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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 2020-2023**

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# 1. INTRODUCTION

2023 marks the 30<sup>th</sup> anniversary of the entry into force of the Maastricht Treaty, which established citizenship of the European Union ('EU citizenship'). This report, produced on the basis of Article 25 of the Treaty on the Functioning of the European Union (TFEU)<sup>1</sup>, forms part of a package of measures on EU citizenship intended to build on and reinforce the rights flowing from that status as provided for in the Treaty.

In a 2023 Flash Eurobarometer survey on citizenship and democracy<sup>2</sup>:

- almost 9 out of 10 respondents (87%) agreed they felt like citizens of the European Union, with more than 6 out of 10 (63%) totally agreeing;
- the proportion of respondents who felt they were European Union citizens was at least 80% in all Members States;
- two thirds (66%) of respondents had heard of the term 'citizen of the European Union' and knew what it meant; 25% had heard of the term but were unsure what it meant, and 9% had not heard of the term at all;
- half of respondents (50%) said they felt well informed about their rights as a citizen of the European Union, a third (33%) did not feel very well informed and 16% did not feel at all informed.

Clear and comprehensive reporting is therefore important so that citizens of the European Union ('EU citizens') are better informed about their rights, to understand where progress has been made and where potential implementation gaps remain.

This report, the tenth report presented pursuant to Article 25 TFEU, covers all relevant developments since the previous progress report<sup>3</sup>. It first explains how this report forms part of a broader Citizenship Package. It then reviews the provisions on:

- EU citizenship;
- non-discrimination;
- the right to free movement and residence in the territory of the Member States;
- the right to vote and stand as a candidate at municipal elections and elections to the European Parliament in the Member State of residence;

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<sup>1</sup> Article 25(1) TFEU provides that '*The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this Part. This report shall take account of the development of the Union*'.

<sup>2</sup> Flash Eurobarometer 528 on Citizenship and Democracy.

<sup>3</sup> In 2020, the Commission adopted two different Reports on EU citizenship: the '[EU Citizenship Report 2020](#)' [Communication](#) (Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Citizenship Report 2020 - Empowering citizens and protecting their rights, COM(2020)730 final), and a [progress report under Article 25](#) (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 2016-2020, COM(2020)731 final). This current report covers in particular the period from 1 July 2020 to 30 August 2023. To the extent possible, it also contains information on policy and/or case law developments after this date.

- the right to consular protection;
- the right to petition the European Parliament;
- the right to take complaints to the Ombudsman; and
- the European Citizens' Initiative.

The report takes stock of policy initiatives since 2020 by outlining the measures undertaken at EU level to strengthen and promote EU citizenship rights, common values and democratic participation. It draws on the issues that citizens and other stakeholders raised in their letters, complaints and during meetings with the Commission as well as on the feedback received on the Commission's Have Your Say Portal<sup>4</sup>.

An overview of the progress of the implementation of the specific priority actions announced in the 'EU Citizenship Report 2020' Communication<sup>5</sup> for 2020-2022 can be found in Annex I.

The report also sets out the main legal developments, including the most relevant judgments of the Court of Justice of the European Union (the 'Court') in this area. An overview of all relevant case law of the Court can be found in Annex II.

## 2. CITIZENSHIP PACKAGE

Strengthening EU citizenship rights reflects the commitments made in the European Commission President's guidelines for the 2019-2024 Commission<sup>6</sup>, in particular the commitment to strive for more in nurturing, protecting and strengthening our democracy. Since 2020, the Commission has put forward several new measures to advance EU citizenship rights, which are outlined in this report.

The 30<sup>th</sup> anniversary of EU citizenship is a reminder of the importance of the rights it entails. The Commission is therefore presenting a Citizenship Package, intended to further advance EU citizenship rights and to make them more tangible for EU citizens. In addition to this report, this Package includes the following measures:

- a revision of the Consular Protection Directive;
- an update of the 2009 guidance on free movement;
- a Guide to EU citizenship;
- a Guide of good electoral practices for citizens with disabilities; and
- a Compendium of e-voting and other ICT practices.

