*, *Citizenship in Contemporary Europe*, Edinburgh Scholarship Online.

<sup>35</sup> Gosewinkel, D. (2021). *Struggles for Belonging: Citizenship in Europe, 1900-2020*. Oxford Academic.  
Kochenov, D. (2013). THE ESSENCE OF EU CITIZENSHIP EMERGING FROM THE LAST TEN YEARS OF ACADEMIC DEBATE: BEYOND THE CHERRY BLOSSOMS AND THE MOON? *The International and Comparative Law Quarterly*, 62(1), 97–136. Anagnostopoulou D., *Strengthening the rights of European Citizenship - towards an inclusive European citizenship?* In L. Papadopoulou / D. Anagnostopoulou (ed.), *Towards an inclusive European citizenship*, Athens: ed. Papazisi 2019.

<sup>36</sup> Kostakopoulou D. (2007), *European Union Citizenship: Writing the Future*, 13(5) *ELJ* 623. Kochenov, D. (2017). *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press.

<sup>37</sup> Wiener, A. (1997). *Making Sense of the New Geography of Citizenship: Fragmented Citizenship in the European Union*. *Theory and Society*, 26(4), 529-560.

**Public Demand and Citizen Engagement:** There was also a growing public demand for greater rights and freedoms within the EU. European citizens increasingly called for the ability to move freely, live, and work in different member states without facing significant legal or administrative barriers. This public demand was a significant driving force behind the push for European citizenship<sup>38</sup>.

**External Challenges and Globalization:** The need to respond to external challenges and the pressures of globalization also influenced the introduction of European citizenship. By creating a more unified and integrated entity, the EU aimed to strengthen its position on the global stage and enhance its ability to address common challenges collectively<sup>39</sup>.

European citizenship strengthens the ties between us and our States (in so far as we are European citizens precisely because we are nationals of our States) and, at the same time, it emancipates us from them (in so far as we are now citizens beyond our States). Access to European citizenship is gained through nationality of a Member State, which is regulated by national law, but, like any form of citizenship, it forms the basis of a new political area from which rights and duties emerge, which are laid down by Community law and do not depend on the State. That is why, although it is true that nationality of a Member State is a precondition for access to Union citizenship, it is equally true that the body of rights and obligations associated with the latter cannot be limited in an unjustified manner by the former<sup>40</sup>.

**Brexit (2016-2020):** The United Kingdom's decision to leave the EU (Brexit) had profound implications for EU citizenship. Following the referendum on June 23, 2016, and the subsequent formal departure on January 31, 2020, UK citizens lost their EU citizenship. This event highlighted the significance of EU citizenship, as millions of UK citizens lost rights such as free movement across EU member states and voting rights in EU elections<sup>41</sup>. Following the UK's withdrawal from the EU, a decision on the acquired rights of British nationals resident in Member States, and of EU citizens living in the UK, was agreed. Over the years, each Member State has

<sup>38</sup> Kostakopoulou D. (2007), *European Union Citizenship: Writing the Future*, 13(5) ELJ 623. Kochenov, D. (2017). *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press.

<sup>39</sup> Wiener, A. (1997). *Making Sense of the New Geography of Citizenship: Fragmented Citizenship in the European Union*. *Theory and Society*, 26(4), 529-560.

<sup>40</sup> C-135/08, *Rottmann v. Freistaat Bayern*. ECLI:EU:C:2009:588. European Parliament, Factsheets, *The citizens of the European Union (2023)*, available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

<sup>41</sup> Mindus, P. (2017). *European Citizenship after Brexit - Freedom of Movement and Rights of Residence*. Palgrave Macmillan.

vested its nationals with a legal heritage of rights, and EU law also creates a number of individual rights directly enforceable in the courts, according to the case-law of the CJEU (*Van Gend & Loos*). Limits of that legal heritage could be seen as resting with the national law that gives them effect<sup>42</sup>.

### Synopsis: Introduction to European Citizenship

- Formally introduced with the Maastricht Treaty in 1992.
- Amsterdam Treaty (1997): Reinforced fundamental rights and consular protection.
- Nice Treaty (2001): Prepared EU for enlargement.
- Lisbon Treaty (2007): Incorporated the Charter of Fundamental Rights, expanded political participation.
- Article 9 TEU and Article 20 TFEU state that holding nationality of a Member State confers EU citizenship.
- EU citizenship is complementary to national citizenship and includes additional rights and duties.
- Acquired automatically with national citizenship and lost with its loss.
- Brexit highlighted the significance of EU citizenship as UK citizens lost their EU rights.

### Comprehension Questions

- How does the International Court of Justice define citizenship?
- How does the concept of European citizenship differ from national citizenship?
- What rights are granted to EU citizens under the Maastricht Treaty?
- Describe the legal framework for acquiring and losing European citizenship.
- How did the Amsterdam Treaty enhance the rights of EU citizens?
- What was the significance of the Lisbon Treaty for EU citizenship?

<sup>42</sup> European Parliament, Factsheets, The citizens of the European Union (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024]. Anagnostopoulou D., Strengthening the rights of European Citizenship - towards an inclusive European citizenship? In L. Papadopoulou / D. Anagnostopoulou (ed.), Towards an inclusive European citizenship, Athens: ed. Papazisi 2019.



- Explain the complementary nature of EU citizenship in relation to national citizenship.

### III. Citizenship Acquisition and Loss

Article 20 (1) of the Treaty on the Functioning of the European Union (TFEU) states that:

**Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.**

There are two primary ways citizenship can be acquired: either by birthright, which can occur through descent (*jus sanguinis*) or by being born within a country's territory (*jus soli*); or through various naturalization processes. There is no common EU policy on the acquisition of European citizenship as it is supplementary to national citizenship. Under international law, it is for each Member State, having due regard to EU law, to lay down the conditions for the acquisition and loss of nationality. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty<sup>43</sup>.

As a result, there is a great variety in rules and practices with regard to the acquisition and loss of citizenship in EU member states. Member States retain the authority to regulate the acquisition and revocation of national citizenship in a manner that aligns with their interests and identities<sup>44</sup>.

While the European Union lacks legal jurisdiction over matters of national (and consequently EU) citizenship acquisition or loss, the European Court of Justice (ECJ) has gradually expanded the scope of EU citizenship in relation to national citizenship by imposing constraints on Member States' authority to regulate national citizenship. In cases such as *Zhu and Chen*, the ECJ emphasized circumstances where the fundamental rights of EU citizenship must be asserted in relation to, or independently from, national citizenship status. For instance, the ECJ granted a non-EU citizen the right to remain in a Member State to provide care for a minor EU

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<sup>43</sup> European Parliament (2018) Acquisition and loss of citizenship in EU Member States: Key trends and issues -Briefing, available online at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)625116](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)625116), [accessed 23 May 2024]. Sachpekidou. E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek).

<sup>44</sup> European Parliament (2018) Acquisition and loss of citizenship in EU Member States: Key trends and issues -Briefing, available online at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)625116](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)625116), [accessed 23 May 2024]. Kanellopoulos. P. (2010). *The law of the European Union, The Lisbon Treaty*, 5<sup>th</sup> edition. Sakkoulas (in Greek).

citizen<sup>45</sup>. Similarly, in the Rottman case, the ECJ emphasized that **EU Member States should exercise their authority to regulate national citizenship while considering EU law. The Court indicated that the loss of EU citizenship falls within the realm of European Union law due to its nature and consequences, thereby urging national courts to employ a proportionality test to determine the justification for such loss of citizenship**<sup>46</sup>. Advocate General Maduro, in his Opinion on the Rottman case, suggested that national citizenship regulations could, under certain circumstances, contravene Member States' obligation of loyal and sincere cooperation<sup>47</sup>. Also, in a recent judgment, the CJEU ruled that it is for each Member State to lay down the conditions for acquisition and loss of its nationality. EU law did not preclude the permanent loss of, for example, Danish nationality and therefore of citizenship of the Union in a specific case. Denmark was therefore allowed to make the retention of Danish nationality dependent on the existence of a genuine connection with that country. However, where the person concerned did not hold the nationality of another EU Member State, due regard must be had to the principle of proportionality<sup>48</sup>.

Several citizenship laws within the European Union include provisions for the exceptional naturalization of individuals possessing special talents, extraordinary accomplishments, or those who make substantial contributions to the state. This pathway is frequently utilized to grant citizenship to athletes or artists and, on occasion, to investors and affluent individuals<sup>49</sup>.

The concept of exchanging citizenship for financial investment appears to contradict the well-established principle that citizenship should be rooted in a "genuine link". Beyond ethical considerations, the practice of investor citizenship gives rise to a host

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<sup>45</sup> Case C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, ECLI:EU:C:2004:639.

<sup>46</sup> C-135/08, Rottmann v. Freistaat Bayern ECLI:EU:C:2010:104.

<sup>47</sup> C-135/08, Rottmann v. Freistaat Bayern. Opinion of Advocate General, ECLI:EU:C:2009:588. European Parliament (2018) Acquisition and loss of citizenship in EU Member States: Key trends and issues -Briefing, available online at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)625116](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)625116), [accessed 23 May 2024].

<sup>48</sup> European Parliament (2018) Acquisition and loss of citizenship in EU Member States: Key trends and issues -Briefing, available online at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)625116](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)625116), [accessed 23 May 2024]. Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek).

<sup>49</sup> European Parliament (2018) Acquisition and loss of citizenship in EU Member States: Key trends and issues -Briefing, available online at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)625116](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)625116), [accessed 23 May 2024].

of practical concerns, including issues related to tax evasion, corruption, extradition, and security<sup>50</sup>.

In the contentious debate surrounding “golden passports”, where certain EU Member States sell their national citizenship, thereby also offering EU citizenship to foreign investors, the European Parliament made its stance clear. In a resolution passed on 16 January 2014, Parliament emphasized that the values and privileges associated with EU citizenship should not be commodified<sup>51</sup>. This sentiment was reiterated in a resolution on 10 July 2020<sup>52</sup>, where Parliament urged Member States to phase out existing citizenship and residency schemes tied to investment, citing concerns about their association with money laundering and the potential erosion of trust within the Schengen area<sup>53</sup>.

This practice has been marred by numerous scandals. For instance, in 2009, an Austrian politician pledged to expedite citizenship for a Russian investor in exchange for €5 million (a portion of which was intended to be donated to the politician's party). Similarly, in 2011, Cyprus granted citizenship to Rami Makhoul, the cousin of President Bashar al-Assad, only to revoke it in 2012<sup>54</sup>.

On 29 September 2022, the European Commission took action by referring Malta to the Court of the European Union over its investor citizenship scheme, commonly known as the “golden passport” scheme. The Commission argued that granting nationality and EU citizenship in exchange for predetermined payments or investments, without genuine ties to the Member States involved, contravenes the principle of sincere cooperation outlined in Article 4(3) of the Treaty on European Union (TEU) and undermines the integrity of EU citizenship as defined in Article 20 of the Treaty on the Functioning of the European Union<sup>55</sup>.

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<sup>50</sup> European Parliament (2018) Acquisition and loss of citizenship in EU Member States: Key trends and issues -Briefing, available online at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)625116](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)625116), [accessed 23 May 2024].

<sup>51</sup> European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)).

<sup>52</sup> European Parliament resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing – the Commission’s Action Plan and other recent developments (2020/2686(RSP)).

<sup>53</sup> European Parliament, Factsheets, The citizens of the European Union (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

<sup>54</sup> European Parliament, Factsheets, The citizens of the European Union (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

<sup>55</sup> European Commission, Press release 20 October 2020, Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for “selling” EU citizenship, available online at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1925](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925), [accessed 26 May 2024]. European Parliament, Factsheets, The citizens of the European Union (2023), available online

Furthermore, on 9 March 2022, the Parliament adopted a resolution on citizenship and residence schemes, urging the Commission to propose comprehensive regulations aimed at standardizing procedures and bolstering efforts against organized crime, money laundering, corruption, and tax evasion within these schemes before the end of its current mandate<sup>56</sup>.

In response to the Russian invasion of Ukraine, on 28 March 2022, the Commission issued a recommendation outlining immediate measures concerning investor citizenship and residence schemes<sup>57</sup>.

Citizenship can be lost through various mechanisms, broadly categorized into voluntary loss, which occurs when an individual voluntarily renounces their citizenship, and involuntary loss, where citizenship is revoked by the state either automatically or through an official decision. Recent terrorist attacks in Europe have prompted heightened security concerns among both citizens and policymakers, leading several states to expand legal provisions for revoking citizenship as a deterrent and punitive measure against terrorists. Proponents of citizenship revocation argue that withdrawing citizenship from individuals posing imminent threats strengthens citizenship by reasserting the conditions on which it is granted. However, critics argue that such practices weaken citizenship by making it contingent on individuals' behavior and by increasing executive discretion at the expense of citizenship rights. One significant legal objection to citizenship revocation is the obligation of states to prevent statelessness. Consequently, most laws regarding citizenship revocation apply only to dual citizens. Nevertheless, this approach raises concerns about citizenship equality by creating distinctions between dual citizens and those with single nationality, as well as between naturalized citizens and native-born citizens, thereby potentially establishing different tiers of citizenship. Additionally, doubts persist regarding the efficacy of citizenship revocation as a counterterrorism

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at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

<sup>56</sup> European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes (2021/2026(INL)). European Parliament, Factsheets, The citizens of the European Union (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

<sup>57</sup> COMMISSION RECOMMENDATION of 28.3.2022, on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes, Brussels, 28.3.2022, C(2022) 2028 final. European Parliament, Factsheets, The citizens of the European Union (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

tool, as alternative measures such as criminal sanctions and restricting mobility rights may prove more effective in addressing security concerns<sup>58</sup>.

Some Member States, like the UK (before Brexit) and Denmark, restrict EU citizenship for certain groups. In the UK, citizenship complexities led to exclusions until 2002, when most overseas territories citizens gained EU citizenship. Residents of Crown Dependencies had limited EU rights. In Denmark, Faroe Islands residents lack EU citizenship, unlike Greenland residents<sup>59</sup>.

Following “Brexit”, the Court of Justice decided on 15 June 2023 that the loss of the status of citizen of the EU is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, and not of the withdrawal agreement or the Council’s decision approving that agreement<sup>60</sup>.

### Synopsis: Citizenship Acquisition and Loss

- **Article 20(1) of the Treaty on the Functioning of the European Union (TFEU) establishes EU citizenship, which is supplementary to national citizenship.**
- **Acquisition of Citizenship:**
  - **By Birthright: Jus sanguinis (descent) or jus soli (birth within a country's territory).**
  - **Naturalization: Varied processes based on Member State regulations.**

<sup>58</sup>Heinke D.H., Malet D., Minks S., Raudszus J., van Ginkel B., Renard T., Coolsaet R., *RETURNEES: WHO ARE THEY, WHY ARE THEY (NOT) COMING BACK AND HOW SHOULD WE DEAL WITH THEM? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands*, Egmont Paper 101, [Policy Paper], February 2018, available at: [https://aei.pitt.edu/94367/1/egmont.papers.101\\_online\\_v1%2D3.pdf](https://aei.pitt.edu/94367/1/egmont.papers.101_online_v1%2D3.pdf), [accessed 10 May 2024].  
European Parliament (2018) Acquisition and loss of citizenship in EU Member States: Key trends and issues -Briefing, available online at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)625116](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)625116), [accessed 23 May 2024].

<sup>59</sup>The Danish Parliament (2021), Greenland and the Faroe Islands, available online at: <https://www.thedanishparliament.dk/en/eu-information-centre/greenland-and-the-faroe-islands>, [accessed 25 May 2024].  
GOV.UK (2023), British Citizenship, available online at: <https://www.gov.uk/government/publications/british-citizenship-caseworker-guidance/british-citizenship-accessible> [accessed 25 May 2024].

<sup>60</sup>C-499/21 P, *Silver and Others v Council*, ECLI:EU:C:2023:479. C-501/21 P, *Shindler and Others v Council*, ECLI:EU:C:2023:480. C-502/21 P, *Price v Council*, ECLI:EU:C:2023:482. European Parliament, Factsheets, *The citizens of the European Union* (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024].

- **Member States regulate acquisition and loss of citizenship, respecting EU laws and fundamental freedoms.**
- **ECJ cases (Zhu and Chen, Rottman) emphasize the relationship between EU and national citizenship, urging proportionality in loss of EU citizenship decisions.**
- **Known as “golden passports”, these schemes grant citizenship in exchange for financial investment, raising ethical and practical concerns (e.g., tax evasion, security).**
- **Citizenship Loss Mechanisms:**
  - **Voluntary Loss: Individuals renounce their citizenship.**
  - **Involuntary Loss: State revokes citizenship due to security concerns or other reasons.**
- **States expanding laws to revoke citizenship as a counter-terrorism measure, leading to debates about citizenship equality and effectiveness.**

### Comprehension Questions

- What role does the European Court of Justice play in citizenship issues?
- What are “golden passports”?
- What concerns are associated with investor citizenship schemes?
- What mechanisms exist for the loss of citizenship?
- How did Brexit affect EU citizenship for UK citizens?

## IV. Rights of European Citizens

According to Article 20 (2) of the Treaty on the Functioning of the European Union (TFEU) EU Citizens enjoy the following Rights:

- The right to move and reside freely within the territory of the Member States;
- The right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
- The right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- The right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

The Treaty of Lisbon provided for an additional form of public participation: **the European Citizens' Initiative**. This initiative enables one million citizens, who live in at least seven different Member States, to ask the Commission to submit a proposal in areas that fall within its remit<sup>61</sup>.

Also, according to Article 15 (3) of the Treaty on the Functioning of the European Union (TFEU)

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

<sup>61</sup> European Parliament Factsheets, European Citizens' Initiative (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024].



Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

Following the ratification of the Charter of Fundamental Rights of the European Union, it has become legally binding and now provides protection for the rights of every European citizen. This significant development occurred with the entry into force of the Treaty of Lisbon on December 1, 2009, which conferred the same legal value to the Charter as the EU Treaties. This means that the Charter is now a fundamental part of EU law, applicable to EU institutions and member states when implementing EU law<sup>62</sup>. It should be noted that while the scope of application of the Charter is, on the one hand, potentially very broad, as most of the rights it recognizes are granted to 'everyone' regardless of nationality or status, Article 51 does on the other hand limit its application to the EU institutions and bodies and, when they act to implement EU law, to the Member States<sup>63</sup>.

The Court of Justice of the European Union (CJEU) has undergone several phases in its interpretation of rights related to European citizenship. Initially, the CJEU was hesitant to apply the provisions directly related to EU citizenship, often focusing on the economic aspects under the freedom of movement articles. This conservative approach was evident in early rulings where the Court preferred to interpret cases under the specific provisions for workers and economic actors rather than the broader citizenship provisions. Over time, however, the CJEU's interpretation evolved significantly. Landmark cases such as *Grzelczyk* (C-184/99) and *Baumbast* (C-413/99) marked a shift towards recognizing broader citizenship rights independently of economic activity. These rulings emphasized that EU citizenship is intended to be

<sup>62</sup> Peers, Steve, et al. "The EU Charter of Fundamental Rights: A Commentary." Oxford University Press, 2014.

<sup>63</sup> European Parliament Factsheets, The protection of Article 2 TEU values in the EU (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/146/the-protection-of-article-2-teu-values-in-the-eu>, [accessed 25 May 2024].

the fundamental status of nationals of the Member States, thus gradually extending protections and rights to include social and political dimensions.<sup>64</sup>

## A. The right to move and reside freely within the territory of the Member States (Article 21 TFEU)

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect<sup>65</sup>.

The concept of the free movement has evolved since its inception. Initially, the 1957 Treaty establishing the European Economic Community focused on the free movement of workers and freedom of establishment, primarily concerning individuals as employees or service providers. However, with the Treaty of Maastricht, the notion of EU citizenship was introduced, granting automatic

<sup>64</sup> Lansbergen A, Miller N. Court of Justice of the European Union European Citizenship Rights in Internal Situations: An Ambiguous Revolution? Decision of 8 March 2011, Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM). *European Constitutional Law Review*. 2011;7(2):287-307.

<sup>65</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30.4.2004, p. 77–123.

citizenship to nationals of Member States. This EU citizenship forms the basis for the right of individuals to move and reside freely within Member States' territories. The Lisbon Treaty further solidified this right, incorporating it into the general provisions on the Area of Freedom, Security, and Justice<sup>66</sup>.

### Historical Context and Evolution of Free Movement Legislation

The concept of free movement within the European Union (EU) has evolved significantly since the inception of the European Economic Community (EEC) in 1957. The Treaty of Rome established the EEC with a fundamental objective to create a common market, which inherently included the free movement of workers, services, goods, and capital<sup>67</sup>.

**Treaty of Rome (1957):** The Treaty of Rome laid the groundwork for free movement by guaranteeing the right of workers to move freely within the Community for employment purposes (Treaty of Rome, Art. 48-51). This provision was pivotal in fostering economic integration and addressing labor shortages<sup>68</sup>.

#### Early Secondary Legislation:

**Regulation (EEC) No 1612/68:** This regulation was a key piece of secondary legislation that detailed the free movement of workers, prohibiting discrimination based on nationality concerning employment, remuneration, and other working conditions. It also addressed the rights of family members to join the worker and access education and social advantages<sup>69</sup>.

**Directive 68/360/EEC:** Complementing Regulation 1612/68, this Directive facilitated the implementation of free movement by eliminating administrative obstacles to the movement and residence of workers and their families<sup>70</sup>.

#### Extension Beyond Workers:

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<sup>66</sup> European Parliament Factsheets, Free movement of persons (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons>, [accessed 25 May 2024].

<sup>67</sup> Papagiannis. D. (2016). European Law, 5<sup>th</sup> Edition. Nomiki Vivliothiki (in Greek).

<sup>68</sup> Tsadiras. A. (2022). Introduction to the Law of the European Union. Sakkoulas (in Greek).

<sup>69</sup> Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257, 19.10.1968, p. 2–12.

<sup>70</sup> Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ L 257, 19.10.1968, p. 13–16.

**Directive 73/148/EEC:** This Directive extended free movement rights to self-employed individuals, service providers, and recipients, reflecting the expanding scope of economic activities within the Community<sup>71</sup>.

**Directive 90/364/EEC, Directive 90/365/EEC, and Directive 93/96/EEC:** These Directives extended residence rights to non-economically active persons, such as students, retirees, and individuals with sufficient resources, provided they had health insurance, thus broadening the scope of beneficiaries beyond economically active individuals<sup>72</sup>.

**The Schengen Area:** A key milestone in creating an internal market with free movement of persons was the Schengen agreements. The original Schengen Agreement was signed on June 14, 1985, followed by the Convention implementing the Schengen Agreement on June 19, 1990, which came into force on March 26, 1995. Initially signed by Belgium, France, Germany, Luxembourg, and the Netherlands, these agreements were based on intergovernmental cooperation in justice and home affairs. The Amsterdam Treaty incorporated the Schengen acquis into EU law, and under the Lisbon Treaty, it is now subject to parliamentary and judicial scrutiny. Since the EU enlargement on May 1, 2004, new accession countries cannot opt out of Schengen rules (Article 7 of the Schengen Protocol)<sup>73</sup>.

The Schengen Area's key achievements include<sup>74</sup>:

- **Abolition of Internal Border Controls:** Free movement within the area without internal border checks.
- **Strengthened External Borders:** Harmonized controls; EU citizens need only an ID card or passport to enter.

<sup>71</sup> Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, OJ L 172, 28.6.1973, p. 14–16.

<sup>72</sup> Council Directive 90/364/EEC of 28 June 1990 on the right of residence, OJ L 180, 13/07/1990, p. 26–27. Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, OJ L 180, 13.7.1990, p. 28–29. Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students, OJ L 317, 18.12.1993, p. 59–60.

<sup>73</sup> Kanellopoulos. P. (2010). The law of the European Union, The Lisbon Treaty, 5<sup>th</sup> edition. Sakkoulas (in Greek). European Parliament, Factsheets, Free movement of persons (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons> [accessed 23 May 2024].

<sup>74</sup> Council of the European Union, The Schengen area explained, available online at: <https://www.consilium.europa.eu/en/policies/schengen-area/>, [accessed 23 May 2024].

European Parliament, Factsheets, Free movement of persons (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons> [accessed 23 May 2024]. European Commission Factsheet, What is Shengen? MEMO/11/608 (2011), available online at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_11\\_608](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_11_608), [accessed 27 May 2024].

- **Common Visa Policy:** Single visa valid for the entire Schengen Area for nationals of third countries requiring an entry visa.
- **Police and Judicial Cooperation:** Enhanced cross-border police assistance, right of pursuit, faster extradition, and mutual recognition of criminal judgments.
- **Schengen Information System (SIS):** Developed for information sharing on security and border management.

Despite its success, the Schengen Area has faced challenges. The COVID-19 pandemic prompted temporary border closures, though the EU Digital COVID Certificate, introduced in July 2021, facilitated movement. Other significant challenges include the influx of refugees and migrants and the threat of terrorist attacks, which have tested the robustness of the Schengen framework<sup>75</sup>.

**Maastricht Treaty (1992):** The Maastricht Treaty introduced the concept of EU citizenship, granting every citizen of a Member State the right to move and reside freely within the Union, thereby enshrining these rights at the highest level of EU law (Maastricht Treaty, Art. 8a). This was a significant shift from purely economic migration towards a more inclusive understanding of mobility rights<sup>76</sup>.

### The Directive 2004/38/EC

Despite the comprehensive legislative framework, the existing rules were fragmented and often inconsistent, creating practical and legal obstacles for EU citizens exercising their free movement rights. The need for simplification and consolidation led to the drafting of Directive 2004/38/EC<sup>77</sup>. The Directive, commonly referred to as the "Free Movement Directive", or "Citizens' Directive" was adopted by the European Parliament and the Council of the European Union on April 29, 2004. The Directive consolidates and simplifies existing legislation regarding the free movement and residence rights of European Union (EU) citizens and their family members. Its overarching aim is to facilitate the integration of EU citizens into the host Member States by enhancing their mobility and residence rights within the EU.

<sup>75</sup> European Parliament, Factsheets, Free movement of persons (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons> [accessed 23 May 2024].

<sup>76</sup> Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek).

<sup>77</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30.4.2004, p. 77–123.

## Rationale for the Directive

**Simplification and Codification:** The Directive aimed to simplify the fragmented legal landscape by consolidating multiple legislative instruments into a single, coherent text, making it easier for EU citizens and national authorities to understand and apply the rules (Recital 3, Directive 2004/38/EC).

**Strengthening Rights:** By updating and reinforcing the rights of free movement and residence, the Directive sought to facilitate genuine integration of EU citizens into the host Member States, promoting social and economic cohesion (Recital 17, Directive 2004/38/EC).

**Legislative Process:** The Directive was proposed by the European Commission in 2001 as part of the broader initiative to enhance EU citizenship rights. It underwent extensive consultations and revisions before being adopted by the European Parliament and the Council on April 29, 2004<sup>78</sup>.

## Innovations and Enhancements

**Permanent Residence:** One of the significant innovations was the introduction of the right to permanent residence after five years of continuous legal residence, providing long-term security and stability for EU citizens and their family members (Directive 2004/38/EC, Art. 16).

**Expanded Definitions:** The Directive also broadened the definition of family members, including registered partners and dependent relatives, thereby reflecting the diverse forms of familial relationships within the EU (Directive 2004/38/EC, Art. 2).

## Key Provisions

### Right of Entry and Residence:

**Short-term Stays:** EU citizens and their family members are entitled to reside in any Member State for up to three months with a valid identity card or passport. No additional formalities are required during this period (Directive 2004/38/EC, Art. 6).

**Extended Stays:** For stays exceeding three months, EU citizens must either be employed, self-employed, possess sufficient resources and health insurance, or be enrolled in an educational institution. These conditions ensure that

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<sup>78</sup> Guild, Elspeth, Steve Peers, and Jonathan Tomkin, 'Preface', *The EU Citizenship Directive: A Commentary*, 2nd edn (Oxford, 2019; online edn, Oxford Academic, 19 Mar. 2020).

citizens do not become an unreasonable burden on the host Member State's social assistance system (Directive 2004/38/EC, Art. 7).

**Permanent Residence:** After five years of continuous legal residence, EU citizens and their family members acquire the right to permanent residence. This status grants them the right to reside without any conditions, reflecting a deeper level of integration into the host society (Directive 2004/38/EC, Art. 16).

**Family Members:** The Directive encompasses a broad definition of family members, including spouses, registered partners (if recognized by the host Member State), direct descendants under the age of 21 or dependents, and dependent direct relatives in the ascending line (Directive 2004/38/EC, Art. 2).

**Equal Treatment:** EU citizens residing in another Member State are entitled to equal treatment with nationals of that state in areas covered by the Treaty, such as employment, education, and social and tax advantages. This principle of non-discrimination is fundamental to the EU's internal market (Directive 2004/38/EC, Art. 24).

**Administrative Formalities:** For stays longer than three months, EU citizens must register with the relevant authorities. Non-EU family members are required to apply for a residence card, which must be issued within six months of application (Directive 2004/38/EC, Arts. 8-10).

**Retention of Residence Rights:** Provisions are included to retain residence rights in specific circumstances, such as the death of the EU citizen, departure, divorce, annulment of marriage, or termination of a registered partnership, under certain conditions (Directive 2004/38/EC, Arts. 12-13).

**Restrictions on Movement:** The Directive allows for restrictions on free movement and residence on grounds of public policy, public security, or public health. These measures must be proportionate and based solely on the personal conduct of the individual concerned, ensuring that they are not applied arbitrarily (Directive 2004/38/EC, Arts. 27-28).

## Evaluation

Directive 2004/38/EC represents a crucial milestone in the evolution of EU free movement legislation. It not only consolidates previous Directives and regulations but also enhances the rights and protections afforded to EU citizens and their family members. The Directive's implementation, however, has revealed challenges,

particularly regarding consistent application across Member States and the balance between free movement and national welfare considerations<sup>79</sup>. Directive 2004/38/EC represents a significant legislative advancement in the promotion of EU citizens' rights, yet its implementation has encountered several challenges:

**Inconsistent Implementation:** Member States have demonstrated variability in applying the Directive, leading to discrepancies in rights protection. Issues such as bureaucratic hurdles, delays in issuing residence documentation, and divergent interpretations of "sufficient resources" have been documented<sup>80</sup>.

**Judicial Interpretation:** The European Court of Justice has been instrumental in clarifying the Directive's provisions. For example, in *Metock* (C-127/08), the ECJ ruled that the right to free movement extends to non-EU family members irrespective of prior lawful residence in another Member State, thereby broadening the scope of protection. Conversely, in *Dano* (C-333/13), the Court emphasized limitations on access to social benefits for economically inactive EU citizens, underscoring the balance between free movement and national welfare interests<sup>81</sup>.

**Economic and Social Impact:** The Directive has positively influenced the EU economy by enhancing labor mobility, addressing skill shortages, and increasing competitiveness. Nonetheless, concerns about the strain on social welfare systems in host Member States persist, highlighting the need for a balanced approach that safeguards both citizens' rights and national welfare policies<sup>82</sup>.

**Social Integration:** While the Directive facilitates legal residence and mobility, issues related to social integration, such as language barriers, discrimination, and access to services, remain significant. These challenges necessitate

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<sup>79</sup> Report from the Commission to the European Parliament and the Council on the application of 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. COM(2008) 840 final. Guild, Elspeth, Steve Peers, and Jonathan Tomkin, 'Preface', *The EU Citizenship Directive: A Commentary*, 2nd edn (Oxford, 2019; online edn, Oxford Academic, 19 Mar. 2020).

<sup>80</sup> Report from the Commission to the European Parliament and the Council on the application of 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. COM(2008) 840 final.

<sup>81</sup> Case C-127/08, *Metock and Others v. Minister for Justice, Equality and Law Reform*, ECLI:EU:C:2008:449. Case C-333/13, *Dano v. Jobcenter Leipzig*, ECLI:EU:C:2014:2358.

<sup>82</sup> Report from the Commission to the European Parliament and the Council on the application of 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. COM(2008) 840 final.



comprehensive integration policies at both EU and Member State levels to fully realize the benefits of free movement<sup>83</sup>.

## Equal Treatment

The principle of equal treatment and non-discrimination is fundamental to the European Union (EU) and is enshrined in its primary and secondary legislation. These principles aim to ensure that EU citizens are treated equally across Member States, fostering social cohesion and economic integration within the internal market.

**Article 18 TFEU** prohibits any discrimination on the grounds of nationality within the scope of the Treaties. Additionally, **Article 45 TFEU** addresses the free movement of workers, emphasizing that they should not face discrimination in employment, remuneration, and other conditions of work and employment based on their nationality.

**Article 24 of the Directive 2004/38/EC:** This Directive explicitly addresses the principle of equal treatment, stating that EU citizens residing in another Member State shall enjoy equal treatment with nationals of that state within the scope of the Treaty. This includes access to employment, education, social and tax advantages, and other areas where discrimination based on nationality is prohibited<sup>84</sup>.

The scope of equal treatment and non-discrimination under Directive 2004/38/EC covers various aspects of life for EU citizens and their family members residing in a host Member State. The Directive aims to remove obstacles to mobility and ensure that EU citizens can fully exercise their rights.

**Access to Employment:** EU citizens have the right to seek employment and work in any Member State under the same conditions as nationals. This includes not only the hiring process but also working conditions, remuneration, dismissal, and social and tax advantages.

**Social Benefits and Services:** The Directive ensures that EU citizens residing in another Member State have access to social benefits and services on equal terms with nationals. This includes social security, healthcare, and other public services. However, economically inactive EU citizens must

<sup>83</sup> European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs (2016). Obstacles to the Right of Free Movement and Residence for EU Citizens and their Families: Comparative Analysis, available online at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2016\)571375](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2016)571375), [accessed 27 May 2024].

<sup>84</sup> Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek). Kanellopoulos. P. (2010). The law of the European Union, The Lisbon Treaty, 5<sup>th</sup> edition. Sakkoulas (in Greek).

demonstrate sufficient resources and health insurance to avoid becoming an unreasonable burden on the host Member State's social assistance system.

**Education:** EU citizens and their family members have the right to access education and vocational training in the host Member State under the same conditions as nationals. This includes both access to educational institutions and the eligibility for scholarships and grants.

**Public Services and Housing:** Equal treatment extends to access to public services, including housing. EU citizens should be able to access public housing and other social services without discrimination based on nationality<sup>85</sup>.

Despite the clear legal framework, the implementation of equal treatment and non-discrimination principles has faced challenges, often requiring judicial interpretation to ensure consistent application across Member States.

**Martínez Sala (C-85/96):** This case established that an EU citizen lawfully residing in another Member State could not be discriminated against on the grounds of nationality in receiving social benefits.

62 Article 8(2) of the Treaty attaches to the status of citizen of the Union the rights and duties laid down by the Treaty, including the right, laid down in Article 6 of the Treaty, not to suffer discrimination on grounds of nationality within the scope of application *ratione materiae* of the Treaty.

63 It follows that a citizen of the European Union, such as the appellant in the main proceedings, lawfully resident in the territory of the host Member State, can rely on Article 6 of the Treaty in all situations which fall within the scope *ratione materiae* of Community law, including the situation where that Member State delays or refuses to grant to that claimant a benefit that is provided to all persons lawfully resident in the territory of that State on the ground that the claimant is not in possession of a document which nationals of that same State are not required to have and the issue of which may be delayed or refused by the authorities of that State.

