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FREMP 7	COPEN 19
JAI 62	EJUSTICE 9
COHOM 7	FRONT 32
CATS 8	GENVAL 7
CULT 8	INF 8
EDUC 19	DAPIX 32
EMCO 2	SAN 43
SOC 44	ANTIDISCRIM 5
COSI 13	DROIPEN 9
VISA 29	TELECOM 19
SCHENGEN 4	TRANS 25
COMPET 47	JEUN 9
COCON 3	JUSTCIV 15

#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 24 January 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS UNDER  
ARTICLE 25 TFEU On progress towards effective EU citizenship 2013-  
2016

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Delegations will find attached document COM(2017) 32 final.

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Brussels, 24.1.2017  
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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**UNDER ARTICLE 25 TFEU  
On progress towards effective EU citizenship 2013-2016**

## **1. INTRODUCTION**

Article 25 of the Treaty on the Functioning of the European Union (TFEU) requires the Commission to report to the European Parliament, the Council and the Economic and Social Committee every three years on the application of the provisions (in Part Two of the Treaty) on non-discrimination and citizenship of the Union.<sup>1</sup> This eighth report presented pursuant to Article 25 TFEU covers the period from **1 January 2013 to 30 June 2016**.<sup>2</sup>

This report reviews the provisions in Part II TFEU regarding Union citizenship, non-discrimination, free movement and residence in the territory of the Member States, the right to vote and stand as a candidate at municipal and European Parliament elections in the Member State of residence, the right to consular protection, the right to petition the European Parliament and the right to take complaints to the Ombudsman. The report accompanies the EU Citizenship Report – Strengthening citizens’ rights in a Union of democratic change.

## **2. NON-DISCRIMINATION ON GROUNDS OF NATIONALITY (ARTICLE 18 TFEU)**

Article 18 TFEU<sup>3</sup> prohibits discrimination on grounds of nationality within the scope of application of the Treaties.<sup>4</sup>

In *Rüffer*<sup>5</sup> the Court of Justice of the European Union (the Court) clarified that Articles 18 and 21 TFEU (on free movement) preclude national rules which, in any legal proceedings brought before the courts of a specific territorial entity in a Member State, grant the right to use a language other than the official language only to citizens of that State domiciled in that territorial entity.

## **3. COMBATING DISCRIMINATION ON THE BASIS OF SEX, RACIAL OR ETHNIC ORIGIN, RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION (ARTICLE 19 TFEU)**

### **3.1. Introduction**

Article 19 TFEU stipulates that appropriate action may be taken by the EU to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.<sup>6</sup>

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<sup>1</sup> The annual reports on the application of the Charter of Fundamental Rights of the European Union include updates on progress with respect to Union citizenship rights.

<sup>2</sup> Judgments of the Court of Justice of the European Union issued since 30 June 2016 will be considered in the next Report under Article 25 TFEU.

<sup>3</sup> See also Article 21(2) of the Charter of Fundamental Rights.

<sup>4</sup> This provision is without prejudice to special provisions in the Treaties.

<sup>5</sup> Case C-322/13 *Grauel Rüffer*. The case concerned the use of German before the civil courts in the Italian Province of Bolzano.

<sup>6</sup> See also Article 21(1) of the Charter of Fundamental Rights.

In January 2014 the Commission jointly reported<sup>7</sup> on the implementation of the Racial Equality Directive<sup>8</sup> and the Employment Equality Directive.<sup>9</sup> It concluded that all Member States had transposed the Directives, that the main remaining challenges were to raise awareness of the protection in place and to improve implementation and application in practice, and it underlined that strengthening the role of national equality bodies could be crucial to this.

In May 2015 the Commission reported<sup>10</sup> on the implementation of the Directive on Gender Equality<sup>11</sup> as regards access to goods and services. The report concluded that all Member States had taken measures to transpose the Directive and establish the procedures and bodies for its implementation, and that the main challenge was to determine how Member States ensure that their administrative and judicial authorities and equality bodies systematically provide victims with full protection in practice.

In December 2015 the Commission published a list of actions to advance LGBTI equality.<sup>12</sup>

The Commission supports equal treatment of the Roma, the largest ethnic minority in the EU. In 2013 following a Commission initiative, the Council adopted a recommendation on effective Roma integration measures in the Member States.<sup>13</sup>

The Commission published annual assessment reports on the implementation of the EU Framework for National Roma Integration Strategies<sup>14</sup> based on information from each Member State, NGOs, international organisations and the EU Fundamental Rights Agency (FRA).

### 3.2. Case law developments

In three rulings the Court interpreted the Employment Equality Directive as applied to the prohibition of discrimination based on sexual orientation and the notion of disability.

In *Accept*<sup>15</sup> the Court considered that a ‘patron’ of a football club’s public statement that he would never hire a homosexual player could establish a *prima facie* presumption of discrimination based on sexual orientation. To rebut this presumption, the football club, as an employer, was not required to prove it had recruited persons with a particular sexual orientation, since this would interfere with the right to privacy, but could refer, for example,

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<sup>7</sup> COM(2014) 2 final.

