

Development and nature of Union citizenship

Abolishing obstacles to free of movement of persons as part of the establishment of internal market was among the explicit objectives of the (then) European Economic Community (EEC) from its very inception. Yet, the initial Treaty establishing the EEC, signed in Rome in 1957, did not make any reference to EU citizenship, and free movement provisions were primarily aimed at persons engaged in economic activity, i.e. workers or the self-employed. It was not until the 1970s that ideas centred around the notion of '**Europe for Citizens**' came to the fore, calling, inter alia, for a broader set of political and social rights for European citizens. They gained momentum in 1990, when the Spanish government, prior to the negotiations preceding the Maastricht Treaty, submitted a proposal titled 'The Road to European Citizenship'. In its proposal, the Spanish government called for the establishment of a European Union citizenship, defined as 'the personal and indivisible status of nationals of the Member States, whose membership in the Union means that they have special rights and duties that are specific to the nature of the Union and are exercised and safeguarded specifically within its boundaries'.¹

Article 20(1) TFEU

'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.'

The **Treaty on European Union**, signed in Maastricht in 1992, introduced the legal concept of EU citizenship. It formed part of the broader effort to move gradually away from a community with an exclusive economic focus towards a political union (a shift also illustrated by, inter alia, renaming the 'European Economic Community' the 'European Community'). The Treaty introduced a number of new rights granted to EU citizens, including political rights. The **Lisbon Treaty**, which was signed in 2007, in particular aimed at enhancing citizens' participation in the political life of the Union and introduced another novel right for Union citizens – the right to start a **Citizens' Initiative**.

The concept of EU citizenship was substantially enhanced and developed by the Court of Justice of the EU (CJEU), which in 2001 famously claimed that 'Union citizenship is destined to be the **fundamental status** of nationals of the Member States'.² Free movement rights – initially reserved for those engaged in economic activity and thus actively contributing to the economy of their host Member State – were gradually expanded to other categories of persons, including students, jobseekers and those who retire and settle in another Member State. EU citizenship, intrinsically linked to free movement of persons, has broadly been considered one of the Union's most significant achievements. Arguably, however, it also has the potential to become one of the most divisive, as the United Kingdom's EU membership referendum campaign (2016) showed.

Every person holding the nationality of a Member State is automatically a Union citizen. The Treaties make clear that Union citizenship shall be '**additional to and not replace**' national citizenship (Articles 9 TEU and 20(1) TFEU). Thus Union citizenship has no stand-alone character: it is dependent on national citizenship and is lost if a person is no longer a national of a Member State.³ The conditions for acquisition and loss of nationality are defined by Member States alone – within the limits of European and international law.⁴

Rights of Union citizens: overview

The core rights from EU citizenship have been categorised into: rights relating to **free movement and residence**, **political rights** and right to **diplomatic and consular protection**. Under the Treaties (in particular Articles 20-25 TFEU, 11(4) TEU), Union citizens have:

- 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 its nationals;
- 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;
- A group of at least a million EU citizens have the right to propose a Citizens' Initiative – inviting the Commission, within the framework of its powers, to submit a proposal on matters where they consider a legal act is required for implementing the Treaties (Article 11(4) TEU).

Article 18 TFEU **prohibits discrimination** on grounds of nationality within the scope of application of the Treaties. Both direct and indirect discrimination⁵ are captured by this provision. The prohibition of discrimination, in combination with the right to move and reside freely (Article 21 TFEU), essentially entitles migrant EU citizens to 'home treatment' in the state of residence. But the Treaties also make clear that the above rights are not absolute but subject to **conditions and limitations** set out in the Treaties and secondary legislation.

It should also be noted that many of the rights are not exclusively reserved for Union citizens but may, and do, apply to qualifying **third-country nationals**. For example, the right to petition the European Parliament or complain to the European Ombudsman is granted to Union citizens and any 'natural or legal person residing or having its registered office in a Member State' ([EU Charter of Fundamental Rights](#)). Moreover, third-country nationals who are long-term residents (normally for at least five years) enjoy equal treatment with regard to a broad range of entitlements (Directive [2003/109](#)). Generally, however, the legal regime for non-EU citizens is (much) less favourable compared to the generous provisions applicable to Union citizens.