64 Since the unequal treatment in question thus comes within the scope of the Treaty, it cannot be considered to be justified: it is discrimination

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<sup>85</sup> Sachpekidou. E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek). Kanellopoulos. P. (2010). *The law of the European Union, The Lisbon Treaty*, 5<sup>th</sup> edition. Sakkoulas (in Greek).

directly based on the appellant's nationality and, in any event, nothing to justify such unequal treatment has been put before the Court.

65 The answer to the fourth question must therefore be that Community law precludes a Member State from requiring nationals of other Member States authorised to reside in its territory to produce a formal residence permit issued by the national authorities in order to receive a child-raising allowance, whereas that Member State's own nationals are only required to be permanently or ordinarily resident in that Member State<sup>86</sup>.

**Grzelczyk (C-184/99):** The European Court of Justice (ECJ) ruled that while Member States could require students from other Member States to have sufficient resources, they could not deny them social assistance benefits if they had previously been economically active.

Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.

A citizen of the European Union, lawfully resident in the territory of a host Member State, can rely on Article 6 of the Treaty (now, after amendment, Article 12 EC) in all situations which fall within the scope *ratione materiae* of Community law.

Those situations include those involving the exercise of the fundamental freedoms guaranteed by the Treaty and those involving the exercise of the right to move and reside freely in another Member State, as conferred by Article 8a of the Treaty (now, after amendment, Article 18 EC).

The fact that a Union citizen pursues university studies in a Member State other than the State of which he is a national cannot, of itself, deprive him of the possibility of relying on the prohibition of all discrimination on grounds of nationality laid down in Article 6 of the Treaty. The Treaty on European Union has introduced citizenship of the European Union into the Treaty and added to Title VIII of Part Three a new chapter 3 devoted to education and vocational training. There is nothing in the amended text of the Treaty to suggest that students who are citizens of the Union, when they move to another Member State to study there, lose the rights which the Treaty confers on citizens of the Union. Furthermore, the Council has

<sup>86</sup> C-85/96, *María Martínez Sala v Freistaat Bayern*, ECLI:EU:C:1998:217.

also adopted Directive 93/96, which provides that the Member States must grant the right of residence to student nationals of a Member State who satisfy certain requirements.

Article 1 of Directive 93/96 on the right of residence for students does not require, as a condition for obtaining the right of residence, resources of any specific amount, nor that they be evidenced by specific documents. The article refers merely to a declaration, or such alternative means as are at least equivalent, which enables the student to satisfy the national authority concerned that he has, for himself and, in relevant cases, for his spouse and dependent children, sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their stay.

That interpretation does not, however, prevent a Member State from taking the view that a student who has recourse to social assistance no longer fulfils the conditions of his right of residence or from taking measures, within the limits imposed by Community law, either to withdraw his residence permit or not to renew it. Nevertheless, in no case may such measures become the automatic consequence of a national of another Member State having recourse to the host Member State's social assistance system.

Indeed, Directive 93/96, like Directives 90/364 on the right of residence and 90/365 on the right of residence for employees and self-employed persons who have ceased their occupational activity, accepts a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States, particularly if the difficulties which a beneficiary of the right of residence encounters are temporary. Furthermore, a student's financial position may change with the passage of time for reasons beyond his control. The truthfulness of a student's declaration is therefore to be assessed only as at the time when it is made.

Articles 6 and 8 of the Treaty (now, after amendment, Articles 12 EC and 17 EC) preclude entitlement to a non-contributory social benefit, such as a minimum subsistence allowance, from being made conditional, in the case of nationals of Member States other than the host State where they are legally resident, on their falling within the scope of Regulation No 1612/68 on the freedom of movement for workers within the Community when no such condition applies to nationals of the host Member State.

An interpretation that the Court gives to a provision of Community law clarifies and defines its meaning and scope only as it should have been understood and applied from the time of its entry into force. It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the possibility for any person concerned to rely upon a provision which it has interpreted with a view to calling into question legal relationships established in good faith. The financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effect of the ruling<sup>87</sup>.

**Dano (C-333/13):** This case clarified that economically inactive EU citizens who do not meet the conditions set out in the Directive, such as having sufficient resources and health insurance, are not entitled to social assistance benefits from the host Member State. This ruling emphasized the balance between the right to free movement and the protection of Member States' social welfare systems.

Article 24(1) of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, read in conjunction with Article 7(1)(b) thereof, and Article 4 of Regulation No 883/2004 on the coordination of social security systems, as amended by Regulation No 1244/2010, must be interpreted as not precluding legislation of a Member State under which nationals of other Member States are excluded from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004, although those benefits are granted to nationals of the host Member State who are in the same situation, in so far as those nationals of other Member States do not have a right of residence under Directive 2004/38 in the host Member State.

Article 24(1) of Directive 2004/38 provides that all Union citizens residing on the basis of the Directive in the territory of the host Member State are to enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. It follows that, so far as concerns access to the abovementioned social benefits, a Union citizen can claim equal treatment with nationals of the host Member State only if his residence in the territory of the host Member State complies with the conditions of

<sup>87</sup> C-184/99. Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve, ECLI:EU:C:2001:458.

Directive 2004/38. To accept that persons who do not have a right of residence under Directive 2004/38 may claim entitlement to social benefits under the same conditions as those applicable to nationals of the host Member State would run counter to an objective of the Directive, set out in recital 10 in its preamble, namely preventing Union citizens who are nationals of other Member States from becoming an unreasonable burden on the social assistance system of the host Member State.

Thus, in the case of economically inactive Union citizens whose period of residence in the host Member State has been longer than three months but shorter than five years, it must be examined whether their residence complies with the conditions in Article 7(1)(b) of Directive 2004/38, which include the requirement, intended to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence, that the economically inactive Union citizen must have sufficient resources for himself and his family members. Pursuant to that provision, a Member State must have the possibility of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence. In this connection, the financial situation of each person concerned should be examined specifically, without taking account of the social benefits claimed.

The same conclusion must be reached in respect of the interpretation of Article 4 of Regulation No 883/2004 as 'special non-contributory cash benefits' within the meaning of Article 70(2) of the regulation are, under Article 70(4), to be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation<sup>88</sup>.

**Practical Obstacles:** Administrative hurdles and inconsistent application of the Directive's provisions remain significant challenges. For instance, some Member States have imposed excessive documentation requirements or delays in processing residence permits, effectively impeding the exercise of free movement and equal treatment rights<sup>89</sup>.

<sup>88</sup> C-333/13, *Dano v Jobcenter Leipzig*, ECLI:EU:C:2014:2358.

<sup>89</sup> Report from the Commission to the European Parliament and the Council on the application of 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. COM(2008) 840 final. European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs (2016). *Obstacles to the Right of Free Movement and Residence for EU Citizens and their Families: Comparative Analysis*, available online at:

In conclusion, the principles of equal treatment and non-discrimination are central to the EU's legal framework, ensuring that EU citizens can fully enjoy their rights within the internal market. Directive 2004/38/EC consolidates these principles, promoting the integration and mobility of EU citizens and their family members. However, ongoing challenges in implementation and varying interpretations by national authorities highlight the need for continued vigilance and judicial oversight to uphold these fundamental rights<sup>90</sup>.

### Equal treatment beyond nationality

**Article 19 TFEU** empowers the EU to address discrimination on multiple grounds, including sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation. This broad scope underlines the EU's commitment to promoting equality and protecting individuals from discrimination<sup>91</sup>.

Article 19 TFEU forms the legal basis for several EU Directives aimed at preventing discrimination, such as the **Racial Equality Directive** and the **Employment Equality Directive**. These Directives set out minimum standards for equal treatment, which member states must incorporate into their national laws.

#### Racial Equality Directive (2000/43/EC)

The Racial Equality Directive aims to eliminate discrimination based on racial or ethnic origin across various domains, including employment, education, social protection, and access to goods and services. It addresses both direct and indirect discrimination, as well as harassment and victimization<sup>92</sup>.

#### Definitions:

**Direct discrimination** shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

**Indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that

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[https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2016\)571375](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2016)571375), [accessed 27 May 2024].

<sup>90</sup> Guild, Elspeth, Steve Peers, and Jonathan Tomkin, 'Preface', *The EU Citizenship Directive: A Commentary*, 2nd edn (Oxford, 2019; online edn, Oxford Academic, 19 Mar. 2020).

<sup>91</sup> Sachpekidou, E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek). Fredman S., *Discrimination Law*, Oxford University Press, Oxford, 2002.

<sup>92</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22–26.

provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

**Harassment** shall be deemed to be discrimination when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

**An instruction to discriminate** against persons on grounds of racial or ethnic origin shall be deemed to be discrimination.

**Implementation and Enforcement:** Member states must establish bodies to promote equal treatment and provide effective remedies for victims of discrimination. The Court of Justice of the European Union (CJEU) has played a critical role in interpreting and enforcing the provisions of this Directive.

**Case Law:**

**Firma Feryn NV (C-54/07):** This case involved a public statement by a company director indicating a reluctance to hire Moroccan workers. The CJEU held that such statements constituted direct discrimination under the Racial Equality Directive, even if no actual recruitment decision was affected. This case underscored the broad scope of the Directive in combating discriminatory practices.

It is true that, as those two Member States contend, Article 2(2) of Directive 2000/43 defines direct discrimination as a situation in which one person 'is treated' less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin. Likewise, Article 7 of that Directive requires Member States to ensure that judicial procedures are available to 'all persons who consider themselves wronged by failure to apply the principle of equal treatment to them' and to public interest bodies bringing judicial proceedings 'on behalf or in support of the complainant'.

Nevertheless, it cannot be inferred from this that the lack of an identifiable complainant leads to the conclusion that there is no direct discrimination within the meaning of Directive 2000/43. The aim of that Directive, as stated in recital 8 of its preamble, is 'to foster conditions for a socially inclusive labour market'. For that purpose, Article 3(1)(a) states that the Directive covers, inter alia, selection criteria and recruitment conditions.



The objective of fostering conditions for a socially inclusive labour market would be hard to achieve if the scope of Directive 2000/43 were to be limited to only those cases in which an unsuccessful candidate for a post, considering himself to be the victim of direct discrimination, brought legal proceedings against the employer.

The fact that an employer declares publicly that it will not recruit employees of a certain ethnic or racial origin, something which is clearly likely to strongly dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market, constitutes direct discrimination in respect of recruitment within the meaning of Directive 2000/43. The existence of such direct discrimination is not dependent on the identification of a complainant who claims to have been the victim.

Statements by which an employer publicly lets it be known that, under its recruitment policy, it will not recruit any employees of a certain ethnic or racial origin may constitute facts of such a nature as to give rise to a presumption of a discriminatory recruitment policy.

It is, thus, for that employer to adduce evidence that it has not breached the principle of equal treatment, which it can do, inter alia, by showing that the actual recruitment practice of the undertaking does not correspond to those statements.

It is for the national court to verify that the facts alleged against that employer are established and to assess the sufficiency of the evidence which the employer adduces in support of its contentions that it has not breached the principle of equal treatment<sup>93</sup>.

**CHEZ Razpredelenie Bulgaria AD (C-83/14):** In this case, the CJEU ruled that placing electricity meters at a height that made them difficult to access in predominantly Roma neighborhoods constituted indirect discrimination. This decision highlighted the Directive’s capacity to address systemic discrimination practices.

The concept of ‘discrimination on the grounds of ethnic origin’, for the purpose of Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and, in particular, of Articles 1 and 2(1) thereof, must be interpreted as being

<sup>93</sup> C-54/07, Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v Firma Feryn NV, ECLI:EU:C:2008:397.

intended to apply in circumstances in which, in an urban district mainly lived in by inhabitants of Roma origin, all the electricity meters are placed on pylons forming part of the overhead electricity supply network at a height of between six and seven metres, whereas such meters are placed at a height of less than two metres in the other districts, irrespective of whether that collective measure affects persons who have a certain ethnic origin or those who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure.

In the light of the objective of Directive 2000/43 and the nature of the rights which it seeks to safeguard, its scope cannot be defined restrictively and the principle of equal treatment to which it refers thus applies not to a particular category of person but by reference to the grounds mentioned in Article 1 thereof.

Such an interpretation is supported by recital 16 in the preamble to, and Article 3(1) of, Directive 2000/43, according to which the protection against discrimination on grounds of racial or ethnic origin which the Directive is designed to guarantee is to benefit 'all' persons.

It is also supported both by the wording of Article 13 EC, now, after amendment, Article 19 TFEU, a provision which constitutes the legal basis of Directive 2000/43 and which confers on the European Union the competence to take appropriate action to combat discrimination based, *inter alia*, on racial and ethnic origin, and by the principle of non-discrimination on grounds of race and ethnic origin enshrined in Article 21 of the Charter of Fundamental Rights of the European Union, to which the Directive gives specific expression in the substantive fields that it covers.

Article 2(2)(b) of Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin must be interpreted as meaning that a measure under which, in an urban district mainly lived in by inhabitants of Roma origin, all the electricity meters are placed on pylons forming part of the overhead electricity supply network at a height of between six and seven metres, whereas such meters are placed at a height of less than two metres in the other districts, would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if that measure did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages

caused were not disproportionate to the objectives thereby pursued. That is not so if it is found, a matter which is for the national court to determine, either that other appropriate and less restrictive means enabling those aims to be achieved exist or, in the absence of such other means, that that measure prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned, mainly lived in by inhabitants of Roma origin, in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly<sup>94</sup>.

### Employment Equality Directive (2000/78/EC)

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment<sup>95</sup>.

#### Definitions:

**Direct discrimination** shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation.

**Indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

- (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or
- (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

<sup>94</sup> C-83/14, CHEZ Razpredelenie Bulgaria" AD v Komisia za zashtita ot diskriminatsia, ECLI:EU:C:2015:480.

<sup>95</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22.

**Harassment** shall be deemed to be a form of discrimination when unwanted conduct takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

**An instruction to discriminate** shall be deemed to be discrimination.

This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

**Reasonable Accommodation:** Requires employers to provide reasonable accommodations for individuals with disabilities unless this would impose a disproportionate burden.

**Implementation and Enforcement:** The Directive mandates the establishment of national equality bodies to oversee compliance and assist victims. The CJEU has been pivotal in interpreting key aspects of the Directive, thereby shaping its application.

**Case Law:**

**Mangold v. Helm (C-144/04):** This landmark case concerned age discrimination. The CJEU ruled that the principle of non-discrimination on grounds of age is a general principle of EU law, influencing the Directive's interpretation and its horizontal direct effect.

The application of national legislation such as that at issue in the main proceedings leads to a situation in which all workers who have reached the age of 52, without distinction, whether or not they were unemployed before the contract was concluded and whatever the duration of any period of unemployment, may lawfully, until the age at which they may claim their entitlement to a retirement pension, be offered fixed-term contracts of employment which may be renewed an indefinite number of times. This significant body of workers, determined solely on the basis of age, is thus in danger, during a substantial part of its members' working life, of being excluded from the benefit of stable employment which, however, as the Framework Agreement makes clear, constitutes a major element in the protection of workers.

In so far as such legislation takes the age of the worker concerned as the only criterion for the application of a fixed-term contract of employment, when it has not been shown that fixing an age threshold, as such, regardless of any other consideration linked to the structure of the labour market in question or the personal situation of the person concerned, is objectively necessary to the attainment of the objective which is the vocational integration of unemployed older workers, it must be considered to go beyond what is appropriate and necessary in order to attain the objective pursued. Observance of the principle of proportionality requires every derogation from an individual right to reconcile, so far as is possible, the requirements of the principle of equal treatment with those of the aim pursued (see, to that effect, Case C-476/99 Lommers [2002] ECR I-2891, paragraph 39). Such national legislation cannot, therefore, be justified under Article 6(1) of Directive 2000/78.

The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law. Where national rules fall within the scope of Community law, which is the case with Paragraph 14(3) of the TzBfG, as amended by the Law of 2002, as being a measure implementing Directive 1999/70 (see also, in this respect, paragraphs 51 and 64 above), and reference is made to the Court for a preliminary ruling, the Court must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with such a principle (Case C-442/00 Rodríguez Caballero [2002] ECR I-11915, paragraphs 30 to 32).

Consequently, observance of the general principle of equal treatment, in particular in respect of age, cannot as such be conditional upon the expiry of the period allowed the Member States for the transposition of a Directive intended to lay down a general framework for combating discrimination on the grounds of age, in particular so far as the organisation of appropriate legal remedies, the burden of proof, protection against victimisation, social dialogue, affirmative action and other specific measures to implement such a Directive are concerned<sup>96</sup>.

**Coleman v. Attridge Law (C-303/06):** This case addressed associative discrimination, where the claimant alleged discrimination based on her association with her disabled son. The CJEU extended the Directive's

<sup>96</sup> C-144/04 Werner Mangold v Rüdiger Helm, ECLI:EU:C:2005:709.

protection to cover such associative discrimination, thus broadening the scope of protection under the Directive.

Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. The principle of equal treatment enshrined in that Directive in the area of employment and occupation applies not to a particular category of person but by reference to the grounds mentioned in Article 1.

Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a) of Directive 2000/78.

Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Under Article 2(3), harassment is deemed to be a form of discrimination within the meaning of Article 2(1) and the principle of equal treatment enshrined in that Directive in the area of employment and occupation applies not to a particular category of person but by reference to the grounds mentioned in Article 1.

Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3) of Directive 2000/78<sup>97</sup>.

The Racial Equality Directive and the Employment Equality Directive represent significant advancements in the EU's efforts to foster an inclusive society and protect fundamental rights. The Directives set out comprehensive frameworks that member states must incorporate into their national laws, ensuring a minimum standard of

<sup>97</sup> C-303/06, S. Coleman v Attridge Law and Steve Law, ECLI:EU:C:2008:415.

protection against discrimination. The requirement for member states to establish equality bodies and provide effective remedies underscores the EU’s commitment to robust enforcement mechanisms. The CJEU’s interpretative role has been crucial in ensuring the Directives’ broad and effective application, thereby enhancing their impact<sup>98</sup>.