<sup>8</sup> Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, pp. 22–26.

<sup>9</sup> Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16–22.

<sup>10</sup> COM(2015) 190 final.

<sup>11</sup> Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, pp. 37–43.

<sup>12</sup> [http://ec.europa.eu/justice/discrimination/files/lgbti\\_actionlist\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/lgbti_actionlist_en.pdf)

<sup>13</sup> Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States (2013/C 378/01).

<sup>14</sup> The last report (COM(2016) 424 final of 27/6/2016) provides, for the first time, an overview of the measures put in place by Member States following the 2013 Council Recommendation on effective Roma integration measures in the Member States of 9 December 2013.

<sup>15</sup> Case C-81/12 *Asociația ACCEPT* (“Becali”).

to equality provisions regarding its recruitment policy, or to having clearly distanced itself from the statement.

In *Kaltoft*<sup>16</sup> the Court refused to accept that EU law could be interpreted as laying down a general principle of non-discrimination on grounds of obesity in employment and occupation. However, the notion of disability in the Employment Equality Directive must be interpreted as meaning that the obesity of a worker constitutes a ‘disability’ where it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.

Moreover, in *Nikolova*<sup>17</sup> the Court ruled that the prohibition of discrimination on the grounds of ethnic origin in the Racial Equality Directive could protect a claimant who was not of Roma origin, where the measure in question affected both persons of Roma origin and others who also lived in the same area and were affected by the measure.

## **4. CITIZENSHIP OF THE UNION (ARTICLE 20(1) TFEU)**

### **4.1. Introduction**

Article 20 TFEU provides that any person who holds the nationality of an EU country is also a citizen of the Union. Union citizenship is additional to and does not replace national citizenship. While it is for each Member State to lay down conditions for the acquisition and loss of nationality, with due regard to Union law,<sup>18</sup> granting the nationality of a Member State also entails granting EU citizenship and the rights that go with it, which can be exercised throughout the Union. Therefore, the Commission considers that Member States should use their prerogative of awarding citizenship in a spirit of sincere cooperation, as the Treaties require.

Against this background, the Commission looked into national ‘investor schemes’ granting citizenship rights to non-EU nationals in return for investment. Most Member States operate schemes allowing investors who are non-EU nationals to reside in their territory.

The Commission intervened in one Member State, which had granted citizenship to investors in return for investment alone. The Member State amended its scheme to add a requirement for a year’s effective residence before obtaining citizenship.<sup>19</sup> The Commission is in dialogue with another Member State which grants citizenship in return for investment alone.

In the reporting period, the Commission dealt with 14 complaints, 56 letters/individual queries, 23 questions and 7 petitions from the European Parliament in this area, mainly related to information on how to obtain Member State nationality and the nature of EU citizenship. They also concerned how Member States should exercise their competence to grant their nationality with due regard to EU law.

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<sup>16</sup> Case C- 354/13 *Kaltoft*.

<sup>17</sup> Case C-83/14 *Chez*.

<sup>18</sup> Case C-135/08 *Rottmann*.

<sup>19</sup> [http://europa.eu/rapid/press-release\\_SPEECH-14-18\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-18_en.htm)

## 4.2. Case-law developments

In *Aloka*<sup>20</sup> the Court stated that non-EU citizens who are the primary carers of an EU citizen child can reside with their child in the host Member State by virtue of Article 20 TFEU if such a refusal would deprive that EU citizen of effective enjoyment of the substance of the rights conferred by virtue of the status of EU citizenship.

## 5. RIGHT TO MOVE AND RESIDE FREELY IN THE TERRITORY OF THE MEMBER STATES (ARTICLES 20(2)(A) AND 21 TFEU)

### 5.1. Introduction

Under Articles 20(2)(a) and 21 TFEU, Union citizens are entitled to move and reside freely in the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and measures adopted to give them effect.

Most citizens view this right as one of the main benefits of EU membership.<sup>21</sup> An absolute majority of Europeans across all EU Member States think that free movement of people within the EU brings overall benefits to the economy of their country.<sup>22</sup>

In 2015, more than 15 million EU citizens were living or working in an EU country other than their country of citizenship. A far larger number of EU citizens made temporary visits to other Member States for holidays, visits to friends and family and for business.

In the reporting period, the Commission dealt with 613 complaints from citizens, 309 letters/individual queries, 75 questions and 46 petitions from the European Parliament on the exercise of the right to free movement. Many concerned the right of entry and residence of non-EU family members of EU citizens (conditions for issuing visas and residence cards, additional formalities) and the conditions under which EU citizens can exercise their right to free movement.

Mobile EU citizens who encounter instances of incorrect application of EU law can get help from SOLVIT,<sup>23</sup> which has been established to react quickly and find solutions at national level. From 2013 to 2015, SOLVIT handled 979 cases on free movement of persons.<sup>24</sup>

EU citizens can also address the Commission's Europe Direct<sup>25</sup> (EDCC) portal, which provides European citizens with general information on the EU and advice on Union citizens' rights. In the reporting period, EDCC received a total of 14,549 enquiries on the free movement of persons.

