



THE CITIZENS OF THE UNION AND THEIR RIGHTS

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 of access to documents of the Union's institutions, bodies, offices and agencies. Article 16 of the TFEU enshrines the right to the protection of personal data ([4.2.8](#)). Article 2 of the TEU provides that 'the Union is founded 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 ([1.1.4.](#)) 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 activated 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 of the Opinion):

'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.'

If the UK leaves the EU, a decision on the acquired rights of British nationals resident in Member States, and of EU citizens living in the UK, would have 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 case-law of the CJEU (*Van Gend & Loos*). Limits of that legal heritage could be seen as resting with the national law that gives them effect. 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 and the right to apply to the Ombudsman (both Article 24 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 MEPs), 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, the fourth paragraph of Article 263 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 them, and against a regulatory act which is of direct concern to them 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)).

On the controversial issue of 'golden visas', whereby some Member States are selling their national citizenship, and hence EU citizenship, in order to attract foreign investors, Parliament asserted in a [resolution of 16 January 2014](#) that the values and achievements associated with EU citizenship cannot have a 'price tag' attached.

Udo Bux
05/2019