Despite the progress, challenges remain in achieving uniform implementation across all member states. Issues such as varying levels of commitment, resource allocation, and socio-political contexts influence the effectiveness of these Directives. Future directions may include strengthening monitoring mechanisms and enhancing cooperation among member states to address these disparities<sup>99</sup>.

### **Equality between men and women**

The principle that men and women should receive equal pay for equal work has been enshrined in the European Treaties since 1957 (today: Article 157 of the Treaty on the Functioning of the European Union (TFEU)). Article 153 TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in employment matters and, within this framework, Article 157 TFEU authorises positive action to empower women. In addition, Article 19 TFEU provides for the adoption of legislation to combat all forms of discrimination, including on the basis of sex. Legislation against trafficking in human beings, in particular women and children, has been adopted on the basis of Articles 79 and 83 TFEU. The Rights, Equality and Citizenship Programme finances, among others, measures contributing to the eradication of violence against women, based on Article 168 TFEU<sup>100</sup>.

**EU legislation, mostly adopted by the ordinary legislative procedure, includes:**

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<sup>98</sup> Nikolaidis C., *The Right to Equality in European Human Rights Law: The Quest for Substance in the Jurisprudence of the European Courts*, Routledge, New York 2014. Meenan H. (eds.), *Equality Law in an Enlarged European Union*, Cambridge University Press, Cambridge 2007. McCrudden C., Prechal S., *The Concepts of Equality and Non—discrimination in Europe: A Practical Approach*, European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Brussels 2009

<sup>99</sup> Eriksson A., European Court of Justice: Broadening the Scope of European non-discrimination Law, *International Journal of Constitutional Law*, 7(4) 2009, 731–753. Meenan H. (eds.), *Equality Law in an Enlarged European Union*, Cambridge University Press, Cambridge 2007. McCrudden C., Prechal S., *The Concepts of Equality and Non—discrimination in Europe: A Practical Approach*, European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Brussels 2009.

<sup>100</sup> European Parliament Factsheets, Equality between men and women (2023), Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/59/equality-between-men-and-women>, [accessed 27 May 2024]. Sachpekidou. E. (2021). *European Law*, 3rd edition. Sakkoulas (in Greek).

- **Council Directive 79/7/EEC** of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.
- **Council Directive 92/85/EEC** of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
- **Council Directive 97/81/EC** of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.
- **Council Directive 2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive), which prohibits discrimination on the grounds of racial or ethnic origin in a broad range of fields, including employment, social protection and social advantages, education, and goods and services available to the public, such as housing.
- **Council Directive 2000/78/EC** of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- **Council Directive 2004/113/EC** of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
- **Directive 2006/54/EC** of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- **Council Directive 2010/18/EU** of 8 March 2010 implementing the revised Framework Agreement on parental leave and repealing Directive 96/34/EC.
- **Directive 2010/41/EU** of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.
- **Directive 2011/36/EU** of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.
- **Directive 2011/99/EU** of the European Parliament and of the Council of 13 December 2011 establishing the European protection order.



- **Directive 2012/29/EU** of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
- **Directive (EU) 2019/1158** of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.
- **Directive (EU) 2022/2381** of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.
- **Directive (EU) 2023/970** of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms<sup>101</sup>.

#### Case Law:

**Bilka judgment** of 13 May 1986 (Case C-170/84): the CJEU ruled that a measure excluding part-time employees from an occupational pension scheme constituted ‘indirect discrimination’, and was therefore contrary to former Article 119 of the European Economic Community Treaty if it affected a far greater number of women than men, unless it could be shown that the exclusion was based on objectively justified factors unrelated to any discrimination on the grounds of sex<sup>102</sup>.

**Violeta Villar Láiz judgment** of 8 May 2019 (C-161/18): the CJEU found that the Spanish legislation on the calculation of retirement pensions for part-time workers is contrary to EU law if it is found to be particularly disadvantageous to female workers<sup>103</sup>.

**Hakelbracht judgment** of 20 June 2019 (C-404/18): the CJEU ruled that when a person who purports to be discriminated against based on their gender launches a complaint, employees other than the person discriminated against based on their gender should be protected as they may be disadvantaged by

<sup>101</sup> European Parliament Factsheets, Equality between men and women (2023), Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/59/equality-between-men-and-women>, [accessed 27 May 2024].

<sup>102</sup> C-170/84, Bilka - Kaufhaus GmbH v Karin Weber von Hartz, ECLI:EU:C:1986:204.

<sup>103</sup> C-161/18, Violeta Villar Láiz v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS), ECLI:EU:C:2019:382.

their employer for the support they have formally or informally given to the victim of the alleged discrimination<sup>104</sup>.

### Directive 2014/54/EU on free movement of workers

The Directive 2014/54/EU, adopted by the European Parliament and the Council on April 16, 2014, aims to facilitate the free movement of workers within the European Union (EU) by ensuring the effective enforcement of the rights conferred on workers by Article 45 of the Treaty on the Functioning of the European Union and by Regulation (EU) No 492/2011<sup>105</sup>. This Directive addresses the obstacles and discriminatory practices that hinder the free movement of workers, focusing on practical measures to support and protect these rights<sup>106</sup>.

#### Key Provisions

**Access to Information:** Member States are required to ensure that EU workers and their family members have access to easily understandable information regarding their rights. This includes information on job vacancies, working conditions, social and tax advantages, and access to training (Directive 2014/54/EU, Art. 2).

**Support and Assistance:** The Directive mandates the establishment of contact points to provide support and assistance to workers. These contact points should help workers and employers understand and enforce their rights and obligations (Directive 2014/54/EU, Art. 4).

**Legal Protection:** Member States must guarantee that judicial and/or administrative procedures are available to all workers who believe their rights have been violated. This includes provisions for compensation and the restoration of rights where they have been denied (Directive 2014/54/EU, Art. 5).

**Equality Bodies:** The Directive requires the designation of equality bodies to promote, analyze, monitor, and support equal treatment and non-discrimination of workers exercising their right to free movement. These bodies should be able to provide independent assistance to victims of

<sup>104</sup> C-404/18, Jamina Hakelbracht and Others v WTG Retail BVBA, ECLI:EU:C:2019:523.

<sup>105</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union Text with EEA relevance, OJ L 141, 27.5.2011, p. 1–12.

<sup>106</sup> Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers Text with EEA relevance, OJ L 128, 30.4.2014, p. 8–14.

discrimination and conduct surveys and reports on relevant issues (Directive 2014/54/EU, Art. 7).

**Social Dialogue:** Member States are encouraged to promote dialogue between social partners (employers and workers' representatives) to foster awareness and best practices regarding the free movement of workers (Directive 2014/54/EU, Art. 8).

The Directive 2014/54/EU represents a significant step towards strengthening the free movement of workers within the EU by addressing both legal and practical barriers. Its implementation is intended to ensure that workers can exercise their rights effectively and without discrimination.

**Enhancing Accessibility and Awareness:** By mandating accessible information and support mechanisms, the Directive seeks to bridge the knowledge gap that often prevents workers from fully understanding or claiming their rights. This is particularly crucial in fostering a more inclusive labor market where workers can move freely without fear of exploitation or ignorance of their entitlements (European Commission, 2014)<sup>107</sup>.

**Role of Equality Bodies:** The establishment and empowerment of equality bodies are critical to the Directive's success. These bodies serve as watchdogs and advocates for workers, ensuring that discrimination is identified and addressed promptly. Their ability to provide independent assistance and conduct research contributes to a deeper understanding and proactive management of issues related to worker mobility<sup>108</sup>.

**Strengthening Legal Protections:** The Directive's emphasis on robust legal protections and remedies underscores the EU's commitment to upholding workers' rights. The provision of judicial and administrative avenues for redress ensures that workers have concrete means to challenge and rectify instances of discrimination or rights violations<sup>109</sup>.

<sup>107</sup> European Commission, MEMO, Brussels, 15 January 2014, European Commission upholds free movement of people, available online at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_14\\_9](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_9), [accessed 27 May 2024]. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Free movement of EU citizens and their families: Five actions to make a difference, COM(2013) 837 final.

<sup>108</sup> European Parliament legislative resolution of 12 March 2014 on the proposal for a Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (COM(2013)0236 — C7-0114/2013 — 2013/0124(COD)).

<sup>109</sup> European Commission, MEMO, Brussels, 15 January 2014, European Commission upholds free movement of people, available online at:

**Challenges in Implementation:** Despite its robust framework, the Directive faces challenges in uniform implementation across Member States. Differences in national legal systems, administrative capacities, and levels of commitment to EU Directives can lead to varying degrees of effectiveness. Ensuring consistent application and monitoring compliance are essential for the Directive’s intended impact<sup>110</sup>.

**Impact on Social Dialogue:** Encouraging social dialogue is a strategic aspect of the Directive, aiming to build consensus and cooperation between employers and workers. By involving social partners in the promotion and protection of free movement rights, the Directive fosters a collaborative environment conducive to addressing challenges and sharing best practices<sup>111</sup>.

## B. The right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections (Article 22 TFEU)

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 subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.
2. Without prejudice to Article 223(1) 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

[https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_14\\_9](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_9), [accessed 27 May 2024]. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Free movement of EU citizens and their families: Five actions to make a difference, COM(2013) 837 final.

<sup>110</sup> European Parliament legislative resolution of 12 March 2014 on the proposal for a Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (COM(2013)0236 — C7-0114/2013 — 2013/0124(COD)).

<sup>111</sup> European Commission, MEMO, Brussels, 15 January 2014, European Commission upholds free movement of people, available online at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_14\\_9](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_9), [accessed 27 May 2024]. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Free movement of EU citizens and their families: Five actions to make a difference, COM(2013) 837 final.

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 subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

European Citizenship encompasses the entitlement to participate in electoral processes by exercising the right to vote and the opportunity to present oneself as a candidate in both European Parliament elections and municipal elections within the Member State of residence. This prerogative extends to European Union citizens on equal terms with nationals of the respective Member State. Pertaining to the specifics of participation in municipal elections, Directive 94/80/EC of 19 December 1994 delineates the applicable regulations. Additionally, Directive 93/109/EC of 6 December 1993 outlines the procedures governing candidature in European Parliament elections.

### **The right to vote and to stand as a candidate in municipal elections**

EU citizenship gives every EU citizen the right to vote and stand as candidate in municipal and European Parliament elections regardless of whether they are a national of the EU country in which they reside, and this under the same conditions as nationals. The detailed arrangements for the exercise of this right are laid down by Council Directive 94/80/EC<sup>112</sup>.

According to the Directive, any European Union citizen who is not a national of the EU member state in which they reside retains the right to participate in municipal elections within that country under equivalent conditions as its nationals. To engage in electoral processes, EU citizens are required to formally register on the electoral roll of their country of residence, furnishing the same documentary evidence as local voters. In jurisdictions where voting is compulsory, EU citizens are also bound by this legal obligation.

In instances where national residents must fulfill a minimum residency period to qualify for voting or candidacy, EU citizens residing in the country may reckon time spent in other EU member states towards meeting this requirement.

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<sup>112</sup> Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ L 368, 31.12.1994, p. 38–47.

EU member states reserve the right to disqualify EU citizens from candidacy if they:

- Have been deprived of this privilege according to the laws of their EU country of origin due to an individual decision under civil or criminal law.
- Fail to provide requisite documentation such as a nationality and residency declaration, or other mandated identity documents.

Under certain circumstances, EU countries may deem holding elected municipal office in the resident country incompatible with holding positions in other EU member states.

Furthermore, EU member states may opt to reserve specific senior elected roles for their own nationals, or restrict citizens of other EU member states from participating in selecting delegates empowered to elect parliamentary assembly members or cast votes in such assemblies.

Exceptions recognized by the Directive encompass:

- EU member states where the proportion of voting-age EU citizens residing there, but not holding its nationality, exceeds 20% of the total electorate.
- EU citizens who already possess voting rights in national parliamentary elections within their EU country of residence.

**Conditions of residence:** Article 4 of the Directive lays down that when the nationals of a Member State have to reside in the territory of that State for a certain minimum period to vote and stand for election, they are deemed to have fulfilled that condition if they resided for an equivalent period in other Member States. The Commission is still assessing how this provision is being implemented by one Member State.

**Specific exclusions:** The Directive allows Member States to deprive citizens of their right to stand as candidate in municipal elections if, through an individual decision, they have been deprived of their right to stand as a candidate under the law of their home Member State.

**Incompatibility of mandates:** Persons standing as candidates are subject to the same conditions on incompatibility as those which apply to the nationals of the Member State of residence. This provision appears to have been correctly transposed in all Member States.

**Supporting documents to stand as candidate:** EU citizens entitled to stand as candidate should only need to produce the same supporting documents as national citizens. A limited number of optional documents may be required by the Member

States other than a formal declaration stating nationality and address in the Member State of residence. National legislation which requires the submission of a certificate from the home Member State attesting that the citizen has not been deprived of the right to stand as a candidate would not be compliant with the Directive. Such a certificate can only be requested if the authenticity of the declaration is in doubt. Otherwise, it would constitute an additional burden on mobile EU citizens. Requiring the reference number of a residence certificate would also not be in compliance with the Directive. The Commission brought infringement proceedings against one Member State that imposed such additional requirements, following which the national legislation was amended and brought into compliance with the Directive.

**Information requirements for Member States:** The Directive requires that the Member State of residence inform mobile EU citizens of the conditions and detailed arrangements for the exercise of electoral rights in municipal elections 'in good time and in an appropriate manner'. The Netherlands, as member of the Commission's expert group on electoral matters, has proposed a multilingual form to make this exchange of information easier. The form is currently under consideration by other Member State experts. In particular, mobile citizens have the right to be informed of the action taken on their applications to be entered on the electoral roll or to stand as a candidate. If a request to be entered on the electoral roll or to stand as a candidate is rejected by the Member State of residence, the Directive requires that mobile citizens be afforded the same legal remedies as national citizens. All Member States communicated actions and institutional initiatives to inform citizens of their electoral rights, thus implementing those provisions of the Directive.

**Derogations where justified by a Member State's specific situation:** Article 12 of the Directive permits exceptions to the principle of equal treatment where this is justified by problems specific to a Member State. A Member State where the proportion of mobile EU citizens of voting age exceeds 20 % of the total electorate can require both voters and candidates to have a minimum period of residence. It can also take measures to modify the composition of the lists of candidates. It does this to better integrate non-nationals and to avoid polarisation between lists of 'national' and 'non-national' candidates. Luxembourg is the only Member State that uses this derogation. It only gives the right to vote to mobile EU citizens who have had their legal domicile in Luxembourg and have resided there at least 5 years before registration<sup>113</sup>.

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<sup>113</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the application of

According to the European Commission, there has been limited participation by mobile EU citizens in recent years in municipal elections within their respective states of residence. While data regarding voter turnout in municipal elections is available for only a few states, the low rates of voter registration in those states that do provide data suggest a trend of low participation. However, the scarcity of Member States supplying data hinders further analysis and conclusive observations. The procedures for mobile EU citizens to register on electoral rolls vary across Member States. The **European Commission's Your Europe portal** offers easily accessible information on these electoral formalities tailored to the individual's Member State of residence. In Member States where registration on the electoral roll isn't automated, a smaller proportion of mobile EU citizens who reside there actively seek inclusion on electoral rolls compared to Member States with automatic enrollment mechanisms. However, in the latter, a notably higher proportion of mobile EU citizens are registered on electoral rolls. It's noteworthy that some Member States employing automatic enrollment require mobile citizens to register their residence, while others do not. Consequently, in Member States where registration is not obligatory, the count of mobile EU citizens on electoral rolls may diverge from the total number of resident mobile EU citizens<sup>114</sup>.

### **The right to vote and to stand as a candidate in European Parliament elections**

Citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and to stand as a candidate there in elections to the European Parliament. Directive 93/109/EC outlines the rules and procedures governing the right of European Union citizens to stand as candidates in European Parliament elections<sup>115</sup>. The Directive was amended by the Directive 2013/1/EU<sup>116</sup>.

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Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2018)44.

<sup>114</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2018)44.

<sup>115</sup> Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329, 30.12.1993, p. 34–38.

<sup>116</sup> Council Directive 2013/1/EU of 20 December 2012 amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 26, 26.1.2013, p. 27–29.



Directive 93/109/EC delineates the criteria that nationals of other EU countries must meet to vote or stand as candidates in their country of residence. The individual must:

1. Be an EU citizen.
2. Reside in the EU country where they intend to vote or stand as a candidate.
3. Fulfill the same conditions required of nationals of that EU country (ensuring equality between national and non-national voters).

**Simplified Procedures for Candidacy Applications:** Amendments to the Directive in 2013 streamlined the application process for EU citizens residing in an EU country where they are not nationals. Previously, these citizens had to obtain a certificate from their home country confirming they were not disqualified from standing in European Parliament elections. Since 2014, applicants can provide a declaration instead of the certificate. The authorities in the country of residence must then verify the declaration with the applicant's home country. To facilitate this, each EU country must designate a contact point responsible for the exchange of such information.

**Exercising the Right to Vote and Stand as a Candidate:** EU citizens can exercise their electoral rights either in their country of residence or their home country. However, they are prohibited from voting or standing as a candidate in more than one EU country during the same election.

**Registration on the Electoral Roll:** Non-national voters must request to be entered on the electoral roll of their country of residence. In countries where voting is compulsory for nationals, non-national voters who register are also subject to this requirement. To register, non-national voters must submit the same documents required of national voters, along with additional information in the form of a formal declaration.

**Legal Remedies:** Non-nationals who are refused entry on the electoral roll or whose candidacy application is rejected must have access to the same legal remedies as nationals.

**National Rules for Expatriates:** The Directive does not affect each EU country's regulations concerning the voting and candidacy rights of its nationals residing outside its electoral territory.