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<sup>20</sup> Case C-86/12 *Aloka and others*.

<sup>21</sup> 57% of respondents to the Standard Eurobarometer 83, May 2015.

<sup>22</sup> 71% of respondents to the Flash Eurobarometer 430 on EU citizenship, October 2015.

<sup>23</sup> SOLVIT is a service provided by national administrations throughout the EU and the EEA. National SOLVIT centres take on board citizens' complaints and cooperate via an online database to help citizens solve their problems out of court and free of charge.

<sup>24</sup> [http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/solvit/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm)

<sup>25</sup> <http://europa.eu/contact/>

## 5.2. Case-law developments

The Court has interpreted the right to free movement in a number of recent judgments. In particular, it has further clarified how the right to free movement applies to certain cases involving economically inactive EU citizens, EU citizens looking for a job and third country family members of EU citizens.

### 5.2.1 Access to benefits and/or social assistance by economically inactive EU citizens

The Court ruled in *Brey*<sup>26</sup> that EU law does not preclude national legislation from making the grant of social assistance benefits to an economically inactive EU citizen subject to meeting the conditions for enjoying a right of residence in the host Member State set out in the Free Movement Directive.<sup>27</sup> However, the Directive requires Member States to show a certain degree of financial solidarity, particularly in case of temporary difficulties, and therefore not to deny *automatically* social assistance benefits to EU citizens who encounter temporary difficulties *while legally residing in another Member State*. The host Member State must take into account all the circumstances of the individual case to assess whether the inactive EU citizen has become an unreasonable burden on its social assistance system.

In *Dano*<sup>28</sup> the Court reviewed the case of an economically inactive EU citizen who did not fulfil the conditions set out in the Free Movement Directive (having sufficient resources) to claim a right of residence upon arriving in the territory of the host Member State. The Court held that national legislation which precludes granting special non-contributory cash benefits constituting social assistance benefits to nationals of other Member States in that situation complies with EU law. In order to determine whether an economically inactive EU citizen has sufficient resources, the financial situation of each person should be examined specifically, without taking into account the social benefits claimed.

### 5.2.2 Access to social assistance by jobseekers

In *Alimanovic*<sup>29</sup> the Court held that jobseekers from another Member State who worked in another Member State for less than a year and then looked unsuccessfully for work for the following six months, would retain their worker status for no less than six months – during which, they benefit from equal treatment and entitlement to social assistance benefits. After that period, the host Member State may withdraw such benefits, without individual examination.

In *García-Nieto*<sup>30</sup> the Court clarified that job-seekers from other Member States can be excluded from social assistance during the first three months of their job search, without individual examination unless they have previously worked in the host Member State (first-time jobseekers).

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<sup>26</sup> Case C-140/12 *Brey*.

<sup>27</sup> Article 7(1)b of Directive 2004/38/EC on the right of the citizens of the Union and their family members to move freely and reside freely within the territory of the Member States (the Free Movement Directive).

<sup>28</sup> Case C-333/13 *Dano*, see paragraphs 78-79.

<sup>29</sup> Case C-67/14 *Alimanovic*.

<sup>30</sup> Case C-299/14 *García-Nieto and Others*.

### 5.2.3 Residence of non-EU family members of EU citizens in the host Member State

The Court clarified specific aspects of the right of residence of non-EU nationals who are family members of Union citizens in the host Member State.

In *Aloka*<sup>31</sup> the Court stated that non-EU citizens who are the primary carers of an EU citizen child can reside with their child in the host Member State by virtue of Article 21 TFEU in so far as the EU citizen satisfies the conditions set out in the Free Movement Directive.

In *McCarthy*<sup>32</sup> the Court ruled that a Member State cannot require a non-EU family member of an EU citizen in possession of a residence card issued by another Member State<sup>33</sup> first to obtain a visa to enter its territory.

### 5.2.4 Residence of non-EU family members of an EU citizen's in the Member State of nationality of that EU citizen

The Court further clarified the conditions under which non-EU family members of EU citizens may enjoy a *derived* right of residence in the citizens' Member States of nationality when the citizens return with their family member after having genuinely and effectively exercised their right to free movement.

In *S and G*<sup>34</sup> the Court ruled that EU citizens who reside in the Member State of their nationality but commute regularly for work reasons to another Member State fall within the scope of Article 45 TFEU and thus exercise their right to free movement as workers. A non-EU family member derives a right of residence in the home Member State of an EU citizen who is resident in that Member State but regularly travels to another Member State to work, if refusal to grant such a right would discourage the commuting EU citizen from effectively exercising his right to free movement as a worker.