Rights of free movement and residence

According to the [EU Citizenship report 2017](#), in 2014, Europeans made 214 million cross-border trips to other EU countries, while about **15 million** Europeans lived in a Member State other than their own. Free movement rights are now governed by the '**Citizenship Directive**', covering most aspects of free movement of persons ([Directive 2004/38](#)). The directive also covers the rights of (non-EU) family members of Union citizens, who are granted far-reaching rights. It applies only to migrant EU citizens, i.e. those who move to or reside in a Member State *other* than that of their nationality (Article 3). It has been incorporated in the EEA Agreement and so also applies to citizens of non-EU EEA countries.⁶

Entry and residence

Every EU citizen has a right to **enter** the territory of another Member State with a valid identity card or passport, without any visa requirements or equivalent formalities (Article 5(1) Directive 2004/38).⁷ This right is not compromised by the fact that border controls may (temporarily) apply. Every citizen has a right of **residence** in another Member State of **up to three months** without any conditions other than the requirement to hold a valid identity card or passport (Article 6). However, this applies only as long as such persons do not 'become an unreasonable burden on the social assistance system of the host Member State' (Article 14(1)).⁸ EU citizens who travel to another Member State to find

work may stay for a period longer than three months, as long as they can 'provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged' (Article 14(4)(b)). The directive does not define the concept of 'genuine chance of being engaged', and this is interpreted differently in different Member States.⁹

The directive also sets out categories of persons who enjoy the right of residence for **longer than three months**:

- Workers or self-employed persons: workers and the self-employed do not need to satisfy any further conditions (besides being a worker/self-employed); Union citizens will retain the status of a worker/self-employed if they are, for example, temporarily unable to work due to illness or accident (Article 7);¹⁰
- Persons with 'sufficient resources': Union citizens who have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State have the right of residence provided they have comprehensive sickness insurance cover in the host Member State.¹¹ Member States may not require a fixed amount which they regard as 'sufficient resources' but must take into account the personal situation of the person concerned (Article 8(4)). This provision covers, for example, pensioners residing in another EU country after retiring.
- Students: students who are enrolled in an accredited establishment for the purpose of studies, including vocational training, have a right of residence provided they have comprehensive insurance cover in the host Member State and declare – by means of a declaration, or equivalent means they may choose – that they have sufficient resources not to become a burden on the social assistance system of the host Member State (Article 7(1)(c)). Member States *may not* require students to refer to any specific amount of resources in such a declaration.

EU citizens have the right to be accompanied by their **family members** (EU or non-EU citizens). The latter include a spouse, registered partner,¹² children under 21 or dependent children (including children of the spouse), and dependent parents.

Member States may require Union citizens to **register** with the relevant authorities (Article 8(1)), which may entail proving that a person satisfies the above conditions.

After a continuous period of **five years** of legal residence in a Member State, EU citizens become permanent residents. This status implies a right of residence, which is no longer subject to the above conditions (e.g. sufficient resources), and 'full' equal treatment, including access to all relevant benefits granted to nationals. The same applies for family members who have legally resided with the Union citizen. In this context, the CJEU defines 'legal residence' as residence in compliance with the conditions of the directive, in particular those set out in Article 7 for the respective categories (above).¹³ Once acquired, the right of permanent residence is lost in the case of an absence from the territory of the Member State longer than two consecutive years (Article 16(4)).

Directive 2004/38 explicitly allows Member States to take necessary measures to terminate or withdraw the above rights in cases of **abuse**, such as marriages of convenience (Article 35). It also allows Member States to maintain national provisions which are *more favourable* to Union citizens and their family members.

Protection against expulsion

The Citizenship Directive grants Member States the right to **restrict** freedom of movement and residence on grounds of public policy, public security or public health (Article 27(1)). This may entail expulsion measures taken against EU citizens or their family members. Any such expulsion

measure needs to comply with the principle of proportionality, and must be based exclusively on the personal conduct of the individual concerned. Such conduct must represent a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society' (Article 27(2)). Before taking an expulsion measure, Member States must take into account the personal situation of the individual concerned, including the length of residence in the host Member State, age, health, family situation and social integration into the host Member State. The longer a person has resided in the territory of a Member State, the stronger the safeguards against expulsion (Article 28). [In practice](#), the most common grounds for expulsion decisions include public order and security reasons, committing of crimes, failure to fulfil residence conditions or being an unreasonable burden on the social assistance system.