Mobile EU citizens continue to encounter significant challenges in exercising their electoral rights in European Parliament elections. These difficulties encompass several areas, including obtaining accurate information on the procedures for voting

and standing as a candidate, as well as dealing with onerous registration processes. Additionally, there is the issue of deregistration from electoral rolls in their country of origin, which complicates their ability to vote. A specific problem arises from the exchange of information between Member States regarding registered voters and candidates, aimed at preventing multiple voting in European Parliament elections. This process is impeded by inconsistencies in the scope and deadlines for data exchange and collection, leading to inefficiencies and gaps in ensuring that electoral rights are uniformly protected across the EU<sup>117</sup>.

The European Commission has assessed compliance with the Directive among Member States, ensuring proper implementation since the Directive's 1994 inception. While most states that joined the EU before May 2004 have aligned with the Directive, issues remain in states that joined after this date. Additionally, some Member States impose extra requirements, such as proof of residence or repeated registration, contrary to the Directive. Several Member States have also failed to adequately inform citizens about voting and candidacy procedures, contributing to low participation rates. Non-national EU citizens face further obstacles related to political party membership and formation. In some countries, only nationals can found or join political parties, restricting non-nationals to running as independents or through other organizations. This limits their ability to participate on equal terms with nationals<sup>118</sup>.

### **C. The right to diplomatic protection in the territory of a third country (non-EU state) by the diplomatic or consular authorities of another Member State (Article 23 TFEU)**

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. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.

<sup>117</sup> European Commission, Proposal for a COUNCIL DIRECTIVE laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals (recast), COM(2021) 732 final.

<sup>118</sup> REPORT FROM THE COMMISSION Report on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC), COM(2010) 605 final.

The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt Directives establishing the coordination and cooperation measures necessary to facilitate such protection.

Article 23 of the Treaty on the Functioning of the European Union (TFEU) establishes a significant right for EU citizens regarding diplomatic and consular protection in third countries. This right ensures that every EU citizen is entitled to protection by the diplomatic or consular authorities of any Member State when they are in a non-EU country where their own Member State is not represented. This entitlement is granted under the same conditions as the nationals of the assisting Member State. This provision highlights the EU's commitment to ensuring a high level of protection and support for its citizens globally, reflecting the principles of solidarity and mutual assistance among Member States. The obligation on Member States to adopt the necessary provisions and engage in international negotiations to secure this protection emphasizes the proactive stance required to implement this right effectively<sup>119</sup>.

### The notion of diplomatic protection

The Draft Articles on Diplomatic Protection, adopted by the International Law Commission in 2006, are highly informative and beneficial. Based on the Commission's analysis of relevant state practices, a definition of diplomatic protection has been formulated, outlining the necessary cumulative elements. Diplomatic protection is defined as "the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility".

For a State to exercise diplomatic protection on behalf of an injured person, three basic requirements must be met:

1. The responsibility of a State under international law for injury to an alien caused by the State's wrongful act or omission.
2. A connection between the injured person and the State exercising protection (known as the "nationality of claim").
3. Exhaustion of all local remedies.

<sup>119</sup> Craig, P., & De Búrca, G. (2011). *EU Law: Text, Cases, and Materials*. Oxford University Press.

Once these preconditions are satisfied, the State of the injured national may politically intervene on their behalf. This intervention can take various forms of diplomatic and other actions, provided these actions adhere to the criteria for "peaceful means of dispute settlement"<sup>120</sup>.

Traditionally, diplomatic protection has been regarded as a right of the state rather than the individual who has been wronged under international law. An injury to a foreign national is viewed as an indirect injury to their home country<sup>121</sup>. When a state takes up the case of an injured national, it is seen as asserting its own rights. This concept is clearly articulated in the Permanent Court of International Justice's Mavrommatis Judgment of 1924, which states:

"It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights - its right to ensure, in the person of its subjects, respect for the rules of international law"<sup>122</sup>.

This means that, under general international law, a state is not obligated to pursue diplomatic protection on behalf of its nationals. The decision to take up a national's case is discretionary and often influenced by the state's own political or economic interests. If the state deems it not in its interest, it may choose not to engage in diplomatic protection<sup>123</sup>.

There are three substantial distinctions between diplomatic protection and consular assistance: the greater legal limitations on consular activities compared to diplomatic protection, the different levels of representation, and the legal nature of both concepts. Consular assistance is more constrained by legal limitations, particularly the principle of non-intervention. This principle restricts the actions consular officers can take, focusing on providing support without interfering in the host state's internal affairs. In contrast, diplomatic protection does not face such

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<sup>120</sup> International Law Commission (2006). Draft articles on Diplomatic Protection. Text adopted by the International Law Commission at its fifty-eighth session. Available online at: [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_8\\_2006.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_8_2006.pdf), [accessed 29 May 2024]. PAVLOVIČ, Peter. Protection of EU Citizen According to Art. 23 TFEU: Diplomatic Protection as Defined by International Law? AD ALTA: Journal of Interdisciplinary Research. Hradec Králové: Magnanimitas, 2012, vol. 2, No 1, p. 30-33.

<sup>121</sup> Amerasinghe, C. F. (2008). Diplomatic Protection. Oxford: Oxford University Press.

<sup>122</sup> Mavrommatis Palestine Concessions (Greece v. U.K.), 1924 P.C.I.J. (ser. B) No. 3 (Aug. 30).

<sup>123</sup> Annemarieke Vermeer-Künzli, As If: The Legal Fiction in Diplomatic Protection, *European Journal of International Law*, Volume 18, Issue 1, February 2007, Pages 37–68.

constraints, allowing for more assertive measures to be taken on behalf of a state's national. Also, diplomatic protection involves representing the interests of the state, rather than merely the interests of the individual, which is typical of consular assistance. In diplomatic protection, the state takes up the case of its national as its own, asserting its rights under international law. Finally, consular assistance often has a preventive nature and occurs before local remedies have been exhausted or before a violation of international law has taken place. It aims to support and protect the individual in navigating the host state's legal and administrative systems. On the other hand, diplomatic protection is considered "remedial protection" and typically occurs after local remedies have been exhausted and an international law violation has been identified<sup>124</sup>.

### European context: Implementation Directive

Council Directive (EU) 2015/637, adopted on 20 April 2015, focuses on the coordination and cooperation measures to facilitate consular protection for unrepresented EU citizens in third countries, replacing Decision 95/553/EC<sup>125</sup>. This Directive represents a significant development in enhancing the protection of EU citizens abroad, especially those whose home Member States do not have a consular presence in a third country<sup>126</sup>.

Other EU countries must provide unrepresented EU citizens with whatever assistance they would provide to their own nationals such as:

- assistance in cases of death,
- assistance in cases of serious accident or illness,
- assistance in cases of arrest or detention,
- assistance to victims of crime,
- the relief and repatriation in case of an emergency.

<sup>124</sup> PAVLOVIČ, Peter. Protection of EU Citizen According to Art. 23 TFEU: Diplomatic Protection as Defined by International Law? AD ALTA: Journal of Interdisciplinary Research. Hradec Králové: Magnanimitas, 2012, vol. 2, No 1, p. 30-33. D. Anagnostopoulou, Developments in the EU, in P. Naskou Perrakis / N. Zaikos, Diplomatic and Consular Law, Parliamentary, Cultural, Economic and Business Diplomacy, Sakkoula Publications, Athens-Thessalonica 2022, pp. 144-145. (in Greek).

<sup>125</sup> Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC, OJ L 106, 24.4.2015, p. 1–13. D. Anagnostopoulou, Developments in the EU, in P. Naskou Perrakis / N. Zaikos, Diplomatic and Consular Law, Parliamentary, Cultural, Economic and Business Diplomacy, Sakkoula Publications, Athens-Thessalonica 2022, pp. 144-145. (in Greek).

<sup>126</sup> European Commission Press release 20 April 2015 Brussels, EU consular protection rules: better protection for European citizens abroad. Available online at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_4803](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4803), [accessed 29 May 2024].

The Directive also clarifies to what extent non-EU family members can get assistance.

The primary objective of Directive 2015/637 is to ensure that EU citizens who find themselves in a third country where their Member State is not represented can receive consular protection from another Member State. This protection is provided under the same conditions as for nationals of the assisting Member State, embodying the principles of solidarity and mutual assistance that underpin EU citizenship.

**Coordination and Cooperation:** The Directive mandates Member States to cooperate and coordinate their consular efforts to ensure that unrepresented EU citizens receive assistance. This includes sharing information, resources, and best practices to provide effective and efficient consular services (Articles 3 and 4).

**Emergency Assistance:** It details the types of assistance to be provided, such as help in cases of distress, arrest, serious accident or illness, and the repatriation of the deceased. The Directive ensures that such emergency assistance is accessible to all EU citizens regardless of their nationality within the Union (Article 9).

**Financial Aspects:** The Directive also addresses the financial implications of providing consular protection. It outlines the procedures for cost-sharing and reimbursement between the assisting Member State and the citizen’s home Member State, ensuring that financial constraints do not impede the provision of necessary assistance (Articles 10 and 11).

**Communication and Information:** Member States are required to inform unrepresented citizens about their rights to consular protection and the procedures to access such assistance. This involves maintaining up-to-date contact details of consular posts and ensuring that this information is readily available (Articles 6 and 7).

The Directive sets up the rules to guarantee that unrepresented citizens are duly taken into account and fully assisted in crisis situations. In such cases, a clear division of responsibilities and coordination is essential to avoid that EU citizens are neglected.

The Directive necessitates Member States to adopt appropriate measures at the national level to comply with its requirements. This includes legislative changes, administrative arrangements, and training for consular staff to handle the needs of unrepresented citizens effectively. The implementation of Directive 2015/637 has

strengthened the consular network within the EU, fostering a collaborative environment where Member States can rely on each other to support their nationals abroad. This has not only enhanced the protection of EU citizens but also reinforced the sense of a unified European identity and solidarity. While the Directive sets a robust framework for consular protection, challenges remain in its practical application. These include ensuring consistent levels of service across different consular posts, managing the financial and logistical aspects of providing assistance, and navigating the legal complexities involved in consular operations in third countries. Moreover, the Directive emphasizes the need for continuous improvement and adaptation to address emerging issues and changing circumstances in international relations. This calls for ongoing dialogue and cooperation among Member States to refine and enhance the consular protection mechanisms<sup>127</sup>.

#### **D. Rights under Article 24 TFEU: Petitioning the European Parliament, Applying to the Ombudsman, Writing to EU Institutions and Accessing Documents**

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.

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<sup>127</sup> Vigni P. The Right of EU Citizens to Diplomatic and Consular Protection: A Step Towards Recognition of EU Citizenship in Third Countries? In: Kochenov D, ed. *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press; 2017:584-612. D. Anagnostopoulou, Developments in the EU, in P. Naskou Perrakis / N. Zaikos, *Diplomatic and Consular Law, Parliamentary, Cultural, Economic and Business Diplomacy*, Sakkoula Publications, Athens-Thessalonica 2022, pp. 144-145. (in Greek).

The Treaty on the Functioning of the European Union (TFEU) enshrines several important rights for EU citizens under Article 24. These rights are pivotal in ensuring transparency, accountability, and participatory democracy within the European Union. Key among these rights are the ability to petition the European Parliament and apply to the European Ombudsman, the right to communicate with EU institutions in any of the official languages of the Member States, and the right to access documents of the European Parliament, Council, and Commission<sup>128</sup>.

**The right to petition the European Parliament and the right to apply to the Ombudsman:** Article 24 TFEU grants EU citizens the right to petition the European Parliament and apply to the Ombudsman appointed by the European Parliament concerning instances of maladministration in the activities of EU institutions or bodies. These procedures are governed by Articles 227 and 228 TFEU, respectively reflecting the EU's commitment to uphold administrative justice and protect citizens' rights<sup>129</sup>.

The **right to petition** is available to all EU citizens and residents or legal entities established in a Member State, either individually or collectively. To be considered admissible, petitions must pertain to matters falling within the EU's scope of activity and directly affect the petitioners. Adherence to formal requirements, such as providing personal details and using an official EU language, is essential. The procedure for handling petitions is outlined in Rules 226 to 230 of Parliament's Rules of Procedure, overseen by the Committee on Petitions. Formal requirements include the submission of petitions via electronic means or post, and material admissibility involves the committee determining whether the subject matter falls within EU competence. Petitions may be referred to other Parliament committees or the European Commission for investigation or action. The Committee on Petitions may take various actions, including conducting inquiries, contacting relevant institutions, or holding hearings. Petitions may be closed at different stages, such as after admissibility assessment or if no further action can be taken. Transparency is ensured through

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<sup>128</sup> Rigakou, Sm. Article 24. In: Christianos V. (ed.), *EU Treaty & TFEU, Interpretation by Article*, Law Library, Athens. In Greek.

<sup>129</sup> Kanellopoulos. P. (2010). *The law of the European Union, The Lisbon Treaty*, 5<sup>th</sup> edition. Sakkoulas (in Greek).



the publication of petition summaries on Parliament's Petitions Web Portal and informing petitioners of decisions and reasons<sup>130</sup>.

Any EU citizen or natural or legal person residing or having a registered office in an EU Member State has the right to bring a complaint directly to the **Ombudsman**, or through a Member of the European Parliament. Complaints from other entities are not eligible. Complaints must be lodged within 2 years of becoming aware of the grounds and must have been addressed to the relevant organization beforehand. The Ombudsman dismisses complaints outside its scope or deemed unfounded, informing the institution concerned of admissible complaints. EU staff complaints must exhaust internal administrative procedures before reaching the Ombudsman, who communicates actions taken and seeks resolution with the institution concerned. Cases satisfying both parties are closed. The Ombudsman may initiate inquiries independently or in response to complaints, informing the relevant institution. Own-initiative inquiries focus on repeated, systemic, or severe instances of maladministration of public interest, sometimes resulting in best-practice proposals. Whistle-blowers disclosing information leading to an inquiry are protected from reprisals. If maladministration is established, the Ombudsman informs the relevant institution and may issue recommendations. Institutions usually respond within 3 months; failure to do so leads to the inquiry's closure, and the Ombudsman forwards its report to all concerned. An annual report is presented to the European Parliament detailing inquiry outcomes, compliance with recommendations, proposed solutions, and cases involving harassment, whistleblowing, and conflicts of interest<sup>131</sup>.

**The right to write to any EU institution or body in one of the languages of the Member States and to receive a response in the same language:** Article 24(4) TFEU ensures that EU citizens can communicate with any EU institution or body in their preferred official language of the Member States and are entitled to receive a response in the same language. This provision ensures that language is

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<sup>130</sup> European Parliament Factsheets, The right to petition (2023), Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/148/the-right-to-petition>, [accessed 29 May 2024].

<sup>131</sup> Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom, OJ L 253, 16.7.2021, p. 1–10.

not a barrier to accessing EU services and exercising rights, thereby enhancing civic participation and accessibility<sup>132</sup>.

Regulation No 1 of the European Economic Community, which dates from 1958 and determined the languages to be used by the former European Economic Community, was amended following subsequent accessions to the EU. The regulation defines the EU’s official languages, together with Article 55(1) TEU. The provisions of the Regulation and Article 24 TFEU provide that every citizen of the EU has the right to write to any of the institutions or bodies of the EU in one of those languages and to receive an answer in the same language<sup>133</sup>.

**The right to access documents of the European Parliament, Council, and Commission:** Article 15(3) TFEU provides EU citizens with the right to access documents from these institutions, subject to certain conditions. is essential for promoting transparency within the EU. It allows citizens to scrutinize the decision-making processes and hold institutions accountable, subject to certain conditions that balance transparency with confidentiality needs<sup>134</sup>. Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union<sup>135</sup>.

**Regulation (EC) No 1049/2001** establishes the rules regarding public access to documents. To facilitate access, the European Parliament has established an electronic register of documents containing references to documents created or received since 2001. This register serves as a search aid, providing direct access to a wide range of European Parliament documents in electronic format. Documents not available directly on the register, such as those predating 2001 or subject to exceptions under Article 4 of Regulation (EC) No 1049/2001, can be requested. Access to these documents is free of charge, and requests can be made through an electronic form without requiring special justification. Upon

<sup>132</sup> Rigakou, Sm. Article 24. In: Christianos V. (ed.), *EU Treaty & TFEU, Interpretation by Article, Law Library, Athens*. In Greek.

<sup>133</sup> EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, *Official Journal* 017 , 06/10/1958 P. 0385 - 0386.

<sup>134</sup> Rigakou, Sm. Article 24. In: Christianos V. (ed.), *EU Treaty & TFEU, Interpretation by Article, Law Library, Athens*. In Greek.

<sup>135</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, *OJ L* 145, 31.5.2001, p. 43–48.

receiving a request, the European Parliament will provide a reasoned reply within 15 working days. If access is granted, the document will be published on the register for public viewing<sup>136</sup>.

**Exceptions and Rights of Third Parties:** Institutions can refuse access to a document if its disclosure would undermine public interests such as public security, defense, international relations, financial policies, or individuals' privacy and integrity. Exceptions also apply to protect commercial interests, court proceedings, legal advice, and the confidentiality of inspections, investigations, and audits unless there is an overriding public interest in disclosure. For documents created by third parties, EU institutions must consult the third party to assess whether exceptions apply. EU countries have the right to oppose disclosure, although they do not possess a veto.

**Documents in EU Countries:** When an EU country receives a document request from an EU institution, it must consult the institution to ensure compliance with Regulation objectives. Alternatively, the country may refer the request back to the EU institution.

**Applications, Processing, and Access to Documents:** Applicants must make written requests for document access in an official EU language, without specifying reasons but with precision. Institutions must promptly process applications, acknowledging receipt within 15 working days and either granting or refusing access within the same timeframe, extendable once by 15 working days. If refused, applicants can make a confirmatory application within 15 working days for reconsideration.

**Sensitive Documents:** Sensitive documents classified as TRÈS SECRET UE/EU TOP SECRET, SECRET UE/EU SECRET, or CONFIDENTIEL UE/EU CONFIDENTIAL may only be handled by authorized individuals. They may be recorded in registers or released with originator consent.

