Respect for fundamental rights in the European Union

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1 - THE CHARTER OF FUNDAMENTAL RIGHTS - [4.1.2.]

The Charter of Fundamental Rights sets out the basic rights that must be respected both by the European Union and the Member States when implementing EU law. It is a legally binding instrument that was drawn up in order to expressly recognise, and give visibility to, the role of fundamental rights in the legal order of the Union.

LEGAL STATUS

The Charter of Fundamental Rights of the European Union was solemnly proclaimed by Parliament, the Council and the Commission in Nice in 2000. After being amended, it was proclaimed again in 2007. However, the solemn proclamation did not make the Charter legally binding. Only with the adoption of the Treaty of Lisbon on 1 December 2009 did the Charter come into direct effect. Article 6(1) of the Treaty on European Union (TEU) provides that '[t]he Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union […], which shall have the same legal value as the Treaties'. The Charter, therefore, constitutes primary EU law; as such, it serves as a parameter for examining the validity of secondary EU legislation and national measures.

BACKGROUND

The European Communities (now European Union) were originally created as an international organisation with an essentially economic scope of action. There was therefore no perceived need for rules concerning respect for fundamental rights. For a long time, the EU Treaties did not mention these rights either, containing only a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

However, once the Court of Justice of the European Union (CJEU) affirmed the principles of direct effect (1.2.1) and of primacy of European law, certain national courts began to express concerns about the effects which such case-law might have on the protection of constitutional values. If European law was to prevail even over domestic constitutional law, it would become possible for it to breach national fundamental rights. In response to this, in 1974 the German and Italian constitutional courts each adopted a judgment in which they asserted their power to review European law in order to ensure its consistency with constitutional rights [Solange I; Frontini]. Over time, the CJEU also contributed through its case-law to the development of and respect for fundamental rights, by affirming that the Treaties also protected those fundamental rights which result from the constitutional traditions common to the Member States as general principles of Community law [Stauder v City of Ulm, C-29/69; judgment in C-11/70].

From the establishment of the Communities right through to the initial decades of the EU, the protection of fundamental rights was therefore left to the CJEU. However, two proposals were made on repeated occasions with the aim of addressing this legislative gap, which took the form of a lack of an explicit, written catalogue of fundamental rights.

A. The first was that the European Community could accede to the ECHR, a pre-existing regional instrument aimed at protecting human rights, whose correct
application by States Parties is supervised by the European Court of Human Rights (ECtHR). This Convention, adopted in the Council of Europe in 1950 and supplemented by a series of protocols, is a key text in the area of fundamental rights. It is divided into two parts: a section on rights and freedoms comprising 17 articles, and a section describing the operating procedures and competences of the ECtHR, which sits in Strasbourg. The EU per se is not a party to the ECHR. All its Member States are, however. Article 6(2) of the TEU requires the EU to accede to the ECHR, which means that the EU, as is already the case for its Member States, will become subject, as regards respect for fundamental rights, to review by a legal body external to the EU: the ECtHR. Following its accession, EU citizens, but also third country nationals present on EU territory, will be able to challenge legal acts adopted by the EU directly before the ECtHR on the basis of the provisions of the ECHR, in the same way that they challenge legal acts adopted by its Member States.

Negotiations on EU accession are currently taking place between the EU and the Council of Europe. In July 2013, the Commission asked the CJEU to rule on the compatibility of the draft Accession Agreement with the Treaties. On 18 December 2014, the CJEU concluded that the draft agreement on the accession of the EU to the ECHR was not compatible with EU law (Opinion 2/13).

**B.** The other proposal was that the Community should adopt its own Charter of Fundamental Rights, granting the CJEU the power to ensure its correct implementation. This approach was discussed on a number of occasions over the years and was proposed again during the 1999 European Council meeting in Cologne.

**DRAFTING PROCESS**

The main sources of inspiration for the drafters of the Charter were the ECHR and the constitutional traditions common to the Member States, as general principles of Community law. In addition, the European Social Charter (a Council of Europe treaty) and the Community Charter of the Fundamental Social Rights of Workers would also serve as sources of inspiration, insofar as they did not merely establish objectives for action.

The body which was to draft the Charter, called the ‘Convention’, included, as full members, 15 representatives of the heads of state or government of the then 15 Member States, one representative of the President of the Commission, 16 Members of the European Parliament, and 30 members of national parliaments (two from each parliament). The composition and working methods of the Convention served as a model for the Convention on the Future of Europe (1.1.4).

**CONTENT**

The Charter of Fundamental Rights is divided into seven titles, six of which are devoted to listing specific types of rights while the last clarifies the scope of application of the Charter and the principles governing its interpretation. One significant characteristic of the Charter is its innovative grouping of rights, whereby it abandons the traditional distinction between, on the one hand, civil and political rights and, on the other, economic and social rights. At the same time, the Charter makes a clear distinction between rights and principles. The latter, according to Article 52(5), are to be implemented through additional legislation and only become significant for the courts in cases involving the interpretation and legality of such laws.
The substantive part of the Charter is subdivided as follows:

— **Title I (‘Dignity’)** upholds the rights to human dignity, life and integrity of the person, and reaffirms the prohibition against torture and slavery.

— **Title II (‘Freedoms’)** upholds the rights to liberty and respect for private and family life, the right to marry and to found a family, and the rights to freedom of thought, conscience and religion, expression and assembly. It also affirms the rights to education, work, property and asylum.

— **Title III (‘Equality’)** reaffirms the principle of equality and non-discrimination as well as respect for cultural, religious and linguistic diversity. It also grants specific protection to the rights of children, the elderly and persons with disabilities.

— **Title IV (‘Solidarity’)** ensures protection for the rights of workers, including the rights to collective bargaining and action and to fair and just working conditions. It also recognises additional rights and principles, such as the entitlement to social security, the right of access to health care and the principles of environmental and consumer protection.

— **Title V (‘Citizens’ Rights’)** lists the rights of the citizens of the Union: the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections, the right to good administration, and the rights to petition, to have access to documents, to diplomatic protection and to freedom of movement and of residence (4.1.1).

— **Title VI (‘Justice’)** reaffirms the rights to an effective remedy and a fair trial, the right of defence, the principles of legality and proportionality of criminal offences, and the right to protection against double jeopardy.

While the Charter mostly reaffirms rights which already existed in the Member States, and which had been recognised as forming part of the general principles of EU law, it is also innovative in some respects. For instance, disability, age and sexual orientation are now explicitly mentioned as prohibited grounds of discrimination. The main value of the Charter, however, does not lie in its innovative character, but in the explicit recognition of the pivotal role that fundamental rights play in the EU legal order.

**SCOPE OF APPLICATION AND INTERPRETATION**

Title VII of the Charter includes some general provisions governing its interpretation and application. The scope of application of the Charter is potentially very broad: most of the rights it recognises are granted to ‘everyone’, regardless of nationality or status. However, some rights are only granted to citizens (in particular, most of the rights listed in Title V), while others are relevant for non-EU nationals (for instance, the right to asylum) or for specific categories of persons (such as workers).