Non-discrimination

EU law lays down the general prohibition of non-discrimination on grounds of nationality, and requires host Member States to treat migrant EU citizens and their own nationals equally. Directive 2004/38 extends this requirement to (non-EU) family members with the right of residence or permanent residence. The right to equal treatment is not without **exceptions**. Such exceptions are laid down in both primary and secondary EU law and are further elaborated in extensive CJEU case law. For example, the Treaties explicitly provide that non-nationals may be excluded from certain posts in public services,¹⁴ while Directive 2004/38 lays down two further exceptions. First, Member States are not obliged to grant non-national Union citizens social assistance¹⁵ during the first three months of residence or during a longer period in which they seek employment. Second, students are not entitled to receive maintenance aid granted to nationals if such aid consists of student grants or student loans.¹⁶ The CJEU has accepted other instances of differential treatment, as long as such treatment is objectively justified and proportionate. However, the Court has repeatedly stressed that such derogations are to be interpreted **narrowly**, given that they constitute an exception from the general principle of non-discrimination.¹⁷

Political rights

The right to vote and stand as a candidate

Engaging in the political life of a community is among the core elements of modern citizenship. Article 22 TFEU (as well as Articles 39 and 40 of the EU Charter of Fundamental Rights) grants Union citizens who live in another Member State the right to vote and to stand as a candidate in **municipal** and **European Parliament** elections in the Member State of their residence under the same conditions as nationals of that state. The detailed arrangements for the exercise of this right are laid down in two directives ([Directive 94/80/EC](#) and [Directive 93/109/EC](#)), which provide for limited exceptions by, for example, allowing Member States with a particularly high proportion of non-national Union citizens to require additional periods of residence.

Generally, the **turnout** in European Parliament elections has been low compared to national parliament elections,¹⁸ and steadily declining since the first direct elections in 1979. This is despite the fact that the Parliament's role has increased significantly over that period. The same applies to (generally low) participation rates among [migrant Union citizens](#), who do not seem to exercise this right 'as fully as they could'. In this context, hopes have been expressed that voters' interest in European elections may increase as a result of an ever stronger link between the Parliament and the Commission (President), which have been created, in particular, by the '*Spitzenkandidaten* process' of 2014.¹⁹

The turnout rates in European elections vary greatly among Member States: in 2014, from 13 % in Slovakia to 89.6 % in Belgium (where voting is compulsory). According to [Eurostat](#),

in the 2014 European elections, turnout for the EU-28 was 42.5 %, compared to an average 68 % in national elections. The electoral rights granted to Union citizens by Article 22 TFEU do not extend to **national** elections, which arguably remain the most high-profile elections in Member States. In this context, a European Parliament [resolution](#) of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union called for extending the rights granted by Article 22 TFEU to '**all remaining elections**' not covered by the current wording of Article 22 TFEU (point 50).

The right to petition the European Parliament

Articles 24 and 227 TFEU grant EU citizens the right to address, individually or in association with others, a petition to the European Parliament on matters coming **within the Union's fields of activity** and which affect them directly. This right is also enshrined in the EU Charter of Fundamental Rights (Article 44) and extends to all 'natural and legal persons residing or having its registered office in a Member State'. Petitions are considered by the EP's Committee on Petitions (PETI), which may, inter alia, conduct fact-finding visits in Member States or regions concerned, request assistance from the Commission or refer the matter to the Ombudsman (Rules 215-217 of Parliament's [Rules of Procedure](#)). In general, however, the right to petition is not exercised actively by Union citizens. According to the 2015 [report](#) on the activities of the PETI Committee, in 2014, there were 2 714 petitions, while in 2015 the number dropped to a total of **1 431** – in an EU of more than 500 million inhabitants. Most petitions came from Spain, Italy, Germany, Romania and Poland, while the Baltic States have been reported to be the least active 'petitioners'. Common topics of concern for petitioners include, inter alia, fundamental rights, the environment and internal market.