In *O and B*<sup>35</sup> the Court ruled that where citizens exercise their right to free movement under Article 21 TFEU, their 'genuine residence' in the host Member State creates on their return a derived right of residence (on the basis of Article 21 TFEU) for the non-EU national with whom they lived as a family member. In principle, this is where the EU citizen and the non-EU family member have resided in the host Member State for at least three months in accordance with the conditions set out in the Free Movement Directive<sup>36</sup> and in doing so have created or strengthened their family life in that country.

### 5.2.5 Residence of former family members of EU citizens

The Court also ruled on cases of divorce between an EU citizen and a non-EU national who had been residing in a Member State. In *Singh*<sup>37</sup> an EU citizen left the host Member State before commencing divorce proceedings, while the non-EU national spouse stayed behind.

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<sup>31</sup> Case C-86/12 *Aloka and others*.

<sup>32</sup> Case C-202/13 *McCarthy*.

<sup>33</sup> Thereby fulfilling the conditions set out in the Free Movement Directive.

<sup>34</sup> Case C-457/12 *S and G*.

<sup>35</sup> Case C-456/12 *O and B*.

<sup>36</sup> Articles 7 or 16 of the Free Movement Directive.

<sup>37</sup> Case C-218/14 *Singh*.



The Court ruled that the latter retains a right of residence only where this existed at the time the divorce proceedings were launched. This interpretation was confirmed in *NA*.<sup>38</sup>

### 5.2.6 Refusal to recognise names of mobile EU citizens

In *Bogendorff von Wolffersdorff*<sup>39</sup> the Court found that the refusal by the German authorities to recognise freely chosen forenames and surname legally acquired in the UK by a dual German–UK national but which include several tokens of nobility, constitutes a restriction on the freedom to move and reside across the EU. However, the Court ruled that the restriction could be justified on public policy grounds in that case, if it is appropriate and necessary to ensure the principle of equality before the law (in Germany), and provided detailed guidance to help the national court weigh the facts and law.

## 5.3. Commission action

### 5.3.1 Support for Member States and citizens

The Commission developed several tools to inform citizens and national authorities about free movement rights and how to apply them correctly. In particular, it is launching an **e-learning tool** to help national administrations dealing with EU citizens understand and apply free movement rules better.<sup>40</sup>

In 2014 the Commission adopted a Communication, *Helping national authorities fight abuses of the right to free movement*,<sup>41</sup> and a *Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens*,<sup>42</sup> the main purpose of which was to help national authorities to combat potential abuse of the right to free movement.

The Commission also continued its work with Member State experts in its *group of experts on the right to free movement of persons*, to identify difficulties and clarify issues of interpretation of EU law on free movement of EU citizens, as well as to share information on abuse and fraud and exchange best practices.

In 2013 and 2014 two studies evaluated how EU free movement rules are applied on the ground and their impact at local level<sup>43</sup> and a conference was held in February 2014 to discuss the impact of EU mobility at local level and exchange best practices.<sup>44</sup>

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<sup>38</sup> Case C-115/15 *Secretary of State for the Home Department v NA*.

<sup>39</sup> Case C-438/14 *Bogendorff von Wolffersdorff*.

<sup>40</sup> The tool will be made available in all official languages. National administrations will also be able to add information they consider relevant concerning their national rules.

<sup>41</sup> COM(2014) 604 final.

<sup>42</sup> SWD(2014) 284 final.

<sup>43</sup> Evaluation of EU rules on free movement of EU citizens and their family members and their practical implementation (October 2013)

[http://ec.europa.eu/justice/citizen/document/files/evaluation\\_of\\_eu\\_rules\\_on\\_free\\_movement-final\\_report.pdf](http://ec.europa.eu/justice/citizen/document/files/evaluation_of_eu_rules_on_free_movement-final_report.pdf)

Evaluation of the impact of the free movement of EU citizens at local level (January 2014)

[http://ec.europa.eu/justice/citizen/files/dg\\_just\\_eva\\_free\\_mov\\_final\\_report\\_27.01.14.pdf](http://ec.europa.eu/justice/citizen/files/dg_just_eva_free_mov_final_report_27.01.14.pdf)

<sup>44</sup> <http://ec.europa.eu/justice/events/intra-eu-mobility-2014/>

In November 2013 the Commission adopted a Communication on *Free movement of EU citizens and their families: five actions to make a difference*,<sup>45</sup> which explains the rights and obligations attached to free movement, sets out the conditions and limitations under EU law and addresses concerns raised by some Member States. The ‘five actions’ are designed to help Member States apply EU laws and tools to exploit their full potential, including by means of the full use of EU structural and investment funds.

In 2013 the Commission published user-friendly information in this field in *Freedom to move and live in Europe: a guide to your rights as an EU citizen*.<sup>46</sup>

### 5.3.2 Issues relating to the application of free movement rights

The Commission continued actively to ensure the effective transposition of free movement rights by all Member States. It identified and raised a number of issues, the vast majority of which Member States clarified or solved by amending their laws, or committing themselves to doing so.

By the end of 2013 the Commission had closed infringement proceedings against four Member States.<sup>47</sup> In 2014 and 2015 five others<sup>48</sup> adopted new legislation. The Commission remains in dialogue with them to ensure that outstanding concerns are properly addressed.