The application of the Charter is defined expressly in Article 51, which states that its provisions are addressed only to the EU institutions and bodies and, when they act to implement EU law, to the Member States. This provision serves to draw the boundary between the scope of the Charter and that of national constitutions: the Charter does not bind states unless they are acting to implement EU law. Moreover, the Charter does not extend the powers or competences of the Union, thereby ensuring that the adoption of the Charter does not, by itself, increase the powers of the Union to the detriment of those of the Member States.
Additional rules confirming the importance of national constitutional traditions and national laws are to be found in Articles 52 and 53. The first of these articles stipulates that fundamental rights must be interpreted in harmony with the constitutional traditions common to the Member States, as well as with the ECHR, and with full account taken of national laws and practices. Article 53 clearly states that the Charter cannot restrict or adversely affect the level of protection of fundamental rights already provided by Union law, international law (in particular the ECHR) and the Member States’ constitutions.

While the Charter encompasses a number of rights, these are not granted unlimited protection. Article 52 allows for limitations on the exercise of rights, so long as these are provided for by law, respect the essence of the rights in question, and are proportionate and necessary to protect the rights of others or the general interest. Moreover, while some rights are framed in absolute terms, others are only granted ‘in accordance with Union law and national laws and practices’, signifying that the scope of such rights may be subject to additional limitations.

EU AGENCY FOR FUNDAMENTAL RIGHTS

The EU Agency for Fundamental Rights was established by a Council regulation of February 2007[1]. It has been operational since March 2007 and is based in Vienna. Its goal is to provide EU institutions and Member States with assistance and expertise in the field of fundamental rights. The Agency is not authorised to handle individual complaints, it does not have decision-making powers in the area of regulation and it does not have the power to monitor fundamental rights in the Member States in accordance with Article 7 of the TEU. A five-year multiannual framework sets out the areas in which it may act. Its tasks include, in particular, the collection, analysis, dissemination and evaluation of relevant information and data, conducting research and scientific surveys, drawing up preparatory and feasibility studies, and the publication of thematic reports and an annual report on fundamental rights.

ROLE OF THE EUROPEAN PARLIAMENT

A. General approach

In 1977, Parliament, the Council and the Commission adopted a Joint Declaration on Fundamental Rights, in which they committed themselves to respect fundamental rights in the exercise of their powers. Moreover, in 1979 Parliament adopted a resolution suggesting that the European Community should accede to the ECHR.

The 1984 draft Treaty establishing the European Union (1.1.2) specified that the Union must protect the dignity of the individual and grant everyone coming within its jurisdiction the fundamental rights and freedoms derived from the common principles of the national constitutions and the ECHR. It also envisaged accession of the Union to the ECHR.

In April 1989, Parliament proclaimed the Declaration of fundamental rights and freedoms. Subsequent attempts to grant this declaration the status of a legally binding document were, however, unsuccessful.

Every year since 1993, Parliament has held a debate and adopted a resolution on this issue on the basis of a report produced by its Committee on Civil Liberties, Justice and

Home Affairs. In addition, it has adopted several resolutions addressing specific issues concerning the protection of fundamental rights in the Member States.

In 1997, after the adoption of the Amsterdam Treaty, Parliament again called for the adoption of a binding Charter of Fundamental Rights. During the drafting process that led to the adoption of the Charter, Parliament adopted several resolutions insisting that this instrument be given legally binding force by incorporating it into the Treaties. After the Charter was solemnly declared, Parliament expressed its disappointment at its non-binding nature and again called for it to be incorporated in the Treaties in a legally binding manner.

B. Specific actions

Parliament has focused in particular on the issue of codifying fundamental rights in a legally binding document. It signed a joint declaration with the Commission and the Council on 5 April 1977 in which it committed to upholding fundamental rights, and adopted its own declaration on the subject in 1989. In 1994, it drew up a list of the fundamental rights guaranteed by the Union. It placed special emphasis on the drafting of the Charter by making it ‘one of its constitutional priorities’[2] and stipulating the requirements to be met. In particular:

— The Charter needed to be given fully binding legal status by incorporating it into the TEU (‘A Charter […] constituting merely a non-binding declaration and […] doing no more than merely listing existing rights would disappoint citizens’ legitimate expectations’[3]); Parliament thus called for the Charter to be incorporated into the Treaty of Nice and the new Constitutional Treaty;

— Fundamental rights needed to be recognised as indivisible, by making the Charter applicable to all the institutions, bodies and policies of the EU, including those under the second and third pillars, in the context of the powers and functions conferred upon it by the Treaties.

Finally, Parliament has regularly called for the EU to accede to the ECHR, stressing that this would not duplicate the role of the now binding Charter. It called several times for the establishment of the European Agency for Fundamental Rights.

In two resolutions in 2014, Parliament also called for the creation of a ‘Copenhagen mechanism’, which would constitute a more efficient tool to ensure that Member States fully respect the fundamental values of the Union and the requirements of democracy and the rule of law. On 25 October 2016, Parliament adopted a resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights[4].

Sarah Sy
03/2018

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Individual citizens’ rights and European citizenship are enshrined in the Charter of Fundamental Rights of the European Union (EUCFR), the Treaty on the Functioning of the European Union (TFEU) and Article 9 of the Treaty on European Union (TEU). They are essential factors in the formation of a European identity. In the event of a serious breach of basic values of the Union, a Member State can be sanctioned.

LEGAL BASIS

Articles 2, 3, 7 and 9 to 12 of the TEU, 18 to 25 of the TFEU and 39 to 46 of the EUCFR (4.1.2.).

OBJECTIVES

EU law creates a number of individual rights directly enforceable in the courts, both horizontally (between individuals) and vertically (between the individual and the state). Inspired by the freedom of movement for persons envisaged in the Treaties, the introduction of a European form of citizenship with precisely defined rights and duties was considered as long ago as the 1960s. Following preparatory work which began in the mid-1970s, the TEU, adopted in Maastricht in 1992, made it an objective for the Union ‘to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union’. A new part of the EC Treaty (ex Articles 17 to 22) was devoted to this citizenship.

Like national citizenship, EU citizenship refers to a relationship between the citizen and the European Union which is defined by rights, duties and political participation. This is intended to bridge the gap between the increasing impact that EU action is having on EU citizens, and the fact that the enjoyment of (fundamental) rights, the fulfilment of duties and participation in democratic processes are almost exclusively national matters. Article 15(3) of the TFEU gives every natural or legal person in a Member State the right to have access to the documents of the Union’s institutions, bodies and agencies. Article 16 of the TFEU enshrines the right to protection of personal data (4.2.8). Article 2 of the TEU provides that ‘the Union is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities’.