European Ombudsman

Union citizens have the right to refer to the European Ombudsman cases of **maladministration** in the activities of EU institutions, bodies, offices or agencies (with the exception of the CJEU). This right is granted to any natural or legal person residing or having its registered office in a Member State (Article 43 EU Charter of Fundamental Rights). The Ombudsman (currently [Emily O'Reilly](#)) is elected by the European Parliament at the beginning of each parliamentary term. She may conduct inquiries either on her **own initiative** or in response to **complaints** received, except where a matter is subject to legal proceedings (Article 228 TFEU). In contrast to petitions, which may concern 'any matter' within the Union's field of activity (including possible infringements by national authorities), the Ombudsman investigates instances of maladministration by *Union* bodies. There is no requirement to be directly affected in order to submit a complaint. 'Maladministration' may concern failure to respect fundamental rights or failure to observe the principles of good administration. According to the [Ombudsman](#), this covers instances of, inter alia, unfairness, discrimination, abuse of power, failure to reply, and unnecessary delays.

European Citizens' Initiative

The introduction of the European Citizens' Initiative (ECI) was among the legal innovations of the Lisbon Treaty, aimed at increasing citizens' involvement in EU affairs. According to Article 11(4) TEU, not less than one million citizens may *invite* the European Commission, 'within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.' The Commission is *not obliged* to submit a legislative proposal in response, but needs to set out its legal and political conclusions, the action it

intends to take, if any, and reasons for such (in)action ('ECI Regulation' No [211/2011](#)). Since April 2012, in total 64 ECI proposals (including several resubmitted initiatives) have been submitted to the Commission. 'On 22 March 2017, the Commission announced its decision to register two new initiatives, both aimed at protecting EU citizenship rights within the context of withdrawal of a Member State. So far, only three initiatives have been [successful](#) in gathering more than 1 million signatures, and leading to a Commission communication in response. So far, no ECI has triggered a legislative proposal.

In this context, on 28 October 2015, the European Parliament adopted a [resolution](#) on the ECI, in which it made a number of proposals on improving its functioning in order to make it a genuinely effective and user-friendly tool of participatory democracy. While no legislative proposal has yet been triggered by an ECI, the Commission announced in its 2017 [work programme](#) that it will follow up the successful initiative 'Right2Water' by proposing a revision of the Drinking Water Directive. Most recently, the Committee on Constitutional Affairs launched an own-initiative legislative report aiming at the revision of the ECI Regulation. Moreover, the Parliament's [resolution](#) of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the EU, called for endowing citizens with more instruments of participatory democracy, and suggested evaluating the options of Union-wide referendum.

Right to consular protection

When Union citizens find themselves in a **third country** in which their Member State of nationality is not represented, they are entitled to protection by diplomatic and consular authorities of other Member States on the same conditions as the nationals of that state (Articles 20 and 23 TFEU, Article 46 EU Charter of Fundamental Rights). This entails assistance in cases of, for example, emergency situations, arrest or detention, serious accident or illness. According to the [European Commission](#), in only four countries (USA, China, India and Russia) are *all* EU Member States represented with embassies or consulates, leaving about 7 million Union citizens unrepresented when travelling or living outside the EU – a number the Commission expects to (continue to) increase. It is also reported that the right to consular protection is the right of which EU citizens are **least aware**. When invoking this right, Union citizens most commonly request an emergency travel document to be able to travel back home after their document was lost, stolen or is temporarily unavailable ([EU Citizenship report 2017](#)). The modalities for cooperation among Member States in order to ensure effective protection of this right are laid down in [Council Directive 2015/637](#), to be transposed by Member States by May 2018.