**Registers and Administrative Practice:** Each institution maintains a document register, accessible electronically. EU countries assist institutions in providing information to citizens. Institutions develop administrative practices to ensure document access rights are exercised.

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<sup>136</sup> European Parliament, Public Access to Documents. Available online: <https://www.europarl.europa.eu/at-your-service/en/transparency/public-access-to-documents>, [accessed 29 May 2024].

**Publication in the Official Journal:** Various EU documents, including legislative acts, Council positions, and international agreements, are published in the Official Journal.

**Reports and Application Measures:** Each institution publishes an annual report detailing document access cases, including refusals and reasons, as well as the number of sensitive documents<sup>137</sup>.

**These rights collectively reinforce the principles of democracy and the rule of law within the EU, enabling citizens to engage actively with EU institutions and safeguard their interests effectively<sup>138</sup>.**

### Synopsis: Rights of European Citizens

**Right to Move and Reside Freely:** Every EU citizen has the right to move and reside freely within the territory of the Member States.

**Political Rights:** Right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State.

**Diplomatic and Consular Protection:** In a third country where the Member State of nationality is not represented, EU citizens are entitled to protection by the diplomatic and consular authorities of any Member State on the same conditions as nationals of that State.

**Petition and Address Rights:** Right to petition the European Parliament, apply to the European Ombudsman, and address the institutions and advisory bodies of the Union in any of the Treaty languages and obtain a reply in the same language.

These rights are exercised according to the conditions and limits defined by the Treaties and by the measures adopted under them.

**Access to Documents:** According to Article 15 (3) of the TFEU, any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right of access to documents of the Union's institutions, bodies, offices, and agencies. This right is subject to principles and conditions defined by regulations.

<sup>137</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.

<sup>138</sup> Rigakou, Sm. Article 24. In: Christianos V. (ed.), EU Treaty & TFEU, Interpretation by Article, Law Library, Athens. In Greek.

Each institution must ensure transparency and set specific provisions regarding access to documents in its Rules of Procedure. The Court of Justice of the European Union, the European Central Bank, and the European Investment Bank are subject to this paragraph only when exercising their administrative tasks. The European Parliament and the Council must ensure the publication of documents relating to legislative procedures.

The Charter of Fundamental Rights of the European Union became legally binding with the entry into force of the Treaty of Lisbon on December 1, 2009. This Charter now has the same legal value as the EU Treaties, meaning it is a fundamental part of EU law applicable to EU institutions and Member States when implementing EU law.

The Charter's scope is broad, granting most rights to 'everyone,' regardless of nationality or status. However, Article 51 limits its application to EU institutions and bodies and to Member States when they act to implement EU law.

Initially, the CJEU was hesitant to apply EU citizenship provisions directly, often focusing on economic aspects under freedom of movement articles. Over time, landmark cases such as *Grzelczyk* (C-184/99) and *Baumbast* (C-413/99) shifted the focus towards recognizing broader citizenship rights independently of economic activity.

### **Directive 2004/38/EC**

Consolidated and simplified the fragmented legal landscape regarding free movement and residence rights.

Introduced the right to permanent residence after five years of continuous legal residence.

Broadened the definition of family members to include registered partners and dependent relatives.

### **Key Provisions**

Short-term stays up to three months with a valid identity card or passport.

Extended stays require employment, self-employment, sufficient resources, health insurance, or enrollment in an educational institution.

Permanent residence granted after five years of continuous legal residence.

**Family Members:** Includes spouses, registered partners, direct descendants under 21 or dependents, and dependent direct relatives in the ascending line.

**Equal Treatment:** Entitles EU citizens to equal treatment with nationals in employment, education, social, and tax advantages.

**Administrative Formalities:** Registration with relevant authorities for stays longer than three months; non-EU family members must apply for a residence card.

**Retention of Residence Rights:** Provisions for retaining residence rights in specific circumstances such as death, departure, divorce, annulment of marriage, or termination of a registered partnership.

**Restrictions on Movement:** Allows restrictions on grounds of public policy, public security, or public health, which must be proportionate and based on personal conduct.

### Comprehension Questions

- What rights do EU citizens have concerning movement and residence within the member states?
- What political rights are granted to EU citizens under the Treaty on the Functioning of the European Union (TFEU)?
- What was the significance of the Directive 2004/38/EC for EU citizens and their family members?
- How did the Schengen Area contribute to the concept of free movement within the EU?
- What principles of equal treatment and non-discrimination are fundamental to EU law?

## V. The European Citizens’ Initiative

The European Citizens’ Initiative (ECI) stands as a vital tool for fostering participatory democracy within the EU. It empowers one million residents from a quarter of the Member States to urge the Commission to propose legal acts for implementing EU Treaties. Since the enactment of the 2011 Regulation outlining ECI procedures, ten initiatives have effectively reached the Commission. Starting from January 2020, updated regulations aim to enhance accessibility to the ECI process<sup>139</sup>.

### Background

Citizens' initiatives serve as tools accessible to citizens across the majority of EU Member States, operating at national, regional, or local levels, albeit with significant variations in their scope and procedures. During the lead-up to the Amsterdam Intergovernmental Conference in 1996, the Austrian and Italian foreign ministers suggested incorporating the right to submit such initiatives alongside the right to petition the European Parliament, but this proposal wasn't adopted. Similarly, provisions for a citizens' initiative resembling the current framework were initially part of the draft Constitutional Treaty. Despite their exclusion from the final text, concerted efforts by civil society organizations ensured their retention. Subsequently, similar provisions were reintroduced during the drafting of the Lisbon Treaty following the failure of the Constitutional Treaty ratification process<sup>140</sup>.

Today, the right to propose a citizens' initiative is established under Title II of the Treaty on European Union (TEU), which covers provisions on democratic principles. Article 11(4) of the TEU outlines the basic framework for this right, while Article 24(1) of the Treaty on the Functioning of the European Union (TFEU) lays out general principles for a regulation defining specific procedures and conditions. The proposal for such a regulation emerged from extensive consultation processes. Negotiations and finalization of the text spanned several months, culminating in a political agreement reached on December 15, 2010, allowing for the formal adoption of the text by Parliament and the Council on February 16, 2011. Consequently, on April 1, 2011, the agreed text entered into force as Regulation (EU) No 211/2011 (ECI

<sup>139</sup> Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek). European Parliament Factsheets, European Citizens’ Initiative (2023). Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024].

<sup>140</sup> Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek). European Parliament Factsheets, European Citizens’ Initiative (2023). Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024].

Regulation)<sup>141</sup>. However, due to necessary technical adaptations at the Member State level to establish a streamlined verification process, the ECI Regulation only became applicable a year later. The Commission is mandated to present a report on the application of the ECI Regulation every three years starting from April 1, 2015, for possible revision. Reports issued in March 2015<sup>142</sup> and March 2018<sup>143</sup> outlined the implementation status and identified challenges and suggestions for improvement<sup>144</sup>.

Upon the ECI Regulation's applicability, concerns were raised regarding its functionality, prompting calls for reform by the Parliament to simplify and streamline procedures. Eventually, on September 13, 2017, the Commission proposed a legislative revision of the ECI. Interinstitutional negotiations held between September and December 2018 led to a political agreement between Parliament and the Council on December 12, 2018. The agreed text was adopted by Parliament on March 12, 2019, and by the Council on April 9. The final act was signed on April 17 and published in the Official Journal of the European Union on May 17, 2019<sup>145</sup>.

The new ECI rules, Regulation (EU) 2019/788, repealed Regulation (EU) No 211/2011 and have been in effect since January 1, 2020<sup>146</sup>. Clear demarcation between the right to submit an ECI and the right to submit a petition, which differ substantially in their nature and scope, was emphasized. Petitions can be lodged by EU citizens, natural or legal persons residing in the EU, and must address matters falling within the EU's purview that directly affect the petitioner. They are directed to Parliament as the EU citizens' direct representative. In contrast, an ECI constitutes a direct call for a specific EU legal instrument and must adhere to specific qualifying rules. Ultimately, it is addressed to the Commission, the sole institution with the authority to propose legislative measures. In this regard, the ECI bears similarity to the right of

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<sup>141</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65, 11.3.2011, p. 1–22.

<sup>142</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative COM (2015) 145 final.

<sup>143</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2018) 157 final.

<sup>144</sup> Sakkoulas (in Greek). European Parliament Factsheets, European Citizens' Initiative (2023). Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024].

<sup>145</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European citizens' initiative, COM(2017) 482 final. Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek). European Parliament Factsheets, European Citizens' Initiative (2023). Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024].

<sup>146</sup> Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative (Text with EEA relevance.), PE/92/2018/REV/1, OJ L 130, 17.5.2019, p. 55–81.



initiative conferred upon Parliament (Article 225 TFEU) and the Council (Article 241 TFEU)<sup>147</sup>.

### Procedure<sup>148</sup>

**Citizens' committee:** A fundamental organizational structure is required for an initiative as significant as the ECI. The initial step involves forming an organizing committee known as the 'citizens' committee'. This committee must consist of at least seven individuals who are residents of at least seven different Member States, with no necessity for them to represent seven different nationalities, and who are eligible to vote in European elections. The committee is required to designate a representative and an alternate to serve as contact persons for the specific ECI.

Despite proposals from the Commission and Parliament, the new ECI Regulation does not lower the minimum age for supporting an ECI to 16 years. However, Member States have the discretion to set the minimum age at 16 if they opt to do so.

**Registration:** Before commencing the collection of statements of support from citizens, the committee must register the initiative with the Commission. This entails submitting a document outlining the title, subject matter, and a brief description of the initiative, specifying the proposed legal basis for action, and providing details about the committee members and all sources of support and funding for the proposed initiative. Organizers may include additional detailed information and materials, such as a draft of the proposed legislative document, in an annex.

The Commission has a two-month period to decide whether to register the proposed initiative. Registration will be refused if procedural requirements are not met or if the initiative falls outside the Commission's authority to propose a legal act for implementing the Treaties. Additionally, registration will be denied if the initiative is deemed manifestly frivolous, abusive, or contrary to EU values as outlined in Article 2 TEU. The Commission's decision is subject to judicial or extrajudicial appeal. Registered initiatives are published on the Commission's web portal.

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<sup>147</sup> European Parliament Factsheets, European Citizens' Initiative (2023). Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024].

<sup>148</sup> European Union, European Citizens' Initiative. Step by step. Available online at: [https://citizens-initiative.europa.eu/how-it-works\\_en](https://citizens-initiative.europa.eu/how-it-works_en), [accessed 29 May 2024]. European Parliament Factsheets, European Citizens' Initiative (2023). Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024].

To enhance accessibility to the ECI and ensure the registration of as many initiatives as possible, the new regulation allows for the partial registration of initiatives.

**Collection of statements of support:** Upon registration, organizers can commence the collection of statements of support, which must be completed within 12 months. Statements of support can be collected either on paper or electronically. If collected electronically, the online collection system must be certified by relevant national authorities beforehand. Regardless of the method of collection, the same data requirements apply for verification purposes. For an ECI to be considered by the Commission, it must gather one million statements of support within the specified 12-month period.

The new ECI Regulation enables EU citizens to support an ECI irrespective of their place of residence. It also offers greater flexibility in setting the start date for signature collection, allowing for a period within six months following registration. Moreover, it simplifies personal data requirements for ECI signatories, although Member States may still require signatories to provide their full ID numbers.

Additionally, the new regulation mandates the Commission to establish and operate a central online collection system and to phase out individual collection systems after 2022.

Finally, responding to Parliament's insistence, the new regulation provides enhanced support for ECI organizers through designated contact points in each Member State and an online collaborative platform offering information, assistance, practical support, and legal advice on the ECI.

**Verification and certification:** Once the necessary number of statements of support has been collected from a sufficient number of Member States, organizers must submit them to the competent national authorities for certification. These authorities, typically interior ministries, electoral commissions, or population registries, have three months to certify the statements of support but are not required to verify the signatures.

**Submission and examination:** Upon collecting the requisite statements of support, organizers must submit relevant certificates from national authorities regarding the number of statements of support and disclose information about funding received from any source, with contributions above EUR 500 requiring declaration.

Upon receiving the submission, the Commission is obliged to immediately publish it in a register and meet with organizers at the appropriate level to discuss their request in detail. After a discussion with the Commission, organizers are afforded an

opportunity to present the initiative at a public hearing organized by Parliament's relevant committee.

The new ECI Regulation extends the Commission's response time to a valid initiative from three to six months. In its communication outlining legal and political conclusions on each initiative, the Commission must provide a formal list of actions it intends to take and a clear timeline for their implementation. Furthermore, to ensure transparency, organizers are required to regularly report on funding sources and other support provided. The regulation also mandates the Commission to make a contact form available on the register and the ECI public website for citizens to submit complaints regarding the completeness and accuracy of such information.

Parliament's role is strengthened under the new ECI Regulation and amendments to its Rules of Procedure. To bolster the political impact of successful initiatives, Parliament can hold a plenary debate following the public hearing and adopt a resolution to assess political support for the initiative. Finally, Parliament will scrutinize the actions taken by the Commission in response to the initiative, as outlined in specific Commission communications.

As of now, ten initiatives, including Right2Water, One of Us, Stop Vivisection, Ban Glyphosate, Minority SafePack, End the Cage Age, Save bees and farmers, Stop finning – stop the trade, Save cruelty-free cosmetics, and Fur Free Europe, have garnered the necessary number of signatures and have been submitted to the Commission. Parliament facilitated hearings with representatives from these initiatives, and in response, the Commission articulated its legal and political conclusions. Since the inception of the ECI, the Commission has registered a total of 103 initiatives<sup>149</sup>.

### Synopsis: European Citizens' Initiative

- **The European Citizens' Initiative (ECI) is a crucial instrument for promoting participatory democracy in the EU, empowering one million residents from a quarter of the Member States to prompt the Commission to propose legal acts for implementing EU Treaties.**

<sup>149</sup> Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek). European Parliament Factsheets, European Citizens' Initiative (2023). Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>, [accessed 27 May 2024]. European Union, European Citizens' Initiative. Available online at: [https://citizens-initiative.europa.eu/\\_en](https://citizens-initiative.europa.eu/_en) [accessed 29 May 2024].

- Since the enactment of the 2011 Regulation outlining ECI procedures, ten initiatives have successfully reached the Commission.
- Updated regulations effective from January 2020 aim to enhance accessibility to the ECI process.
- Citizens' initiatives, akin to the ECI, exist across the majority of EU Member States, with origins dating back to proposals preceding the Amsterdam Intergovernmental Conference in 1996.
- The right to propose a citizens' initiative is established under Title II of the Treaty on European Union (TEU), with detailed procedures outlined in Article 24(1) of the Treaty on the Functioning of the European Union (TFEU).
- The ECI Regulation underwent revision following concerns about its functionality, with the new rules, Regulation (EU) 2019/788, taking effect on January 1, 2020.
- The ECI process involves several stages, including the formation of a citizens' committee, registration of the initiative with the Commission, collection of statements of support, verification and certification, and submission and examination.
- Parliament plays a significant role in the ECI process, organizing hearings with initiative representatives and assessing political support for successful initiatives through plenary debates and resolutions.

### Comprehension Questions

- What is the purpose of the European Citizens' Initiative (ECI) in the EU?
- How many initiatives have successfully reached the Commission since the enactment of the 2011 Regulation?
- When did the updated regulations aimed at enhancing accessibility to the ECI process come into effect?
- What are the origins of citizens' initiatives in the EU, and when were they first proposed at the intergovernmental level?
- What role does Parliament play in the ECI process, and how does it assess political support for successful initiatives?
- What is the significance of the new ECI rules, Regulation (EU) 2019/788, which took effect in January 2020?
- Can you name at least three initiatives that have been registered by the Commission since the inception of the ECI?

## VI. Duties of European Citizens

Union citizenship does not as yet entail any duties for citizens of the Union, despite the wording to that effect in Article 20(2) TFEU. This constitutes a major difference between EU citizenship and citizenship of a Member State<sup>150</sup>.

Nevertheless, some duties have been suggested by scholars as moral or even legal obligations for EU citizens, for example:

**Duty to Obey Lawful Rules:** This duty underscores the importance of respecting and abiding by the laws and regulations established by the EU and member states. Compliance with legal norms is crucial for maintaining social order, promoting justice, and upholding the rule of law.

**Defence of the Country:** While defense traditionally involves physical force, in the contemporary context of the EU, it can encompass broader notions of security and collective defense. This duty may involve supporting defense policies, participating in peacekeeping efforts, or contributing to the security of the EU as a whole.

**Duty to Pay Taxes:** Taxation is a fundamental aspect of citizenship, as it provides the necessary revenue for funding public services, infrastructure, and social welfare programs. Fulfilling tax obligations ensures the functioning of the state and supports the well-being of its citizens.

**Willingness to Work:** Citizenship entails a commitment to contributing to the economic prosperity and development of the EU and its member states. This duty involves actively participating in the workforce, pursuing education and training, and engaging in productive economic activities.

**Duty to Vote:** Voting is a cornerstone of democratic citizenship, allowing citizens to participate in the governance of their communities and countries. This duty entails exercising the right to vote in elections at all levels, including European Parliament elections, to ensure representative and accountable governance.

Additionally, it is suggested that citizenship duties be framed in more general terms, such as the willingness and possibility of contributing to the construction, maintenance, and improvement of the collective. This broader perspective acknowledges the diverse ways in which citizens can contribute to society beyond

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<sup>150</sup> European Parliament, Factsheets, The citizens of the European Union (2023), available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens-of-the-union-and-their-rights>, [accessed 23 May 2024]. Sachpekidou. E. (2021). European Law, 3rd edition. Sakkoulas (in Greek).

specific duties. Furthermore, the concept of allegiance or loyalty is highlighted as integral to citizenship. While difficult to define precisely, allegiance encompasses a sense of commitment and identification with the community or collective. In the context of the EU, fostering allegiance requires going beyond utilitarian identities and promoting values of solidarity, cooperation, and shared responsibility. The interconnection between rights and duties is emphasized, suggesting that addressing citizenship duties and rights should be done together rather than separately. This approach recognizes the reciprocal relationship between rights and duties and the need for a balanced framework of citizenship within the EU<sup>151</sup>.