Article 7 of the TEU takes over a provision from the earlier Treaty of Nice which establishes both a prevention mechanism, where there is ‘a clear risk of a serious breach’ by a Member State of the values referred to in Article 2 of the TEU, and a sanction mechanism, in the event of a ‘serious and persistent breach’ by a Member State of those values. In the first instance, the Commission would call upon the European Council to conclude, by unanimity, that there was such a risk (Article 7(2)). This would then set in motion a procedure that could lead to a Member State losing its right to vote in the Council. This mechanism was initiated for the first time in 2017 against Poland because of the reform of its Supreme Court.
Moreover, there is to be stronger protection of the rights and interests of Member States’ nationals/EU citizens in the Union’s relations with the wider world (Article 3(5) of the TEU).

ACHIEVEMENTS

For a long time, the legal basis for citizens’ rights at EU level consisted essentially of the case law of the Court of Justice of the European Union (CJEU). Since the entry into force of the Treaty of Lisbon and the EUCFR, the legal basis has been expanded to true European citizenship.

A. Definition of EU citizenship

Under Article 9 of the TEU and Article 20 of the 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. In case C-135/08 Janko Rottmann v Freistaat Bayern, Advocate General Poiares Maduro at the CJEU explained the difference (paragraph 23):

‘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. (…) 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 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. In that way, that relationship with the nationality of the individual Member States constitutes recognition of the fact that there can exist (in fact, does exist) a citizenship which is not determined by nationality. That is the miracle of Union citizenship: it 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.’

Concerning the wish of the UK to leave the EU, a decision on the acquired rights of British nationals resident in other Member States, and of EU citizens living in the UK, has to be made. Over the years, each Member State has 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 jurisprudence of the CJEU (Van Gend & Loos). Limits of that legal heritage could be seen as resting with the national law that gives them effect. Should the UK repeal bill rescind the effects of the Treaties, they could in principle no longer be invoked in UK courts.

B. Substance of citizenship (Article 20 of the TFEU)

For all EU citizens, citizenship implies:

— The right to move and reside freely within the territory of the Member States (Article 21 of the TFEU) (4.1.3);

— The right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections (Article 22(1) of the TFEU) in the Member State in which they reside, under the same conditions as nationals of that State (for the rules on participation in municipal elections see Directive 94/80/EC of 19 December 1994, and for the rules governing election to the European Parliament, see Directive 93/109/EC of 6 December 1993) (1.3.4);

— 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, if their own country does not have diplomatic representation there, to the same extent as that provided for nationals of that Member State;

— The right to petition the European Parliament (Article 24(2) of the TFEU) and the right to apply to the Ombudsman (Article 24(3) of the TFEU) appointed by the European Parliament concerning instances of maladministration in the activities of the EU institutions or bodies. These procedures are governed respectively by Articles 227 and 228 of the TFEU (1.3.16 and 4.1.4);

— 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) of the TFEU);

— The right to access European Parliament, Council and Commission documents, subject to certain conditions (Article 15(3) of the TFEU).

C. Scope

With the exception of electoral rights, the substance of Union citizenship achieved to date is to a considerable extent simply a systematisation of existing rights (particularly as regards freedom of movement, the right of residence and the right of petition), which are now enshrined in primary law on the basis of a political idea.

By contrast with the constitutional understanding in European states since the French Declaration of Human and Civil Rights of 1789, no specific guarantees of fundamental rights are associated with citizenship of the Union. Article 6 of the TEU states that the Union recognises the rights set out in the EUCFR and that it will accede to the European
Convention for the Protection of Human Rights and Fundamental Freedoms, but it does not make any reference to the legal status of Union citizenship.

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

D. European Citizens’ Initiative (4.1.5)

Article 11(4) of the TEU provides for a new right for EU citizens: ‘Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting 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 conditions governing the submission and admissibility of any such initiative by citizens are set out in Regulation (EU) No 211/2011 of the European Parliament and of the Council. Its main provisions are described in 4.1.5.

ROLE OF THE EUROPEAN PARLIAMENT

In electing the European Parliament by direct suffrage, EU citizens are exercising one of their essential rights in the European Union, that of democratic participation in the European political decision-making process (Article 39 of the EUCFR). As regards the procedures for the election of its Members, Parliament has always called for the implementation of a uniform electoral system in all the Member States. Article 223 of the TFEU provides that Parliament shall draw up a proposal to that effect (‘to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States’). The Council will then lay down the necessary provisions (acting unanimously and after obtaining the consent of the majority of the Members of the EP), which will enter into force following their approval by the Member States in accordance with their respective constitutional requirements (1.3.4).

Parliament has always wanted to endow the institution of EU citizenship with comprehensive rights. It advocated the determination of citizenship on an autonomous Union basis, so that EU citizens would have an independent status. In addition, from the start it advocated the incorporation of fundamental and human rights into primary law and called for EU citizens to be entitled to bring proceedings before the CJEU when those rights were violated by EU institutions or a Member State (resolution of 21 November 1991).

During the negotiations on the Treaty of Amsterdam, Parliament again called for the rights associated with EU citizenship to be extended, and it criticised the fact that the Treaty did not make any significant progress on the substance of citizenship, either in regard to individual or to collective rights.

In accordance with Parliament’s requests, Article 263(4) of the TFEU stipulates that any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.

As regards the right of access to documents, on 17 December 2009 Parliament adopted a resolution on improvements needed in the legal framework for access to documents following the entry into force of the Lisbon Treaty. Among other things, it stressed
the need to widen the scope of Regulation (EC) No 1049/2001 to encompass all the institutions and bodies not covered by the original text.

As regards the European Citizens' Initiative (ECI), three months after the submission of a citizens' initiative, Commission representatives meet the organisers, and the organisers also have the opportunity to present their initiative at a public hearing in the European Parliament. The hearing is organised by the committee responsible for the subject matter of the ECI (Rule 211 of Parliament's Rules of Procedure).

As regards triggering the sanction mechanism provided for in Article 7 of the TEU against a Member State, Parliament has both a right of initiative (Article 7(1)), by means of which it can call for the first of these mechanisms to be applied, and a right to exercise democratic control, as it must consent to their implementation (Article 7(2)).

Udo Bux
03/2018
Freedom of movement and residence for persons in the EU is the cornerstone of Union citizenship, established by the Treaty of Maastricht in 1992. The gradual phasing-out of internal borders under the Schengen agreements was followed by the adoption of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU. Notwithstanding the importance of this right, substantial implementation obstacles persist, ten years after the deadline for implementation of the Directive.

LEGAL BASIS

Article 3(2) of the Treaty on European Union (TEU); Article 21 of the Treaty on the Functioning of the European Union (TFEU); Titles IV and V TFEU; Article 45 of the Charter of Fundamental Rights of the European Union.