The main issues raised in the proceedings concern the rights of entry and residence for non-EU family members of Union citizens, including same-sex spouses or partners,<sup>49</sup> in particular the conditions for issuing visas and residence cards to non-EU family members, and the material and procedural safeguards against the expulsion of EU citizens.

The Commission continued its work to uphold EU citizens’ rights to non-discrimination and to dismantle obstacles to free movement in cases relating to the recognition, in one Member State, of personal names attributed or changed under the law of another Member State. In 2014 Belgium adopted a new law amending its Civil Code in response to points raised by the Commission. This allows parents to give a newly-born or adopted child the name of the father or the mother, or both.

The Commission continues to monitor implementation of free movement rules and works with the Member States concerned to tackle outstanding issues.

### 5.3.3 Other Commission actions or initiatives to facilitate the exercise of free movement rights<sup>50</sup>

- (a) Facilitating the free circulation of public documents

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<sup>45</sup> COM(2013) 837 final.

<sup>46</sup> [http://ec.europa.eu/justice/citizen/document/files/guide-free-mo-2013\\_en.pdf](http://ec.europa.eu/justice/citizen/document/files/guide-free-mo-2013_en.pdf)

<sup>47</sup> Cyprus, Italy, Malta and Spain.

<sup>48</sup> Belgium, Germany, Poland, Sweden and the UK.

<sup>49</sup> See also the annual report on the application of the EU Charter of Fundamental Rights.

<sup>50</sup> Not all the actions covered by this section constitute application of the provisions of Part II of the TFEU. However, they are referred to in this section as they all facilitate the exercise of free movement rights.

Europeans who live in another EU country or simply want to benefit from a right or comply with an obligation in another EU country may need to present a public document. Following a proposal<sup>51</sup> in 2013 by the Commission, *Regulation (EU) 2016/1191 to improve the circulation of public documents* was adopted in 2016.

(b) Making the life of crossborder families easier

The *Succession Regulation*<sup>52</sup> adopted in 2012, applicable on 17 August 2015, simplifies international successions (i.e. successions with cross-border elements: e.g. the deceased lived in a country other than that of his/her origin or had property in several countries or the heirs of the deceased live in a different country). The Regulation determines the Member State responsible for dealing with the succession, the applicable national law, enforcement and proof across the European Union through the European Certificate of Succession. In 2014 the Commission adopted a Regulation<sup>53</sup> implementing the Succession Regulation by establishing a number of forms, in particular the European Certificate of Succession form.

On divorce and legal separation, the Regulation determining which country's rules should apply to an international divorce or legal separation<sup>54</sup> now applies in 16 Member States. The Regulation was adopted in 2010 in the context of enhanced cooperation by 14 Member States.<sup>55</sup> Lithuania joined as from 2014<sup>56</sup> and Greece as from 2015.<sup>57</sup> Citizens living in these 16 Member States can choose that the law applicable to their divorce or legal separation should be the law of the country where they habitually reside or where they last habitually resided, or the country of nationality of either spouse or of the country where divorce or legal separation proceedings are being handled.

On matrimonial and parental responsibility matters, the Commission adopted in 2014 an evaluation report on the application of the so-called Brussels IIa Regulation<sup>58</sup>, after almost 10 years of application. The Commission followed it up by proposing, on 30 June 2016, changes to the Brussels IIa Regulation to improve the EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction. The proposed revisions are expected to reduce costs, result in more efficient

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<sup>51</sup> COM (2013) 228 final.

<sup>52</sup> Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012, pp. 107–134.

<sup>53</sup> Commission Implementing Regulation 1329/2014 establishing the Forms referred to in Regulation 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 359, 16.12.2014, pp. 30–84.

<sup>54</sup> Council Regulation (EU) 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343, 29.12.2010, pp. 10–16.

<sup>55</sup> Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia.

<sup>56</sup> Commission Decision 2012/714/EU confirming the participation of Lithuania in enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 323, 22.11.2012, pp. 18–19.

<sup>57</sup> Commission Decision 2014/39/EU confirming the participation of Greece in enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 23, 28.1.2014, pp. 41–42.

<sup>58</sup> Council Regulation 2201/2003/EC concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000/EC, OJ L 338, 23.12.2003, p. 1-29.

proceedings subject to clearer rules.<sup>59</sup> The Commission also published an updated Practice Guide for citizens and legal practitioners on the application of this Regulation, which determines what Member State courts should deal with a divorce, legal separation or marriage annulment and with matters of parental responsibility such as custody, access rights and child abduction, in cross-border circumstances.<sup>60</sup>

On family mediation, the Commission launched in 2015 on the European e-Justice portal a section dedicated to cross-border family mediation. The aim of this section is to promote the use of mediation.