While European citizenship does not replace state citizenship, it is suggested that the nature of the EU entails moral obligations of similar weight to those associated with states. By recognizing the legitimacy and authority of EU institutions, individuals acquire moral responsibilities towards the EU as a political community. The central question addressed is whether the EU can plausibly create political obligations akin to those between states and their citizens. Political philosophers often argue that individuals owe moral obligations to their political communities simply by virtue of belonging to them. However, extending this concept to the EU raises questions about the nature and legitimacy of political obligations within a supranational entity<sup>152</sup>. In this respect several other duties can be suggested, for example:

**Participation in Democratic Processes:** Citizenship in the European Union entails active engagement in democratic processes. This includes voting in European Parliament elections, which are held every five years, as well as local and national elections in one's member state. Additionally, citizens have the right to stand as candidates for various political positions, further contributing to the democratic fabric of the EU.

**Contribution to Society:** European citizens are encouraged to contribute positively to society in various ways. This can involve volunteering, participating in community projects, or even engaging in socially responsible business practices. By actively contributing to the social, economic, and cultural spheres of their communities and the broader EU, citizens help foster cohesion and prosperity.

**Civic Engagement:** Civic engagement refers to active participation in the affairs of one's community and society. This can take many forms, including attending public meetings, joining advocacy groups, or participating in

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<sup>151</sup> Meehan. E., *Citizenship and the European Community*, Sage, London, 1993.

<sup>152</sup> Eleftheriadis, Pavlos, '7 Citizenship and Obligation', *Philosophical Foundations of European Union Law*, *Philosophical Foundations of Law* (Oxford, 2012; online edn, Oxford Academic, 24 Jan. 2013).

grassroots initiatives. By engaging in civic activities, citizens have the opportunity to voice their opinions, address social issues, and contribute to positive change.

**Adherence to Fundamental Values:** European citizenship is founded on a set of fundamental values, including democracy, human rights, equality, and the rule of law. Citizens are expected to uphold and promote these values in their daily lives and interactions. Respecting the dignity and rights of others, embracing diversity, and fostering tolerance and inclusivity are central to the European identity<sup>153</sup>.

### Synopsis: Duties of European Citizens

- **Union citizenship in the EU currently does not entail any explicit duties for citizens, despite the wording in Article 20(2) TFEU, marking a significant difference from citizenship of a Member State.**
- **However, scholars have suggested several moral or even legal obligations for EU citizens, including:**
  - **Duty to obey lawful rules, emphasizing compliance with laws and regulations established by the EU and member states.**
  - **Defence of the country, which in the EU context involves supporting defense policies, participating in peacekeeping efforts, or contributing to EU security.**
  - **Duty to pay taxes, crucial for funding public services, infrastructure, and social welfare programs.**
  - **Willingness to work, involving active participation in the workforce, education, and training to contribute to economic prosperity.**
  - **Duty to vote, ensuring participation in democratic governance at all levels, including European Parliament elections.**
- **Citizenship duties can also be seen in broader terms, encompassing the willingness and ability to contribute to the collective well-being.**
- **Allegiance or loyalty is highlighted as integral to citizenship, fostering commitment and identification with the EU community.**

<sup>153</sup> Anagnostopoulou D., Strengthening the rights of European Citizenship - towards an inclusive European citizenship? In L. Papadopoulou / D. Anagnostopoulou (ed.), Towards an inclusive European citizenship, Athens: ed. Papazisi 2019. (in Greek).

- **The interconnection between rights and duties is emphasized, suggesting a balanced framework of citizenship within the EU.**
- **While European citizenship does not replace state citizenship, individuals acquire moral responsibilities towards the EU as a political community by recognizing the legitimacy and authority of EU institutions.**
- **There are debates about whether the EU can create political obligations similar to those between states and their citizens, raising questions about the nature and legitimacy of political obligations within a supranational entity.**

### Comprehension Questions

- What are some suggested duties for EU citizens despite the absence of explicit duties in Union citizenship?
- How does the concept of allegiance contribute to the idea of citizenship in the EU?
- Why is the interconnection between rights and duties emphasized in discussions about EU citizenship?
- How do scholars argue for the creation of moral responsibilities towards the EU as a political community?
- What challenges arise when extending the concept of political obligations to the EU as a supranational entity?



## VII. European Citizenship in Practice

European citizenship in practice encompasses a range of rights, opportunities, and experiences for individuals within the European Union.

### The Erasmus Program

The European Union established the "Erasmus" program in 1987 with the aim of fostering enhanced collaboration among universities and higher education institutions across Europe. Its primary focus was to facilitate a structured and integrated system for the exchange of students across borders.

The programme's origins can be traced through a series of significant events documented on the official European Commission programme page:

- From 1973 to 1976, the first European-level education action programme was established.
- Between 1976 and 1987, the foundations for what would later become Erasmus were laid through the "Joint Study Programme" (JSP) scheme in higher education. This initiative gained traction as more universities and students participated, contributing to the development of mobility, partnership, and joint curricula.
- From 1985 to 1987, the "Erasmus" proposal was developed and negotiated. In 1985, the Directorate for Education and Training presented the proposal to the Council and European Parliament. The Council officially adopted the "Erasmus" programme on June 15, 1987, and it was officially launched on July 1, 1987.

The choice of the name "Erasmus" refers to Erasmus of Rotterdam, a leading scholar and inspiring lecturer during the Renaissance period who travelled extensively in Europe to teach and study at a number of universities. But at the same time, the word "Erasmus" also served perfectly as the acronym for The **E**uropean **C**ommunity **A**ction **S**cheme for **M**obility of **U**niversity **S**tudents.

Since its inception, the program has undergone significant expansion and development, evolving into what is now known as "Erasmus+." This comprehensive framework combines various former EU initiatives for transnational cooperation and mobility in education, training, youth, and sport within Europe. Notably, Erasmus+ has begun to extend its reach beyond the borders of Europe.

Since its launch in 1987, Erasmus+ has seen remarkable growth, with over 15 million individuals participating in its diverse opportunities. This enthusiastic engagement

has come from a wide range of participants, including faculty, students, young people, and learners of all ages, who have eagerly seized the chance to benefit from the program's offerings.

The objective of “Erasmus+” is to promote transnational learning mobility and cooperation between organisations and policy-makers, as a means of improving quality and excellence, supporting inclusion and equity, and boosting creativity and innovation in the fields of education, vocational education and training, youth and sport. In all these sectors, the aim is to provide support, through life-long learning, for the educational, professional and personal development of participants in Europe and beyond.

The programme's objective is pursued through three key actions:

- Key action 1: Learning mobility of individuals
- Key action 2: Cooperation among organisations and institutions
- Key action 3: Support to policy development and cooperation<sup>154</sup>.

Erasmus has had a beneficial influence on higher education, delivering educational, social, cultural, and economic advantages to institutions. It enhances international collaboration, bolsters academic connections, nurtures research partnerships, and establishes informal networks, forging friendships that transcend borders. The initiative has emerged as a cherished reservoir of 'soft power' and diplomatic capital for the nations involved<sup>155</sup>.

### The Jean Monnet Actions

The Jean Monnet initiative was initially introduced in 1990 and gradually expanded its scope over the years. By 2001, it opened its doors to higher education institutions worldwide. In 2007, it became integrated into the EU's education program, the Lifelong Learning Programme (LLP). Subsequently, in 2014, Jean Monnet became a part of the Erasmus+ program, with additional funds allocated to enhance the involvement of higher education institutions from countries outside the European Union through the EU partnership instrument.

<sup>154</sup> European Commission, Erasmus+. Available online at: <https://erasmus-plus.ec.europa.eu/about-erasmus/history-funding-and-future>, [accessed 29 May 2024].

<sup>155</sup> Rodríguez-Izquierdo. R.M. What is the real impact of the Erasmus programme on university students? (223). Available online at: <https://theconversation.com/what-is-the-real-impact-of-the-erasmus-programme-on-university-students-201114>, [accessed 29 May 2024].

Jean Monnet is dedicated to fostering excellence in EU studies within higher education institutions globally. Its initiatives aim to establish connections between academics, researchers, and EU policymakers. These efforts are centered on the study and research of EU integration, as well as understanding Europe's role in an increasingly globalized world. Implementation primarily occurs within higher education institutions.

The program has supported the establishment of a network of Jean Monnet European Centres of Excellence, recognized by the European Commission for their high-quality research and teaching on topics related to European integration. Additionally, the Commission funds Jean Monnet Chairs and Jean Monnet teaching modules. To date, the program has facilitated the creation of 162 Jean Monnet European Centres of Excellence, 875 Jean Monnet Chairs, and 1001 Jean Monnet Teaching Modules across 72 countries spanning five continents. These projects engage approximately 1,500 professors and reach around 500,000 students annually. Selection for Jean Monnet Projects is based on academic merit and undergoes a rigorous and independent peer review process. Projects are carried out in strict adherence to the principles of academic autonomy and freedom.

Currently, the Jean Monnet actions present opportunities in higher education as well as in other areas of education and training. They play a vital role in disseminating knowledge about European Union integration topics. The supported actions include those focusing on higher education, other areas of education and training, and policy debates within these fields. The European Education and Culture Executive Agency (EACEA) will oversee the implementation of these actions<sup>156</sup>.

### **Citizens, Equality, Rights and Values Programme (CERV)**

The Citizens, Equality, Rights and Values (CERV) programme, launched in 2021 and running until 2027, aims to safeguard and advance Union rights and values as outlined in the EU Treaties and the Charter of Fundamental Rights. It strives to nurture and enhance open, rights-based, democratic, equal, and inclusive societies underpinned by the rule of law. This initiative was established alongside the 2021-2027 Justice programme under the Justice, Rights, and Values Fund.

The overarching goal of the CERV programme is to bolster open, rights-based, democratic, equal, and inclusive societies grounded in the rule of law. This encompasses fostering a vibrant and empowered civil society, promoting

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<sup>156</sup> <https://erasmus-plus.ec.europa.eu/programme-guide/part-b/jean-monnet-actions>

democratic, civic, and social participation among citizens, and celebrating the rich diversity of European society rooted in shared values, history, and memory.

The CERV programme is structured around four pillars:

1. **Equality, Rights, and Gender Equality:** This pillar focuses on promoting rights, non-discrimination, and equality, including gender equality. It seeks to advance gender mainstreaming and non-discrimination practices across various sectors.
2. **Citizens' Engagement and Participation:** This pillar aims to promote citizens' engagement and participation in the democratic life of the Union. It encourages exchanges between citizens of different Member States and raises awareness of Europe's common history and shared values.
3. **Daphne:** This pillar is dedicated to combating violence, including gender-based violence and violence against children. It seeks to address and prevent instances of violence through targeted interventions and support measures.
4. **Union Values:** This pillar is focused on safeguarding and promoting Union values. It aims to uphold the core principles and ideals that underpin the European project, including democracy, human rights, and the rule of law.

Civil society organizations operating at the local, regional, national, and transnational levels, along with other stakeholders, are eligible to apply for CERV funding. Funding is available for initiatives aimed at promoting citizens' engagement, fostering equality for all, and protecting and promoting rights and EU values. These initiatives play a crucial role in advancing the objectives of the CERV programme and contributing to the development of a more inclusive, just, and democratic European Union<sup>157</sup>.

## Landmark Case Law regarding EU Citizenship

### The Zambrano case (C-34/09)

The case of Mr. Ruiz Zambrano before the Court of Justice of the European Union (CJEU) indeed marks a significant development in the interpretation of EU citizenship rights. By recognizing the derived right of residence for third-country nationals with dependent EU citizen children, even in the absence of any cross-border element, the CJEU expands the scope of EU citizenship beyond mere mobility rights. This ruling

<sup>157</sup> [https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/citizens-equality-rights-and-values-programme\\_en](https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/citizens-equality-rights-and-values-programme_en)

underscores the fundamental principle that EU citizenship confers substantive rights that must be protected and enjoyed effectively. It reflects a departure from the traditional understanding that EU citizenship rights are contingent upon exercising freedom of movement within the Union. Instead, the CJEU emphasizes the intrinsic value of EU citizenship itself, irrespective of mobility<sup>158</sup>.

The decision also highlights the interconnectedness between immigration policies and the protection of EU citizenship rights. In this case, the refusal to grant residence rights to Mr. Ruiz Zambrano, despite his children being EU citizens residing in Belgium, would have effectively deprived those children of the genuine enjoyment of their EU citizenship rights. This underscores the need for coherence in immigration policies to ensure the effective protection of EU citizenship rights.

Moreover, the ruling prompts reflection on the implications for national citizenship laws, particularly regarding jus soli (citizenship by birth on the territory). While the CJEU's decision safeguards the rights of EU citizen children, it may also lead to discussions about reforms in national citizenship laws, such as reconsidering automatic acquisition of nationality by jus soli, as mentioned in your analysis.

Overall, the Ruiz Zambrano case represents a significant advancement in the recognition and protection of EU citizenship rights, signaling a shift towards a more inclusive and comprehensive understanding of European citizenship.

**Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.**

**Citizenship of the Union is intended to be the fundamental status of nationals of the Member States. Such a refusal would lead to a situation in which those children, citizens of the Union, would have to leave the territory of the Union in order to accompany their parents. Similarly, if a work permit were not granted to such a person, he would risk not having sufficient resources to provide for himself and his family, which would also result in the children, citizens of the Union, having to leave the territory of the Union. In those circumstances, those citizens of the**

<sup>158</sup> Hailbronner K., Thym D., Case Law, C-34/09 *Gerardo Ruiz Zambrano v. Office National de l'emploi (Onem)*, *Common Market Law Review* 48, 2011, pp. 1253-1270.

**Union would, in fact, be unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union<sup>159</sup>.**

### **The Dereci case (C-256/11)**

The questions referred to the Court in the Dereci case attempt to clarify the scope of the criterion of genuine enjoyment of the rights of European citizenship. The Court emphasized the specific and exceptional nature of the situations in which this criterion can be applied, namely only in situations where the EU citizen is forced to leave the territory of the Union as a whole and not just the territory of the Member State of which they are a national. Additionally, it concerns situations where the right of residence cannot be denied to a third-country national who is a family member of a Member State national, if the effectiveness of the Union citizenship from which the national benefits would otherwise be undermined. However, the fact that the Union citizen wishes to reside with a family member who is a third-country national is not sufficient to establish that they would be forced to leave the EU if a right of residence is not granted to the family member.

The Court also stated that national authorities or courts must assess in each case whether the denial of the right of residence would undermine the right to protection of family life based on Article 7 of the Charter of Fundamental Rights in situations governed by Union law and Article 8 of the European Convention on Human Rights where Union law does not apply.

Therefore, with Dereci, the Court of Justice of the European Union significantly limited the scope for invoking Ruiz Zambrano. At the same time, it granted a wide discretion to national authorities and national courts to determine whether the EU citizen is deprived of the practical exercise of the substantive part of the rights associated with Union citizenship. In this light, the Court of Justice of the EU "delegated" to national courts the ability to determine the level of rights associated with EU citizenship, but to some extent also the jurisdiction of the Court itself. Consequently, it has been argued that this decision potentially constitutes an attack on the legal capacity of the Court of Justice of the EU to determine its own jurisdiction in cases related to European citizenship<sup>160</sup>.

**The situation of a Union citizen who has not made use of the right to freedom of movement cannot, for that reason alone, be assimilated to a purely internal situation. Indeed, as citizenship of the Union is intended to be the fundamental status of nationals of the Member States, Article 20 TFEU precludes national**

<sup>159</sup> C-34/09, Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm), ECLI:EU:C:2011:124.

<sup>160</sup> Kochenov D., The Right to Have What Rights? EU Citizenship in Need of Clarification, *European Law Journal*, Vol. 19, No. 4, July 2013, pp. 502–516.

measures which have the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of that status.

That criterion, relating to the denial of the substance of the rights conferred by virtue of European Union citizen status, refers to situations in which the Union citizen has, in fact, to leave not only the territory of the Member State of which he is a national but also the territory of the Union as a whole.

As regards the right of residence of family members of a citizen of the Union who are third country nationals, that criterion is therefore very specific inasmuch as it relates to situations in which, although subordinate legislation on the right of residence of third country nationals is not applicable, a right of residence may not, exceptionally, be refused to a third country national, who is a family member of a Member State national, lest the effectiveness of the citizenship of the Union enjoyed by that national be disregarded. The mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted<sup>161</sup>.

### **The Tjebbes case (C-221/17)**

The Tjebbes case concerns the conditions under which Member States can revoke the nationality of their citizens, and consequently, their EU citizenship. This case addresses the balance between the sovereign rights of Member States to determine nationality and the protection of EU citizenship rights. The case involved several Dutch nationals who had lost their Dutch nationality automatically under Dutch law. This automatic loss occurred because they had dual nationality and had resided outside the European Union for an uninterrupted period of ten years after reaching the age of majority. As a result, they also lost their EU citizenship, which raised questions about the compatibility of such national legislation with EU law. The Court held that the automatic loss of nationality must be assessed in light of the proportionality principle. This means that national authorities must consider individual circumstances and the consequences of the loss of nationality for the persons concerned and their family members. Also, the loss of nationality should not disproportionately affect the rights conferred by EU citizenship, particularly the right to respect for private and family life under Article 7 of the Charter of Fundamental

<sup>161</sup> C-256/11. Murat Dereci and Others v Bundesministerium für Inneres. ECLI:EU:C:2011:734.

Rights of the European Union. While Member States have the authority to determine the conditions for acquisition and loss of nationality, they must do so in a manner consistent with EU law. Specifically, they must ensure that the loss of nationality does not lead to a disproportionate deprivation of the rights associated with EU citizenship.