OBJECTIVES

The concept of the free movement of persons has changed in meaning since its inception. The first provisions on the subject, in the 1957 Treaty establishing the European Economic Community (1.1.1, 2.1.5 and 2.1.4), covered the free movement of workers and freedom of establishment, and thus individuals as employees or service providers. The Treaty of Maastricht introduced the notion of EU citizenship to be enjoyed automatically by every national of a Member State. It is this EU citizenship that underpins the right of persons to move and reside freely within the territory of the Member States. The Lisbon Treaty confirmed this right, which is also included in the general provisions on the Area of Freedom, Security and Justice.

ACHIEVEMENTS

A. The Schengen area

The key milestone in establishing an internal market with free movement of persons was the conclusion of the two Schengen agreements, i.e. the Agreement proper of 14 June 1985, and the Convention implementing the Schengen Agreement, which was signed on 19 June 1990 and entered into force on 26 March 1995. Initially, the Schengen implementing Convention (signed only by Belgium, France, Germany, Luxembourg and the Netherlands) was based on intergovernmental cooperation in the field of justice and home affairs. A protocol to the Amsterdam Treaty provided for the transfer of the ‘Schengen acquis’ (4.2.4) into the Treaties. Today, under the Lisbon Treaty, it is subject to parliamentary and judicial scrutiny. As most Schengen rules are now part of the EU acquis, it has no longer been possible, since the EU enlargement of 1 May 2004, for accession countries to ‘opt out’ (Article 7 of the Schengen Protocol).

1. Participating countries

There are currently 26 full Schengen members: 22 EU Member States plus Norway, Iceland, Switzerland and Liechtenstein (which have associate status). Ireland and the United Kingdom are not parties to the Convention but can ‘opt in’ to selected parts of the Schengen body of law. Denmark, while part of Schengen, enjoys an opt-out for any
new justice and home affairs measures, including on Schengen, although it is bound by certain measures under the common visa policy. Bulgaria, Romania and Cyprus are due to join, though there are delays for differing reasons. Croatia began the application process to accede to the Schengen area on 1 July 2015.

2. Scope

The Schengen area’s achievements include:

a. The abolition of internal border controls for all persons;

b. Measures to strengthen and harmonise external border controls: all EU citizens need only show an identity card or passport to enter the Schengen area (4.2.4);

c. A common visa policy for short stays: nationals of third countries included in the common list of non-member countries whose nationals need an entry visa (see Annex II to Council Regulation (EC) No 539/2001) may obtain a single visa, valid for the entire Schengen area;

d. Police and judicial cooperation: police forces assist each other in detecting and preventing crime and have the right to pursue fugitive criminals into the territory of a neighbouring Schengen state; there is also a faster extradition system and mutual recognition of criminal judgments (4.2.6 and 4.2.7);

e. The establishment and development of the Schengen Information System (SIS) (4.2.4).

3. Challenges

While the Schengen area is widely regarded as one of the primary achievements of the European Union, it has recently been placed under considerable strain by the unprecedented influx of refugees and migrants into the EU. From September 2015, the sheer number of new arrivals prompted several Member States to temporarily reintroduce checks at the internal Schengen borders. While all the temporary border checks have been in line with the rules in the Schengen Borders Code, this marks the first time in the history of Schengen that temporary border checks have been instituted on such a scale. A further challenge comes in the form of terrorist attacks, revealing the difficulty of detecting terrorists entering and travelling through the Schengen area. The ongoing challenges have served to underline the inextricable link between robust external border management and free movement inside those external borders and have led to a series of new measures, both to enhance security checks on persons entering the Schengen area and to improve external border management (4.2.4 and 4.2.7).

B. Free movement of EU citizens and their family members

1. First steps

In a bid to transform the Community into an area of genuine freedom and mobility for all its citizens, directives were adopted in 1990 in order to grant residence rights to persons other than workers: Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity; Council Directive 90/366/EEC on the right of residence for students; and Council Directive 90/364/EEC on the right of residence (for nationals of Member States who do not enjoy this right under other provisions of Community law and for members of their families).

In order to consolidate different pieces of legislation (including those mentioned above) and take account of the large body of case-law linked to the free movement of persons, a new comprehensive directive was adopted in 2004 — 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. The Directive is designed to encourage Union citizens to exercise their right to move and reside freely within the Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members, and to limit the scope for refusing entry or terminating the right of residence. Under Directive 2004/38/EC, family members include: the spouse; the registered partner, if the legislation of the host Member State treats registered partnerships as equivalent to marriage; direct descendants who are under the age of 21 or are dependants and those of the spouse or registered partner; and dependent direct relatives in the ascending line and those of the spouse or registered partner.

a. Rights and obligations:

— For stays of under three months: the only requirement for Union citizens is that they possess a valid identity document or passport. The host Member State may require the persons concerned to register their presence in the country.

— For stays of over three months: EU citizens and their family members — if not working — must have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. Union citizens do not need residence permits, although Member States may require them to register with the authorities. Family members of Union citizens who are not nationals of a Member State must apply for a residence permit, valid for the duration of their stay or a five-year period.

— Right of permanent residence: Union citizens acquire this right after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right is no longer subject to any conditions. The same rule applies to family members who are not nationals of a Member State and who have lived with a Union citizen for five years. The right of permanent residence is lost only in the event of more than two successive years’ absence from the host Member State.

— Restrictions on the right of entry and the right of residence: Union citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health. Guarantees are provided to ensure that such decisions are not taken on economic grounds, comply with the proportionality principle and are based on personal conduct, among others.

Finally, the directive enables Member States to adopt the necessary measures to refuse, terminate or withdraw any right conferred in the event of abuse of rights or fraud, such as marriages of convenience.

[1]Most Member States also apply the directive to guarantee free movement rights to same-sex spouses, registered partners and partners in a durable relationship.
b. The implementation of Directive 2004/38/EC

The directive has been beset by problems and controversy, with evidence emerging of serious shortcomings in implementation and continuing obstacles to free movement, as highlighted by Commission reports and Parliament studies on the application of the directive, infringement proceedings against Member States for incorrect or incomplete transposition, the large volume of petitions submitted to Parliament and the considerable caseload before the Court of Justice. However, it is not just barriers to free movement that have sparked controversy, but the perceived abuse of free movement rules by EU citizens for the purposes of ‘benefit tourism’. While all the evidence points to very low numbers of intra-EU migrants accessing social security in a Member State other than their own, the issue is politically charged and has led to calls from some Member States for reform.

c. Third-country nationals

For provisions applying to third-country nationals who are not family members of an EU citizen, see 4.2.3.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has long fought hard to uphold the right to free movement, which it regards as a core principle of the European Union. In its resolution of 16 January 2014 on respect for the fundamental right of free movement in the EU, Parliament calls on the Member States to comply with the Treaty provisions on EU rules governing freedom of movement and to ensure that the principles of equality and the fundamental right of freedom of movement are upheld for all Member States, including in relation to access to employment, working conditions, remuneration, dismissal, and social and tax benefits. Parliament also reminds Member States that it is their responsibility to combat misuse of social welfare systems, whether perpetrated by their nationals or by other EU citizens.