(c) Making the exercise of free movement rights more effective for workers

In April 2014, a Directive to improve enforcement of workers' rights<sup>61</sup> was adopted following a proposal made by the Commission in April 2013.<sup>62</sup> It requires Member States to ensure that one or more bodies at national level is responsible for advising and providing support and assistance to EU migrant workers, including jobseekers, with the enforcement of their rights. Member States can also extend the competence of these bodies for all EU citizens exercising their right to free movement. It also aims to improve accessibility to comprehensive, up-to-date information at national and EU-level on the rights of mobile workers.

Also in April 2014, the adoption of the Directive on portability of supplementary pension rights<sup>63</sup> is an important step for the safeguarding of the supplementary pension rights of persons exercising their right to free movement.

Following a proposal by the Commission,<sup>64</sup> a new EURES Regulation was adopted in April 2016<sup>65</sup>. It aims to give workers and employers easy access to all European job vacancies and applications/CVs online (EURES portal), clear information on where and how to find jobs in other EU countries, and minimum support services for jobs seeking. It also aims to improve the exchange of information between Member States on labour market shortages and surpluses to support a better coordinated intra-EU matching.

The Directive on the enforcement of the posting of workers Directive<sup>66</sup> has provided for new and strengthened instruments to fight and sanction circumvention of rules, fraud and abuses. It addresses problems caused by some companies and increases the Member States' ability to monitor working conditions and enforce the rules. On 8 March 2016, the Commission

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<sup>59</sup> [http://europa.eu/rapid/press-release\\_MEMO-16-2359\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-2359_en.htm)

<sup>60</sup> [http://ec.europa.eu/justice/civil/files/brussels\\_ii\\_practice\\_guide\\_en.pdf](http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_en.pdf)

<sup>61</sup> Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, OJ L 128, 30.4.2014, pp. 8–14.

<sup>62</sup> COM(2013) 236 final.

<sup>63</sup> Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, OJ L 128, 30.4.2014, pp. 1–7.

<sup>64</sup> COM(2014) 6 final.

<sup>65</sup> Regulation (EU) 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013, OJ L 107, 22.4.2016, pp. 1–28.

<sup>66</sup> Directive 2014/67/EU concerning the posting of workers in the framework of the provisions of services, OJ L 159, 28.5.2014, pp. 11–31.

presented a proposal for a Directive amending the Directive on posting of workers,<sup>67</sup> to facilitate the provision of services across borders within a climate of fair competition and respect for the rights of posted workers who are employed in one Member State and sent to work temporarily in another by their employer, specifically by ensuring fair wage conditions and a level playing field between posting and local companies in the host country.

On the basis of a Commission proposal<sup>68</sup>, a European Platform was established<sup>69</sup> to tackle undeclared work in its various forms and falsely declared work associated with undeclared work, including bogus self-employment. The Platform was launched on 27 May 2016. Its activities may include the development of shared definitions and common concepts, exchange of evidence-based good practices, mutual learning, staff exchange and joint inspections on cross-border level.

## **6. RIGHT TO VOTE AND STAND AS A CANDIDATE IN MUNICIPAL AND EUROPEAN PARLIAMENT ELECTIONS (ARTICLES 20(2)(B) AND 22 TFEU)**

### **6.1. Introduction**

Under Articles 20(2)(b) and 22 TFEU, all Union citizens residing in a Member State of which they are not nationals are entitled to vote and to stand as candidates in European Parliament and municipal elections in their Member State of residence, under the same conditions as that state's nationals.

The Commission replied to 32 complaints, 71 letters/individual queries, 58 questions and 13 petitions from the European Parliament on these issues, primarily relating to 'disenfranchisement' and to the electoral rights of disabled persons. 'Disenfranchisement' in this context results from some Member States depriving their citizens of the right to vote in national elections once they have resided abroad, including in another Member State, for a given period. As a consequence, these citizens cannot participate in any national elections, whether in their home country or their Member State of residence.

### **6.2. Case-law developments**

In *Delvigne*<sup>70</sup> the Court was asked to examine whether it was contrary to European law for a French citizen who had been convicted of a serious crime to be permanently deprived of his right to vote in European elections. The judgment built on previous case law, in particular *Eman and Sevinge*<sup>71</sup> which established that it is for Member States to determine the franchise, but must respect EU law, including its general principles, in doing so. The Court clarified that national rules regulating the conduct of European elections must comply with the Charter of Fundamental Rights, including its Article 39(2), which guarantees EU citizens' right to vote in European elections. It ruled that in the case in question the withholding of

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<sup>67</sup> COM(2016) 128 final.

<sup>68</sup> COM (2014) 221 final.

<sup>69</sup> Decision 2016/344/EU on establishing a European Platform to enhance cooperation in tackling undeclared work, OJ L 65, 11.3.2016, pp. 12–20.

<sup>70</sup> Case C-650/13 *Delvigne*.

<sup>71</sup> Case C-300/04 *Eman and Sevinge*.

civic rights was proportionate, considering the seriousness of the person's crime and the fact that French law allows citizens to apply for reinstatement of their voting rights, and thus permitted.