Main references

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Endnotes

¹ Note of the Spanish delegation SN 3940/90, 'The Road to European Citizenship' (24 September 1990), in: Laursen, F. and Vanhoonaeker, S. (eds.), *The Intergovernmental Conference on Political Union: Institutional Reforms, New Policies and International Identity of the European Community* (Martinus Nijhoff, 1992), p. 328 *et seq.*

- ² Case [C-184/99](#), *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, para 31.
- ³ Some contest this proposition, for example, Rieder, C.M., '[The withdrawal clause of the Lisbon Treaty in the light of EU citizenship](#)', in: *Fordham International Law Journal*, 37(1), 2013, p. 172.
- ⁴ In the famous case [C-135/08](#), *Rottmann v Freistaat Bayern*, the Court confirmed that while the Member States retain the power to lay down the conditions for the acquisition and loss of nationality, the exercise of that power can be reviewed by the Court 'in so far as it affects the rights conferred and protected by the legal order of the Union' (here loss of Union citizenship, para 48). It further stated that Member States retain the power to withdraw naturalisation (even if such withdrawal leads to loss of Union citizenship), yet such decision must observe the principle of proportionality (para 59).
- ⁵ Indirect discrimination occurs when a seemingly neutral rule contains certain requirements (e.g. relating to place of residence, place of origin, or place of education) which are more easily satisfied by nationals, and therefore put non-nationals at a particular disadvantage.
- ⁶ Iceland and Norway (sectoral derogations apply to Liechtenstein). Decisions of the EEA Joint Committee No [158/2007](#) and No [191/199](#).
- ⁷ For a comprehensive [study](#) on how the individual provisions of Directive 2004/38 have been implemented by different Member States see '[Obstacles to the right of free movement and residence for EU citizens and their families. Comparative Analysis](#)', 2016.
- ⁸ For further analysis on access to social benefits see E.-M. Poptcheva, *Freedom of movement and residence. Access to social benefits*, EPRS [in-depth analysis](#), European Parliament, 2014.
- ⁹ *Obstacles to the right of free movement and residence for EU citizens and their families*, op. cit.
- ¹⁰ The term 'worker' is understood to cover every person pursuing effective and genuine employment activities, to the exclusion of activities purely marginal and ancillary. The (short) duration of contract or low number of hours worked will not prevent a person from being a worker for the purposes of EU law. Such activities need to be performed under direction of another person and for remuneration, which can be remuneration in kind; cases C-53/81, *Levin*, para. 17; C-268/99, *Jany v Staatssecretaris van Justitie*, C-139/85 *Kempf*.
- ¹¹ Such insurance does not need to *derive* from the host Member State; it is sufficient if cover is granted while resident there.
- ¹² Subject to the condition that the host Member State treats registered partnerships as equivalent to marriage, Article 2(2)(b).
- ¹³ Joined cases [C-424/10 and 425/10](#), *Ziolkowski & Szeja*, para 46. The CJEU also held that periods of imprisonment will not count towards establishing permanent residence, case [C-378/12](#), *Onuekwere v Secretary of State for the Home Department*.
- ¹⁴ Article 45(4) TFEU. According to the CJEU's case law, public service does not cover all state employment but only the most sensitive of the public posts, which require 'special relationship of allegiance to the state and reciprocity of rights and duties which form the foundation of the bond of nationality', case C-149/79 *Commission v Belgium*, para. 10. Most functions in the armed forces, police, judiciary and tax authorities are generally considered public service, while employment in teaching, nursing, non-military research or as a notary is not.
- ¹⁵ Social assistance for the purposes of the directive is defined by the Court as covering 'all assistance introduced by the public authorities, whether at national, regional or local level, that can be claimed by an individual who does not have resources sufficient to meet his own basic needs and the needs of his family' and who may, consequently, become a burden on the public finances of the host Member State, case C-140/12, *Brey*, para 61.
- ¹⁶ This exception does not apply to students who are, for example, permanent residents or work alongside their studies.
- ¹⁷ Case [C-75/11](#), *European Commission v Republic of Austria*, par. 54.
- ¹⁸ Bellamy, R., [Evaluating Union citizenship: belonging, rights and participation within the EU](#), 2008.
- ¹⁹ Hobolt, S., *A vote for the President? The role of Spitzenkandidaten in the 2014 European Parliament elections*, in: *Journal of European Public Policy*, 21(10), 2014, p. 1529.

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