With regard to the pressure placed on the Schengen area by the influx of refugees and migrants in 2015, Parliament, in its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, reiterated that the Schengen area is ‘one of the major achievements of European integration’, as well as its concern that, in response to the migratory pressure, ‘some Member States have felt the need to close their internal borders or introduce temporary border controls, thus calling into question the proper functioning of the Schengen area’.

Ottavio Marzocchi
03/2018
Equality between women and men is one of the objectives of the European Union. Over time, legislation, case-law and changes to the Treaties have helped shore up this principle and its implementation in the EU. The European Parliament has always been a fervent defender of the principle of equality between men and women.

LEGAL BASIS

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 TFEU). Besides, Article 153 TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in matters of employment and occupation. Within this framework, Article 157 TFEU furthermore authorises positive action to empower women. In addition, Article 19 TFEU enables 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, and the Rights, Equality and Citizenship programme finances, among others, measures contributing to the eradication of violence against women, based on Article 168 TFEU.

OBJECTIVES

The European Union is founded on a set of values, including equality, and promotes equality between men and women (Articles 2 and 3(3) TEU). These objectives are also enshrined in Article 21 of the Charter of Fundamental Rights. Besides, Article 8 TFEU gives the Union the task of eliminating inequalities and promoting equality between men and women through all its activities (this concept is also known as ‘gender mainstreaming’). The Union and the Member States have committed themselves, in Declaration No 19 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, ‘to combat all kinds of domestic violence […], to prevent and punish these criminal acts and to support and protect the victims’.

ACHIEVEMENTS

A. Main legislation

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


— Directive 92/85/EEC of 19 October 1992 introducing measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;

— Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services;
— in 2006, a number of former legislative acts were repealed and replaced by Directive 2006/54/EC of 5 July 2006[1] on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). This directive defines direct and indirect discrimination, harassment and sexual harassment. It also encourages employers to take preventive measures to combat sexual harassment, reinforces the sanctions for discrimination, and provides for the setting-up within the Member States of bodies responsible for promoting equal treatment between women and men. At present, Parliament is seeking the revision of this directive as regards provisions on equal pay[2] and has adopted an implementation report on the basis of several studies commissioned by the European Parliamentary Research Service (EPRS);


— Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. This directive replaces Council Framework Decision 2002/629/JHA and provides for the approximation of sanctions for trafficking in human beings across Member States and of support measures for victims, and calls upon the Member States to ‘consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation […] with the knowledge that the person is a victim [of trafficking]’ in order to discourage demand; it also establishes the office of the European anti-trafficking coordinator;

— Directive 2011/99/EU of 13 December 2011 establishing the European Protection Order with the aim of protecting a person ‘against a criminal act by another person which may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity’ and enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State; this directive is reinforced by Regulation (EU) No 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters, which ensures that civil protection measures are recognised all over the EU;


B. Progress in case-law of the European Court of Justice (ECJ)

The ECJ has played an important role in promoting equality between men and women. The most notable judgments have been:

— *Defrenne II* judgment of 8 April 1976 (Case 43/75): the Court recognised the direct effect of the principle of equal pay for men and women and ruled that the principle not only applied to the action of public authorities but also extended to all agreements that are intended to regulate paid labour collectively;

— *Bilka* judgment of 13 May 1986 (Case 170/84): the Court ruled that a measure excluding part-time employees from an occupational pension scheme constituted ‘indirect discrimination’ and was therefore contrary to former Article 119 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 grounds of sex;

— *Barber* judgment of 17 May 1990 (Case 262/88): the Court decided that all forms of occupational pension constituted pay for the purposes of Article 119 and the principle of equal treatment therefore applied to them. The Court ruled that men should be able to exercise their pension rights or survivor’s pension rights at the same age as their female colleagues;

— *Marschall* judgment of 11 November 1997 (Case C-409/95): the Court declared that a national rule which, in a case where there were fewer women than men in a sector, required that priority be given to the promotion of female candidates (‘positive discrimination’) was not precluded by Community legislation, provided that the advantage was not automatic and that male applicants were guaranteed consideration and not excluded a priori from applying;

— *Test Achats* judgment of 1 March 2011 (Case C-236/09): the Court declared the invalidity of Article 5(2) of Directive 2004/113/EC as being contrary to the principle of equal treatment between men and women in the access to and supply of goods and services. Consequently, for men and women, the same system of actuarial calculation has to be applied to determine premiums and benefits for the purposes of insurance.

C. Latest developments

Below is an overview of the most recent action taken by the EU in the field of equality between men and women.

1. The multiannual financial framework (MFF 2014-2020) and the Rights, Equality and Citizenship programme

The programme Rights, Equality and Citizenship finances projects aimed at achieving gender equality and ending violence against women (Article 4). Together with the Justice Programme (Regulation 2013/1382), it has been attributed EUR 15 686 million until 2020 (MFF Regulation 1311/2013) and consolidates six programmes of the 2007-2013 funding period, among them the *Daphne III Programme* (Decision 779/2007) and both the ‘Anti-discrimination and Diversity’ and ‘Gender Equality’ sections of the *Programme for Employment and Social Solidarity (PROGRESS)* (Decision 1672/2006/EC).

The annex thereto specifies that the promotion of gender equality will be funded together with other anti-discrimination measures under Group 1, to which a share of
57% of the financial allocations is attributed. Combating violence against women is included in Group 2, with 43% of the overall financial envelope of the programme.

For 2017, the budget line 33 02 02 (promoting non-discrimination and equality) has EUR 35 064 000 in commitment appropriations and EUR 24 000 000 in payments, which represents an increase in payments compared with 2015 or 2016 and means that the implementation of this programme is advancing. In addition, the budget line 33 02 01 has been allocated EUR 26 451 000 to contribute, among other objectives, to combating and protecting against all forms of violence against women.

A study published in autumn 2016 at the request of the FEMM committee provides an overview on the EU budget spent on gender equality[3] in selected Member States.

2. The European Institute for Gender Equality (EIGE)

In December 2006, the European Parliament and the Council established a European Institute for Gender Equality, based in Vilnius, Lithuania, with the overall objective of contributing to and boosting the promotion of gender equality, including gender mainstreaming in all EU and national policies. It also combats discrimination based on sex and raises awareness on gender equality by providing technical assistance to the European institutions through collecting, analysing and disseminating data and methodological tools (see the EIGE’s online Resource and Documentation Centre: http://eige.europa.eu/content/rdc).

3. The Women’s Charter and the Strategic engagement for gender equality 2016-2019

On 5 March 2010, the Commission adopted the Women’s Charter with a view to improving the promotion of equality between women and men in Europe and throughout the world[4].