### **6.3. Developments in the field of voting rights and action taken by the Commission**

In the reporting period, there were important developments as regards the right to vote and stand as a candidate in municipal and European Parliament elections.

#### *6.3.1 Promoting the 'lead candidates' system for the Commission Presidency and addressing the consequences of disenfranchisement*

On 12 March 2013 the Commission issued a *Recommendation on enhancing the democratic and efficient conduct of the European Parliament elections*,<sup>72</sup> against the background of the Lisbon Treaty, which strengthened the Parliament's role in relation to the Commission.<sup>73</sup> It called on European political parties to nominate candidates for the position of Commission President.

Two months before the 2014 European Parliament elections, the Commission issued a *preliminary report*<sup>74</sup> on the implementation of its Recommendation, reviewing its recommendation that European and national political parties identify, ahead of the elections, their candidate for the function of Commission President and outline the candidate's programme, and noting that six European political parties had acted on the Recommendation.

In parallel, the Commission continued its work with Member State experts in its *group of experts on electoral rights* to ensure the smooth conduct of the 2014 European Parliament elections, in particular by exchanging data and developing IT tools to prevent the double voting of EU citizens in these elections.

The *Report on the 2014 European Parliament elections*<sup>75</sup> highlighted that the direct link between the results of the elections and the choice of Commission President helped enhance the democratic legitimacy of the new Commission.

On 11 November 2015 the Parliament proposed a legislative initiative<sup>76</sup> to integrate the 'lead candidates' (*Spitzenkandidaten*) system into EU electoral law.

In January 2014 the Commission adopted a *Recommendation on addressing the consequences of disenfranchisement of Union citizens exercising their rights to free movement*.<sup>77</sup>

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<sup>72</sup> Recommendation 2013/142/EU on enhancing the democratic and efficient conduct of the elections to the European Parliament, OJ L 79, 21.3.2013, pp. 29–32.

<sup>73</sup> Article 17(7) TEU provides for the Parliament to elect the Commission President on the basis of a proposal by the European Council, which must take into account the results of the European elections.

<sup>74</sup> COM(2014) 196 final.

<sup>75</sup> COM(2015) 206 final.

<sup>76</sup> European Parliament Resolution of 11 November 2015 on the reform of the electoral law of the European Union (P8\_TA(2015)0395 – 2015/2035(INL)).

<sup>77</sup> The Commission is following developments in this field. Debate in some Member States is ongoing.

### 6.3.2 Issues addressed on the application of the right to vote and stand as candidate

To ensure that non-national EU citizens can found or become members of political parties in the host Member State, the Commission continued its infringement proceedings against seven Member States which did not allow this. In three cases, proceedings were closed after the Member States provided satisfactory clarifications on the existing legal framework<sup>78</sup> or adopted new legislation<sup>79</sup>. Proceedings are ongoing against four Member States<sup>80</sup>.

## 7. RIGHT TO PROTECTION BY DIPLOMATIC OR CONSULAR AUTHORITIES (ARTICLES 20(2)(C) AND 23 TFEU)

### 7.1. Introduction

Under Articles 20(2)(c) and 23 TFEU, EU citizens have the right to, in a territory of a non-EU country where their Member State of origin does not have representation, the protection of the diplomatic and consular authorities of any other Member State on the same conditions as that state's nationals. EU citizens are less aware of this right than of other Union citizenship rights.<sup>81</sup>

In the reporting period, the Commission replied to four complaints, ten letters/individual queries and three questions from the European Parliament on this issue. These related to the issuance of emergency travel documents to return home or the lack of or discriminatory consular protection.

### 7.2. Developments in the field of consular protection

In 2015 the Council adopted a *Directive to facilitate consular protection for unrepresented EU citizens abroad*<sup>82</sup> which establishes clear and legally binding rules on cooperation and coordination between Member States' consular authorities to ensure that unrepresented EU citizens in third countries can benefit from non-discriminatory consular protection from other Member States. Member States have until 1 May 2018 to transpose the Directive.

In 2015 the Commission set up an *expert group on consular protection* to discuss the implementation of Article 23 TFEU and of the Directive and exchange best practices with Member States' experts.

Several bilateral agreements<sup>83</sup> were negotiated between the EU and third countries containing *consular consent clauses* to give full effect to the right of unrepresented EU citizens to non-discriminatory consular protection.

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<sup>78</sup> Greece.

<sup>79</sup> Spain and Slovakia.

<sup>80</sup> Czech Republic, Latvia, Lithuania and Poland.

<sup>81</sup> Flash Eurobarometer 430 on Union citizenship.

<sup>82</sup> Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC, OJ L 106, 24.4.2015, pp. 1–13.

<sup>83</sup> Inter alia with Afghanistan, Australia, Canada, Cuba and New Zealand.