The Tjebbes case is significant as it underscores the need for Member States to consider the proportionality of national rules on the loss of nationality and their implications for EU citizenship rights. It affirms that while Member States retain sovereignty over nationality laws, these laws must respect EU principles, particularly the protection of fundamental rights and the genuine enjoyment of EU citizenship<sup>162</sup>.

**It is for the competent national authorities, including the national courts, to determine whether the loss of nationality, which entails the loss of the status of citizen of the Union and the rights attaching thereto, in accordance with the principle of proportionality, constitutes an infringement of the rights conferred by the first paragraph of Article 20 TFEU.**

**Article 20 TFEU, read in the light of Articles 7 and 24 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State such as that at issue in the main proceedings, which provides under certain conditions for the loss, by operation of law, of the nationality of that Member State, which entails, in the case of persons who are not also nationals of another Member State, the loss of their citizenship of the Union and the rights attaching thereto, in so far as the competent national authorities, including national courts where appropriate, are in a position to examine, as an ancillary issue, the consequences of the loss of that nationality and, where appropriate, to have the persons concerned recover their nationality ex tunc in the context of an application by those persons for a travel document or any other document showing their nationality. In the context of that examination, the authorities and the courts must determine whether the loss of the nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of each person concerned and, if relevant, for that of the members of their family, from the point of view of EU law<sup>163</sup>.**

<sup>162</sup> van Eijken H. Tjebbes in Wonderland: On European Citizenship, Nationality and Fundamental Rights: ECJ 12 March 2019, Case C-221/17, M.G. Tjebbes and others v Minister van Buitenlandse Zaken, ECLI:EU:C:2019:189. *European Constitutional Law Review*. 2019;15(4):714-730.

<sup>163</sup> C-221/17, M.G. Tjebbes and others v Minister van Buitenlandse Zaken, ECLI:EU:C:2019:189.



### The Baumbast Case (C-413/99)

The Baumbast case is a landmark decision by the Court of Justice of the European Union that significantly expanded the interpretation of EU citizenship rights, particularly concerning the right of residence for EU citizens and their family members, even when they are not economically active. Mr. Baumbast, a German national, had lived and worked in the United Kingdom. After his employment ended, he continued to reside in the UK with his Colombian wife and their two children. Although Mr. Baumbast was no longer economically active in the UK, he had comprehensive sickness insurance and sufficient resources to support his family without becoming a burden on the UK's social assistance system. The UK authorities refused to renew his residence permit, arguing that he no longer met the conditions for residence under EU law. The primary legal question was whether an EU citizen who had ceased economic activity retained the right to reside in a Member State under Article 18 (now Article 21 TFEU) of the Treaty and under Directive 90/364/EEC, which provided for a right of residence for nationals of Member States who are not economically active.

The Court affirmed that EU citizens have a right to reside in another Member State, even if they are not economically active, provided they have sufficient resources and comprehensive sickness insurance. This right is derived from the concept of EU citizenship established by Article 18 (now Article 21 TFEU). The Court emphasized that Article 18 TFEU has direct effect, meaning that individuals can rely on it directly before national courts. This establishes that EU citizens can invoke their right to free movement and residence based on the Treaty itself, independently of secondary legislation.

The Baumbast ruling is significant because it broadened the understanding of EU citizenship by recognizing that the right of residence is not exclusively linked to economic activity. It reinforced the idea that EU citizenship is a fundamental status, granting rights that go beyond the traditional economic freedoms. This case paved the way for subsequent rulings that further developed the rights associated with EU citizenship, emphasizing the importance of the proportionality principle in the application of residence conditions<sup>164</sup>.

**In any event, the limitations and conditions which are referred to in Article 18 EC and laid down by Directive 90/364 are based on the idea that the exercise of the right of residence of citizens of the Union can be subordinated to the legitimate**

<sup>164</sup> Rauceau C. Fundamental Rights: The Missing Pieces of European Citizenship? *German Law Journal*. 2013;14(10):2021-2039.

interests of the Member States. In that regard, according to the fourth recital in the preamble to Directive 90/364 beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State.

However, those limitations and conditions must be applied in compliance with the limits imposed by Community law and in accordance with the general principles of that law, in particular the principle of proportionality. That means that national measures adopted on that subject must be necessary and appropriate to attain the objective pursued (see, to that effect, Joined Cases C-259/91, C-331/91 and C-332/91 *Alluè and Others* [1993] ECR I-4309, paragraph 15).

In respect of the application of the principle of proportionality to the facts of the *Baumbast* case, it must be recalled, first, that it has not been denied that Mr *Baumbast* has sufficient resources within the meaning of Directive 90/364; second, that he worked and therefore lawfully resided in the host Member State for several years, initially as an employed person and subsequently as a self-employed person; third, that during that period his family also resided in the host Member State and remained there even after his activities as an employed and self-employed person in that State came to an end; fourth, that neither Mr *Baumbast* nor the members of his family have become burdens on the public finances of the host Member State and, fifth, that both Mr *Baumbast* and his family have comprehensive sickness insurance in another Member State of the Union.

Under those circumstances, to refuse to allow Mr *Baumbast* to exercise the right of residence which is conferred on him by Article 18(1) EC by virtue of the application of the provisions of Directive 90/364 on the ground that his sickness insurance does not cover the emergency treatment given in the host Member State would amount to a disproportionate interference with the exercise of that right.

The answer to the first part of the third question must therefore be that a citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy there a right of residence by direct application of Article 18(1) EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, the principle of proportionality<sup>165</sup>.

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<sup>165</sup> C-413/99, *Baumbast and R v Secretary of State for the Home Department*, ECLI:EU:C:2002:493.

### The Coman Case (C-673/16)

The case of *Coman and Others v. Inspectoratul General pentru Imigrări* is a landmark ruling by the Court of Justice of the European Union (CJEU) that significantly impacted the recognition of same-sex marriages within the EU context.

Relu Adrian Coman, a Romanian national, and Robert Clabourn Hamilton, a U.S. national, were married in Brussels in 2010. In 2012, they sought to move to Romania, but the Romanian authorities refused to recognize their marriage and thus denied Hamilton the right to reside in Romania as Coman's spouse. The case was referred to the CJEU to determine whether the term "spouse" under EU law includes same-sex spouses for the purposes of free movement and residence rights. On June 5, 2018, the CJEU ruled that while Member States are not required to legalize same-sex marriages, they must recognize such marriages legally performed in other Member States for the purpose of granting residency rights. The Court emphasized that denying residency to a same-sex spouse would violate the right to free movement under Article 21 TFEU, effectively preventing an EU citizen from fully enjoying the rights conferred by their EU citizenship.

This decision reinforced the principle that the rights associated with EU citizenship, particularly the right to free movement, include the rights of same-sex spouses to reside in any Member State. It underscored that the fundamental rights guaranteed by the EU, such as the respect for private and family life and non-discrimination, extend to all citizens regardless of the Member State's stance on same-sex marriage. This ruling thus paved the way for greater recognition and protection of same-sex couples across the EU, ensuring that their marital status is respected when exercising their rights of free movement and residence<sup>166</sup>.

**In a situation in which a Union citizen has made use of his freedom of movement by moving to and taking up genuine residence, in accordance with the conditions laid down in Article 7(1) of Directive 2004/38/EC [...], in a Member State other than that of which he is a national, and, whilst there, has created and strengthened a family life with a third-country national of the same sex to whom he is joined by a marriage lawfully concluded in the host Member State, Article 21(1) TFEU must be interpreted as precluding the competent authorities of the Member State of which the Union citizen is a national from refusing to grant that third-country national a right of residence in the territory of that Member State on the ground that the law**

<sup>166</sup> Tryfonidou A. (2018) Free Movement of Same-Sex Spouses within the EU: The ECJ's *Coman* judgment (19.06.2018), available online at: <https://europeanlawblog.eu/2018/06/19/free-movement-of-same-sex-spouses-within-the-eu-the-ecjs-coman-judgment/>, [accessed 29 May 2024].

of that Member State does not recognise marriage between persons of the same sex.

Article 21(1) TFEU is to be interpreted as meaning that, in circumstances such as those of the main proceedings, a third-country national of the same sex as a Union citizen whose marriage to that citizen was concluded in a Member State in accordance with the law of that state has the right to reside in the territory of the Member State of which the Union citizen is a national for more than three months. That derived right of residence cannot be made subject to stricter conditions than those laid down in Article 7 of Directive 2004/38<sup>167</sup>.

### Synopsis: European Citizenship in Practice

- **Erasmus Program:** Established in 1987, it aims to facilitate student exchange across European universities. It evolved into Erasmus+, a comprehensive framework for cooperation and mobility in education, training, youth, and sport.
- **Jean Monnet Actions:** Initiated in 1990, it fosters excellence in EU studies globally, establishing connections between academics, researchers, and policymakers. It supports the creation of European Centres of Excellence, chairs, and teaching modules.
- **Citizens, Equality, Rights and Values (CERV) Programme:** Launched in 2021, it aims to promote open, democratic, and inclusive societies grounded in the rule of law. It focuses on equality, citizens' engagement, combating violence, and safeguarding Union values.
- **Landmark Case Law regarding EU Citizenship:**
  - **Zambrano case:** Recognizes derived residence rights for third-country nationals with dependent EU citizen children.
  - **Dereci case:** Limits the scope for invoking Zambrano, granting discretion to national authorities to determine the practical exercise of EU citizenship rights.
  - **Tjebbes case:** Addresses the revocation of nationality and its implications for EU citizenship rights, emphasizing the principle of proportionality.

<sup>167</sup> C-673/16, Coman and Others v General Inspectorate for Immigration and Ministry of the Interior, ECLI:EU:C:2018:385.

- **Baumbast case:** Broadens the interpretation of EU citizenship rights regarding the right of residence, recognizing that it is not exclusively linked to economic activity.
- **Coman case:** Affirms recognition of same-sex marriages for the purpose of granting residency rights under EU law, ensuring non-discrimination and respect for family life.

These initiatives and legal cases demonstrate the EU's commitment to promoting mobility, education, equality, and the protection of fundamental rights for its citizens.

### Comprehension Questions

- What was the primary objective behind the establishment of the Erasmus Program in 1987?
- How has the Erasmus Program evolved since its inception?
- What is the Jean Monnet initiative, and what are its main objectives?
- How many Jean Monnet European Centres of Excellence, Chairs, and Teaching Modules have been created to date?
- What are the four pillars of the Citizens, Equality, Rights and Values (CERV) Programme, and what do they focus on?
- Briefly summarize the key points of the Zambrano case and its significance.
- How did the Dereci case limit the scope for invoking the Zambrano ruling?
- What were the main issues addressed in the Tjebbes case regarding the loss of nationality and EU citizenship rights?
- What was the central legal question addressed in the Baumbast case, and what was the ruling's significance?
- Explain the implications of the Coman case regarding recognition of same-sex marriages under EU law.

## VIII. Concluding Remarks

The importance of European citizenship lies in its ability to foster unity, solidarity, and collaboration among individuals within the European Union (EU).

**Promoting Democratic Values:** European citizenship is built upon democratic principles, including the right to participate in political processes and shape the future of the EU. Active participation ensures that democratic values are upheld and that decisions reflect the diverse perspectives and interests of citizens.

**Strengthening Unity and Solidarity:** In a diverse and interconnected Europe, European citizenship serves as a unifying force, transcending national boundaries and fostering solidarity among citizens. Active participation strengthens this unity by promoting mutual understanding, cooperation, and shared responsibility for the common good.

**Protecting Rights and Freedoms:** European citizenship grants individuals a set of rights and freedoms protected under EU law. Active participation is essential for defending these rights, advocating for justice, and holding institutions accountable to ensure that everyone enjoys equal treatment and protection under the law.

**Driving Economic and Social Progress:** Active participation contributes to economic and social progress within the EU by empowering citizens to engage in entrepreneurship, innovation, and community development initiatives. By working together and leveraging collective resources, citizens can address societal challenges and create opportunities for growth and prosperity.

**Fostering Cultural Exchange and Diversity:** European citizenship celebrates cultural diversity and promotes cross-cultural exchange and understanding. Active participation in cultural events, language programs, and educational exchanges enriches the fabric of European society, fostering tolerance, respect, and appreciation for different cultures and identities.

However, simply possessing European citizenship is not enough; active participation is crucial to realizing its full potential. Active participation is essential and a call to action for individuals to engage more actively:

**Shaping EU Policies:** Active participation allows citizens to play a role in shaping EU policies and initiatives. By engaging with policymakers, providing feedback, and advocating for change, individuals can influence the direction

of EU legislation and contribute to the development of policies that address their concerns and priorities.

**Fostering Social Cohesion:** Active participation helps foster social cohesion and a sense of belonging within the EU. By engaging with diverse communities, volunteering, and participating in cultural exchange programs, individuals can build connections, promote understanding, and strengthen the bonds that unite Europeans across borders.

**Protecting Rights and Freedoms:** Active participation is essential for protecting the rights and freedoms enshrined in EU law. By staying informed about their rights, advocating for justice, and holding authorities accountable, citizens can help safeguard against abuses of power and ensure that everyone enjoys equal treatment and protection under the law.

**Addressing Common Challenges:** Active participation is crucial for addressing common challenges facing the EU, such as climate change, migration, and social inequality. By working together, sharing resources, and pooling expertise, citizens can collaborate to find innovative solutions and build a more sustainable and inclusive future for all.

**Strengthening European Identity:** Active participation contributes to the development of a shared European identity based on common values, experiences, and aspirations. By actively engaging with fellow citizens from different backgrounds, celebrating diversity, and embracing unity in diversity, individuals can strengthen their sense of belonging to the European community.

In this respect as European Citizens you are encouraged to:

**Exercise Your Right to Vote:** Voting is one of the most fundamental ways to participate in the democratic process. Make your voice heard by voting in European Parliament elections, local elections, and referendum campaigns. Your vote is your power to shape the future of the EU.

**Engage in Civic Activities:** Get involved in civic organizations, community groups, and advocacy campaigns that align with your interests and values. Whether it's volunteering, organizing events, or raising awareness about important issues, your active engagement can make a difference in your community and beyond.

**Stay Informed and Speak Out:** Stay informed about EU policies, initiatives, and current events through reliable sources of information. Use your voice to

speak out on issues that matter to you, whether it's environmental sustainability, social justice, or human rights. Write to your representatives, participate in public debates, and join online discussions to contribute to the dialogue.

**Collaborate Across Borders:** Embrace opportunities for collaboration and cooperation with citizens from different EU member states. Participate in international projects, cultural exchanges, and collaborative initiatives that promote solidarity and mutual understanding across borders.

**Empower Others to Participate:** Encourage and support others to become active participants in European citizenship. Share information, resources, and opportunities for engagement with your friends, family, and community networks. Together, we can empower more people to contribute to the collective effort of building a stronger, more inclusive, and democratic Europe.

In summary, European citizenship offers immense opportunities for individuals to actively participate in shaping the future of the EU. By embracing their rights and responsibilities, citizens can contribute to the advancement of democratic values, solidarity, and progress within the European community. Let us seize this opportunity to make a positive impact and create a brighter future for all Europeans.



## **IX. Epilogue: The Jean Monnet Chair “EU Institutions, Rights, and Judicial Integration”.**

The self-training manual on European Citizenship was developed within the context of the Jean Monnet Chair titled “EU Institutions, Rights, and Judicial Integration”.

The Jean Monnet Chair, established to promote excellence in EU studies within higher education institutions globally, focuses on deepening understanding and fostering dialogue on various aspects of European integration, including legal and institutional frameworks, rights, and judicial processes. The Jean Monnet Chair “EU Institutions, Rights and Judicial Integration” follows the following objectives:

1. Enhance the interest and profile of EU studies in Cyprus and abroad
2. Develop a network and synergies of dialogue between the academic world and civil society, professional unions, and policy makers at local, national and European level
3. Augment the level of knowledge on specific EU subjects
4. Disseminate knowledge about the European fundamental rights protection, EU values, democracy and the rule to broader society

In this framework, our Chair introduces an ambitious programme of teaching, research, events and dissemination. The Jean Monnet Chair focuses on the subjects of a) fundamental rights protection in the EU, b) EU Judicial protection, c) EU institutions. Those areas are of utmost importance as they touch upon the essence of the European citizenship and in order to address the challenges of European societies that face issues of radicalization, xenophobia, populism etc. Thus, the Chair aims at equipping learners and the broader society with knowledge and skills in order to comprehend the importance of the EU integration and the role of the EU in a globalized world as well as to develop their identity based on respect for human rights, the rule of law and democracy.

Under the guidance and expertise of the Jean Monnet Chair holder, the manual was crafted as a comprehensive resource to educate and engage students, academics, and researchers on the concept and practice of European citizenship. It aims to provide a structured and accessible means of exploring the rights, responsibilities, and legal implications associated with EU citizenship, as well as its broader societal and political significance.

Through rigorous research, analysis, and synthesis of relevant legal and academic literature, the manual delves into the evolution of European citizenship, its legal foundations, and the rights and duties it entails. Drawing on case law, legislative

acts, and scholarly insights, it offers in-depth discussions on key topics such as freedom of movement, non-discrimination, and the relationship between EU citizenship and national citizenship.

Moreover, the manual serves as a pedagogical tool to facilitate interactive learning experiences, incorporating case studies and reflection questions to encourage critical thinking and application of knowledge. By promoting active engagement and dialogue, it seeks to empower learners to grasp the complexities of European citizenship and its implications for individuals, communities, and the European project as a whole.

In essence, the self-training manual on European Citizenship embodies the Jean Monnet Chair's commitment to advancing excellence in EU studies and promoting informed discourse on the principles, values, and challenges inherent in European integration. It represents a valuable contribution to the academic community and underscores the importance of fostering a deeper understanding of European citizenship in today's interconnected world.

The Jean Monnet Chair “EU Institutions, Rights, and Judicial Integration” is hosted at the Open University of Cyprus. The Chairholder is Alexandros Tsadiras, Associate Professor of Administrative Law of the European Union at the Open University of Cyprus.

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