The Strategic engagement focuses on the following five priority areas:

— Increasing female labour market participation and equal economic independence;
— Reducing the gender pay, earnings and pension gaps and thus fighting poverty among women;
— Promoting equality between women and men in decision-making;
— Combating gender-based violence and protecting and supporting victims;
— Promoting gender equality and women’s rights across the world.


5. Sustainable Development Goals

The United Nations General Assembly adopted on 25 September 2015 the resolution on the post-2015 development agenda entitled ‘Transforming our world: the 2030 Agenda for Sustainable Development’[9]. The 2030 Agenda entails 17 Sustainable Development Goals (SDGs) and 169 Targets, which came into force on 1 January 2016. The SDGs are built on the Millennium Development Goals (MDGs). However, in contrast to the MDGs, which were intended for action in developing countries only, the SDGs apply to all countries. SDG 5 ‘Achieve gender equality and empower all women and girls’ contains five Targets.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has played a significant role in supporting equal opportunity policies, in particular through its Committee on Women’s Rights and Gender Equality (FEMM). In the area of equal treatment on the labour market, Parliament acts on the basis of the ordinary legislative procedure (codecision), for example regarding:

— the proposal for a directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012) 0614) (see Parliament’s position at first reading, adopted at the end of 2013)[10],

— the revision of Directive 92/85/EEC (see above); at first reading[11] Parliament advocated a longer period of fully-paid maternity leave, namely 20 weeks[12]. As there was no agreement reached between Parliament and the Council on the Commission proposal, the Commission has now withdrawn the proposal and replaced it with a Roadmap for the initiative ‘A new start to address the challenges of work-life balance faced by working families’[13].

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In addition, Parliament contributes to overall policy development in the area of gender equality through its own-initiative reports, and by drawing the attention of other institutions to specific issues, including:

— combating violence against women by adopting a legislative own-initiative report requesting a legislative initiative on the part of the Commission on the basis of Article 84 TFEU promoting and supporting the action of Member States in the field of prevention of violence against women and girls (VAWG); this resolution includes a number of recommendations\[14\]; the FEMM committee has established a special working group to follow up this resolution;

— empowerment of women and girls: International Women’s Day 2017 focused on the economic empowerment of women, and the FEMM committee adopted an own-initiative report on the issue;

— gender equality in international relations, in particular regarding the developments since the so-called ‘Arab Spring’ in North Africa\[15\].

Parliament is also seeking gender mainstreaming in the work of all its committees\[16\]. To this end, two networks on gender mainstreaming have been established, which are coordinated by the FEMM committee. The network of Chairs and Vice-Chairs for Gender Mainstreaming brings together MEPs who support the introduction of a gender dimension into the work of their respective committees. They are supported by a network of Gender Mainstreaming Administrators in each committee secretariat. The High-Level Group on Gender Equality promotes training and awareness-raising about gender mainstreaming among the staff of the European Parliament and the political groups.

Martina Schonard
10/2017


5 - THE RIGHT OF PETITION - [4.1.4.]

Since the entry into force of the Treaty of Maastricht, every EU citizen has had the right to submit a petition to the European Parliament, in the form of a complaint or a request, on an issue that falls within the European Union’s fields of activity. Petitions are examined by Parliament’s Committee on Petitions, which takes a decision on their admissibility and is responsible for dealing with them.

LEGAL BASIS

Articles 20 and 227 of the Treaty on the Functioning of the European Union (TFEU), Article 44 of the Charter of Fundamental Rights of the EU.

OBJECTIVES

The right of petition aims to provide EU citizens and residents with a simple means of contacting the European institutions with requests or complaints.

ACHIEVEMENTS

A. Principles (Article 227 TFEU)
   1. Those entitled to petition Parliament

   The right of petition is open to any EU citizen and any natural or legal person that is resident or has a registered office in a Member State, either individually or in association with others.

   2. Scope

   In order to be admissible, petitions must concern matters which fall within the EU’s fields of activity and which affect the petitioners directly. The latter condition is interpreted very broadly.

B. Procedure

   The procedure for dealing with petitions is laid down in Rules 215 to 218 of, and Annex VI (XX) to, Parliament’s Rules of Procedure, which confer such responsibility on a parliamentary committee, the Committee on Petitions.

   1. Formal admissibility

   Petitions must state the name, nationality and address of each petitioner and be written in one of the official EU languages. They can be tabled either by post on paper or by electronic means through the EP Petitions portal.

   2. Material admissibility

   Petitions that meet these formal requirements are referred to the Committee on Petitions, which must first decide whether they are admissible. The committee does this by ascertaining that their subject falls within the EU’s fields of activity. Where this is not the case, the petition is declared inadmissible. The petitioner is informed of this and of the reasons for the decision. Petitioners are often encouraged to contact another national, European or international body. An analysis of the statistics concerning petitions shows that the main reason why petitions are declared inadmissible is that
petitioners confuse EU and Member State competences, as well as EU and Council of Europe responsibilities and possibilities for action and redress.

Examination of petitions

The Committee on Petitions usually asks the Commission to provide relevant information or to give its opinion on the points raised by the petitioner. Sometimes, it also consults other parliamentary committees, particularly when petitions are seeking to change existing laws. The Committee on Petitions may also hold hearings (during this term, hearings on the European Citizens' Initiative, the Right to Petition, Disabilities, Article 51 of the Charter of Fundamental Rights, Transparency and Freedom of Information, Union Citizenship and Free Movement took place) or send members on fact-finding visits to the location in question (during the current term to the UK, Spain and Slovakia). Once sufficient information has been gathered, the petition is included on the agenda for a meeting of the committee, to which the petitioner, the Commission and the Member States’ representatives are invited. At this meeting, the petitioner presents his/her petition, the Commission gives its opinion orally and comments on its written response to the issues raised in the petition and the representatives of the Member States concerned can take the floor if they so wish. Members of the Committee on Petitions then have the opportunity to put questions to the Commission representative and to the petitioner.

3. Outcome

This varies from case to case:

— If the petition concerns a specific case requiring individual attention, the committee may contact the appropriate institutions or authorities or intervene through the permanent representation of the Member State concerned to settle the matter.

— If the petition relates to a matter of general interest, for example if the Commission finds that EU law has been breached, infringement proceedings can be opened. This may result in a Court of Justice ruling to which the petitioner can then refer.

— The petition may result in political action being taken by Parliament or the Commission.

In all cases, the petitioner will receive a response detailing the results of the action taken.