## **8. RIGHT TO PETITION THE EUROPEAN PARLIAMENT AND TO ADDRESS THE EUROPEAN OMBUDSMAN (ARTICLES 20(2)(D) AND 24(2), (3) AND (4) TFEU)**

### **8.1. Introduction**

Articles 20(2)(d) and 24(2), (3) and (4) TFEU refer to other rights entitling EU citizens to address the EU institutions, including the right to petition the European Parliament and the right to address the European Ombudsman. Every EU citizen is entitled to write to any of the institutions, bodies, offices or agencies in one of the EU's official languages<sup>84</sup> and receive an answer in the same language.<sup>85</sup>

### **8.2. Right to petition the European Parliament**

Under Article 24(2) TFEU, EU citizens have the right to petition the European Parliament, in any Treaty language, on Union matters that affect them and to obtain a reply in the same language. In the first half of 2016, the EP Committee on Petitions received 779 petitions. In 2015, the EP Committee on Petitions received 1400 petitions, down from 2714 in 2014 and 2891 in 2013. The most common issues attracting petitions were in the field of justice and fundamental rights, including Union citizenship and free movement, followed by issues relating to the environment and the internal market.

A 'petitions web portal'<sup>86</sup> has been available since 2014 to enable the user-friendly online submission of petitions. The portal also allows citizens to show online support for open petitions declared admissible. This online process has reduced the number of petitions by half by introducing filter questions to pre-screen petitions for admissibility.

### **8.3. Right to address the European Ombudsman**

Under Article 24(3) TFEU, EU citizens have a right to address the European Ombudsman, which deals with citizens' complaints about the EU institutions, bodies and agencies. Problems range from contractual disputes to violations of fundamental rights, lack of transparency in decision-making and refusal of access to documents.

In the reporting period, the Ombudsman's office registered 6 506 complaints and opened 953 cases. In each of the three years, the majority of complaints concerned an alleged lack of transparency. Compliance with the Ombudsman's suggestions rose from 80% in 2013 to 90% in 2014. The Ombudsman's office helped over 63300 citizens in the three-year period, by opening inquiries, answering requests for information or giving advice in its interactive online guide.

This core complaint-handling work was supplemented in 2013–2014 by strategic own-initiative inquiries, aimed at benefitting as many citizens as possible by examining issues which appear to be systemic, rather than one-off. Inquiries looked into how the European Citizens' Initiative functions (2013), transparency in the Transatlantic Trade and Investment Partnership negotiations (2014) and transparency in trilogues (2015) etc.

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<sup>84</sup> See Article 55(1) TEU.

<sup>85</sup> This provision is implemented all Union institutions, bodies, offices or agencies, as relevant to their work.

<sup>86</sup> <https://petiport.secure.europarl.europa.eu/petitions/en/main>



## 9. EUROPEAN CITIZENS' INITIATIVE (ARTICLE 24 TFEU; ARTICLE 11(4) TEU)

Under Article 11(4) Treaty on European Union (TEU), implemented by Regulation 211/2011/EU, a million or more citizens from at least seven Member States can come together to invite the Commission, in its areas of competence, to submit any appropriate proposal on matters they consider a Union act is needed to implement the Treaties.

Since Regulation 211/2011 entered into force, 36 initiatives<sup>87</sup> have been launched on a variety of issues and an estimated six million statements of support have been collected by the organisers. Three initiatives have been successful in reaching the million signature threshold:

- the 'Right2Water' initiative<sup>88</sup> calls for legislation upholding human beings' right to water and sanitation, and promoting the provision of water and sanitation as essential public services for all. In a March 2014 Communication,<sup>89</sup> the Commission committed itself to taking a series of measures in response to the organisers' requests;
- the 'One of us' initiative<sup>90</sup> calls for the EU to end the financing of research involving the destruction of human embryos. On 28 May 2014, the Commission adopted a Communication<sup>91</sup> explaining that it did not intend to submit a legislative proposal, on the grounds that the existing EU legal framework was considered adequate; and
- the 'Stop vivisection' initiative<sup>92</sup> calls for legislation to abolish testing on animals. On 3 June 2015, the Commission adopted a Communication<sup>93</sup> in which it committed itself to taking various steps towards phasing out animal testing.

The Commission carried out a review of the application of the Regulation and on 31 March 2015 adopted a report<sup>94</sup> which concluded that the ECI is fully operational. It acknowledges that there is scope to improve the tool so as to make it more user-friendly and accessible to citizens. The Commission is committed to continue monitoring and discussing a range of ECI issues in close cooperation and coordination with the various stakeholders and institutions and to improve the instrument.

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<sup>87</sup> ECI register; <http://ec.europa.eu/citizens-initiative/public/welcome>.

<sup>88</sup> *Water and sanitation are a human right! Water is a public good, not a commodity!* (ECI register); <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000003>

<sup>89</sup> COM(2014) 177 final.

<sup>90</sup> *One of us* (ECI register); <http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/details/2012/000005/it>.

<sup>91</sup> COM(2014) 355 final;

<sup>92</sup> *Stop vivisection* (ECI register); <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000007>

<sup>93</sup> COM(2015) 3773 final

<sup>94</sup> COM(2015) 145 final.