C. Annual activity report

The annual report for 2015 was drawn up by Ángela Vallina (GUE/NGL, Spain) and adopted in plenary on 15 December 2016. The report underlines that petitions are a key element for participatory democracy and allow for the detection of loopholes and breaches in the transposition and implementation of EU law by Member States. Parliament notes that a number of petitions have led to legislative or political action, EU pilot cases, preliminary rulings or infringement proceedings, and calls for the Commission to play a more proactive role in guaranteeing the effective application of EU law and of the Charter of Fundamental Rights. It calls also for more transparency regarding its actions against Member States on possible breaches of EU law, notably when initiated on the basis of petitions. In 2015, the Committee on Petitions was particularly active in the fields of fundamental rights (disabilities, children’s rights, discrimination, minorities, access to justice), the environment and animal welfare, the internal market, labour relations, migration, trade agreements, public health, mortgage
legislation and risky financial instruments in Spain. Fact-finding visits, public hearings, the development of a web portal to submit petitions and SOLVIT, and cooperation and dialogue with national parliaments and authorities — notably with the European Ombudsman — are cited as instruments to ensure that issues raised by citizens in petitions are addressed and resolved.

Annual number of petitions received by Parliament

<table>
<thead>
<tr>
<th>Parliamentary year</th>
<th>Total number[1]</th>
<th>Admissible</th>
<th>Inadmissible</th>
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</thead>
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<td>318</td>
</tr>
<tr>
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<td>1 021</td>
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<td>354</td>
</tr>
<tr>
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<td>526</td>
</tr>
<tr>
<td>2008</td>
<td>1 849</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2009</td>
<td>1 924</td>
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<td>816</td>
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</tr>
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<td>1 406</td>
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<tr>
<td>2014</td>
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<td>1 630</td>
<td>1 083</td>
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<tr>
<td>2015</td>
<td>1 431</td>
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<td>483</td>
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Main subjects of petitions

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<th>%</th>
<th>Subject matter</th>
<th>Number of petitions</th>
<th>2014</th>
<th>%</th>
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<td>Justice</td>
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<td>8.3</td>
<td></td>
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<td></td>
<td>Environment</td>
<td>284</td>
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<td></td>
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<td></td>
<td>Health</td>
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<td></td>
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<td>Social affairs</td>
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Number of petitions by country

<table>
<thead>
<tr>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
</table>

[1]The sum of admissible and inadmissible petitions sometimes differs from the total number of petitions submitted as a decision on admissibility may not yet have been taken on some petitions.
<table>
<thead>
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<th>Country</th>
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<th>%</th>
<th>Country</th>
<th>Number of petitions</th>
<th>%</th>
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<td>9.3</td>
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<td>7.9</td>
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<td>Romania</td>
<td>199</td>
<td>6.3</td>
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<td>Poland</td>
<td>57</td>
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<td>United Kingdom</td>
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Format of petitions

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<th>Format of petition</th>
<th>2014</th>
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</table>

Ottavio Marzocchi
10/2017
6 - EUROPEAN CITIZENS’ INITIATIVE - [4.1.5.]

The European Citizens’ Initiative (ECI) is an important instrument of participatory democracy in the European Union, allowing one million EU citizens residing in at least one quarter of the Member States to invite the Commission to submit a proposal for a legal act to implement the EU Treaties. Since the application of Regulation (EU) No 211/2011 establishing detailed procedures and conditions for the ECI, four initiatives have been successfully submitted to the Commission.

LEGAL BASIS

— Article 11(4) of the Treaty on European Union (TEU);
— Article 24(1) of the Treaty on the Functioning of the European Union (TFEU);
— Regulation (EU) No 211/2011;

BACKGROUND

Citizens’ initiatives are instruments available to citizens in a majority of the Member States, be it at national, regional or local level, although they differ considerably in scope and procedure. The concept of EU citizenship, from which the European Citizens’ Initiative (ECI) was derived, was first introduced in the Maastricht Treaty (1.3.1). Back in 1996, in the run-up to the Amsterdam Intergovernmental Conference, the Austrian and Italian foreign ministers proposed that a right to submit such initiatives be introduced alongside the right to petition the European Parliament, but the proposal was not retained by the Conference. Provisions for a citizens’ initiative very similar to the current regime were originally included in the draft Constitutional Treaty (Article 47(4)). Although the Convention Praesidium rejected the inclusion of these provisions in the final text, concerted efforts on the part of civil society organisations allowed them to be maintained. Following the failure of the ratification process for the Constitutional Treaty, similar provisions were reinserted during the drafting of the Lisbon Treaty.

Today, the right to submit a citizens’ initiative is enshrined under Title II TEU (provisions on democratic principles). Article 11(4) TEU establishes the basic framework for that right, and Article 24(1) TFEU sets out the general principles for a regulation defining concrete procedures and detailed conditions. The proposal for a regulation was the result of an extensive consultation[1]. Negotiation and settlement of the final text took several months — a draft proposal was submitted to Parliament and the Council on 31 March 2010, and a political agreement was reached on 15 December 2010, enabling formal adoption of the text by Parliament and the Council on 16 February 2011. As Regulation (EU) No 211/2011, it entered into force on 1 April 2011. Owing to a number of technical adaptations needed at Member State level to establish a streamlined verification process, the ECI Regulation only became applicable a year later. By 1 April 2015, and by the same date every three years thereafter, the Commission is required to present a report on the application of the ECI Regulation with a view

to its possible revision. The Commission adopted such report on 31 March 2015 as COM(2015) 0145. This communication provided a state of play and assessment of the implementation of the ECI and spelled out a list of challenges identified after the first three years of implementation of this new legislative and institutional framework. It highlighted a number of shortcomings and also took into account some of the substantive research carried out for the European Parliament[2].

The right to submit an ECI should be clearly separated from the right to submit a petition, a procedure from which it differs in many substantial respects. Petitions can be submitted by EU citizens or by natural or legal persons having their residence in the EU (4.1.4), and must address matters that fall within a field of activity of the EU and affect the petitioner directly. Petitions are addressed to Parliament in its capacity as the direct representative of the citizens at EU level. An ECI is a direct call for a specific EU legal instrument, must abide by specific rules in order to qualify, and is ultimately addressed to the Commission, which alone among the institutions has the right to submit legislative proposals. In this respect, the ECI is similar in nature to the right of initiative conferred on Parliament (Article 225 TFEU) and on the Council (Article 241 TFEU).

PROCEDURE

A. Citizens’ committee

As a minimum organisational structure is needed for an initiative of such magnitude, the first step in the creation of an ECI is the establishment of an organising committee, called a ‘citizens’ committee’. This committee must be formed by at least seven people who are residents of at least seven different Member States (but not necessarily of different nationalities) and who are of age to vote in the European elections. The committee must name a representative and a substitute to act as contact people for the specific ECI.

B. Registration

Before it can start collecting statements of support from citizens, the committee must register the initiative with the Commission. This involves submitting a document giving the title and subject matter and a short description of the initiative, outlining the legal basis proposed for legal action and providing information on the committee members and on all sources of support and funding for the proposed initiative. The organisers may provide more detailed information and other material, such as a draft of the proposed legislative document, in an annex.

The Commission has two months to decide whether to register the proposed initiative. It will not be registered if the procedural requirements have not been met or if it falls outside the framework of the Commission’s powers to submit a proposal for a legal act for the purpose of implementing the Treaties. Registration will also be refused if the initiative is manifestly frivolous, abusive or vexatious, or is contrary to the values of the EU as set out in Article 2 TEU. The Commission’s decision is open to judicial or extrajudicial redress. Registered initiatives are published on the Commission’s web portal.

C. Collection of statements of support

Once the initiative is registered, the organisers can start collecting statements of support. This must be done within 12 months. Statements of support can be collected on paper or electronically. If they are collected electronically, the online collection system must first be certified by the relevant national authorities. Detailed rules for the technical specifications of online collection systems are laid down in a Commission implementing regulation (Regulation (EU) No 1179/2011).

Regardless of whether the statements of support are collected on paper or electronically, the same data requirements apply for the purpose of verification. These requirements, defined at Member State level, are spelled out in Annex III to Regulation (EU) No 211/2011. Nine Member States[^3] do not require signatories of statements of support to provide personal identification documents or numbers. All other Member States do require such identification. The annex specifies, for each Member State in which they are required, the types of personal identification document that may be used.

In order to be considered by the Commission, the ECI must gather one million statements of support within 12 months. Also, in order for it to qualify in a given Member State, the number of signatories in that Member State must be at least 750 multiplied by the number of MEPs elected from that Member State. In this way, the minimum number of signed statements of support is determined according to the same system of degressive proportionality used to determine the distribution of seats in the European Parliament among the Member States.

D. Verification and certification

Having collected the necessary number of statements of support from a sufficient number of Member States, the organisers must submit them to the competent national authorities[^4], which are tasked with certifying the statements of support compiled by the Commission on the basis of information communicated by the Member States. The authorities given this task are typically interior ministries, electoral commissions or population registries. The national authorities have three months to certify the statements of support, but are not required to authenticate the signatures.

E. Submission and examination

At this stage, the organisers are asked to submit relevant certificates from the national authorities concerning the number of statements of support, and must provide information about funding received from any source, abiding by the thresholds set out in Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding. In principle, contributions above EUR 500 must be declared.

Having received the submission, the Commission is required to publish it without delay in a register, and to receive the organisers at the appropriate level to allow them to explain the details of their request. After an exchange of views with the Commission, the organisers are given an opportunity to present the initiative at a public hearing held at the European Parliament. The hearing is organised by the committee responsible for the subject matter of the ECI (Rule 211 of Parliament’s Rules of Procedure).

[^3]: Belgium, Denmark, Germany, Estonia, Finland, Ireland, the Netherlands, Slovakia and the United Kingdom.
[^4]: A list of the competent national authorities may be found at: http://ec.europa.eu/citizens-initiative/public/authorities-verification
CURRENT INITIATIVES

Several organisations had attempted to launch initiatives similar to the ECI before this instrument was adopted in law and detailed procedures were established. In 2007, the European Disability Forum launched one of the first such pilot initiatives, in which it claimed to have collected 1.2 million signatures. After the ECI Regulation was adopted in 2010, but before it had entered into force, Greenpeace claimed to have received 1 million signatures calling for a moratorium on GMO crops. However, neither of these initiatives can be counted as an ECI.

Since 1 April 2012, over 68 ECIs have been launched. Of these, 21 were refused registration in principle on the grounds that they fall outside the scope of the Commission’s competence to propose an act, and 14 were withdrawn by their organisers. There are currently eight initiatives registered, which are now at the collection phase. To date, only four initiatives have reached the requisite number of signatures (Right2Water, One of Us, Stop Vivisection and Ban Glyphosate) and have been submitted to the Commission, whereof only one, Ban Glyphosate, has been submitted since 2014. Parliament organised hearings with the representatives of each initiative, which were held on 17 February 2014, 10 April 2014, 24 April 2015 and 20 November 2017, respectively. The Commission provided a reply setting out its legal and political conclusions with regard to all four of them. Six ECIs have been subject to legal action before the General Court of the EU, which found in its most recent judgment, T-646/13 ‘Minority SafePack v Commission’, that the Commission failed to comply with its obligation to explain in detail and justify its reasons to refuse to register an ECI, and in judgment T-754/14 ‘Michael Efler and others v Commission’, on the ‘Stop TTIP’ initiative, the Court clarified that acts that can be subject to an ECI can extend to other acts such as decision to open trade negotiations.

ROLE OF THE EUROPEAN PARLIAMENT

The ECI instrument has been of major interest to Parliament. Before the entry into force of the Lisbon Treaty, Parliament adopted a resolution containing a detailed proposal for the implementation of the ECI. After the entry into force of the Treaty, Parliament was actively involved in the negotiation of the ECI Regulation. Parliament contributed successfully to making the ECI a more accessible and citizen-friendly instrument of participatory democracy. It obtained, inter alia, a reduction in the minimum number of Member States from which the statements of support have to come to one quarter; it insisted that the verification of admissibility must be carried out at the pre-registration stage; and it pressed for the provisions allowing all EU citizens and residents, regardless of nationality, to be granted the right to sign an ECI.

Parliament made a number of political calls to simplify and streamline the procedures for running an ECI, as well as to enhance its impact. Parliament adopted a resolution on the ECI review process on 28 October 2015, calling inter alia for the revision of the regulation with a view to simplifying the personal data requirements and providing funding to support the organisation of ECIs. In 2017, the Committee on Constitutional Affairs launched an own-initiative legislative report aiming at such genuine revision of the ECI Regulation. In September 2017, based on Parliament’s requests and a public

consultation, the Commission eventually made a proposal for a new regulation on ECI[7] that would, inter alia, lower the voting age for signatories to 16 years, simplify the forms to collect support, allow all EU citizens to support an ECI regardless of their residence, and extend the time for the examination of an ECI. This proposal is currently under consideration in the Parliament.

Petr Novak
02/2018

THE EUROPEAN UNION AT A GLANCE

The aim of the Fact Sheets is to provide an overview of European integration and of the European Parliament’s contribution to that process.

Created in 1979 for Parliament’s first direct elections, the Fact Sheets are intended to provide non-specialists with a straightforward and concise – but also accurate – overview of the European Union’s institutions and policies, and of the role that Parliament plays in their development.

The Fact Sheets are grouped into six chapters:

• **How the European Union works**, which addresses the EU’s historical development, legal system, institutions and bodies, decision-making procedures and financing;

• **Citizens’ Europe**, which describes individual and collective rights;

• **The internal market**, which explains the principles and implementation of the internal market;

• **Economic and Monetary Union**, which outlines the context of EMU and explains the coordination and surveillance of economic policies;

• **Sectoral policies**, which describes how the EU addresses its various internal policies;

• **The EU’s external relations**, which covers foreign policy, security and defence, trade, development, human rights and democracy, enlargement and relations beyond the EU’s neighbourhood.

Drafted by the Policy Departments and the Economic Governance Support Unit, the Fact Sheets are reviewed and updated at regular intervals throughout the year, as soon as Parliament adopts any important positions or policies.


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