<sup>4</sup> A call for evidence was online between 14 June and 12 July 2023 ([https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13699-EU-Citizenship-Report-2023\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13699-EU-Citizenship-Report-2023_en)). It received 104 replies, of which 88.46% were from EU citizens and 5.77% from NGOs.

<sup>5</sup> See also footnote 3: the '[EU Citizenship Report 2020' Communication](#) (Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Citizenship Report 2020 - Empowering citizens and protecting their rights, COM(2020)730 final).

<sup>6</sup> [political-guidelines-next-commission\\_en\\_0.pdf \(europa.eu\)](#)

As announced in the ‘Citizenship Report 2020’ Communication, the Commission is adopting a **proposal to amend the Consular Protection Directive**<sup>7</sup> to strengthen the right of EU citizens to consular protection, especially in crisis situations<sup>8</sup>. This proposal draws on recent experiences, such as the repatriations during the COVID-19 pandemic, Russia’s war of aggression against Ukraine, and the evacuation of EU citizens from Afghanistan, Sudan, and recently from Israel and Gaza. The proposed changes seek to ensure that EU citizens continue to benefit from EU solidarity when they need help in a country outside the EU where their EU country of nationality does not have a consulate or embassy, for example due to an accident, serious illness, being victim of a crime or loss of travel documents. The Commission also proposes to improve the preparedness and capacity to respond to crises situations, in particular by making best use of the EU’s global network of EU delegations.

The Commission is **updating its 2009 Communication on guidance for better transposition and application of Directive 2004/38/EC** (‘Free Movement Directive’)<sup>9</sup>. With this review, the Commission aims to facilitate the correct application of free movement legislation across the EU by integrating the relevant case law of the Court handed down since 2009 and providing clarifications on specific issues faced by citizens and national administrations. The updated guidance takes into account the diversity of families and therefore helps all members (including children) of all families (including rainbow families<sup>10</sup>) to exercise their right to free movement in practice, in line with the case law of the Court (*see also Section 6.2.1*).

In its Communication on the follow-up to the Conference on the Future of Europe<sup>11</sup>, the Commission committed to delivering on the Conference proposals within the framework of its competence and in accordance with the Treaties. It indicated it would consider new areas of action in the field of European democracy, in particular ‘making European citizenship more tangible to citizens, including by reinforcing the rights attached to it and by providing reliable and easily accessible information about it’.

The Commission is therefore presenting a ‘**Guide to EU citizenship**’ to further advance awareness of EU citizenship amongst young EU citizens (who start being democratically engaged) and for new EU citizens (e.g. those who are naturalised). The guide will help to familiarise them in an attractive and easy-to-understand way with the history, values, rights and responsibilities that underpin their status as EU citizens. It will also illustrate the benefits of EU citizenship and the opportunities it offers for democratic engagement. Throughout the

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<sup>7</sup> Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC (*OJ L 106, 24.4.2015, p. 1*, ELI: <http://data.europa.eu/eli/dir/2015/637/oj>).

<sup>8</sup> COM(2023)930. This proposal also builds on the findings of the Report from the Commission to the European Parliament and the Council on the implementation and application of Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC ([COM\(2022\) 437 final](#)).

<sup>9</sup> C 2023 931.

<sup>10</sup> See for example Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Union of Equality: LGBTIQ Equality Strategy 2020-2025, [COM\(2020\)698 final](#).

<sup>11</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – Conference on the Future of Europe: Putting Vision into Concrete Action, [COM\(2022\)404 final](#).

guide, the respect of Union of values is highlighted, with a focus on fundamental rights, democracy and the rule of law. This will help make EU citizenship rights more tangible for EU citizens.

Participation in elections is an essential component of a vibrant democracy. This goes beyond the right to vote and includes the possibility to stand as a candidate, to join a political party, to join the electoral process as an election official or election observer, and to access electoral information to support free and fair expression of electoral preferences. All citizens should be able to participate effectively in the political life in the European Union.

As announced in the Strategy for the Rights of Persons with Disabilities 2021-2030, the Commission is publishing a **‘Guide of good electoral practices in Member States addressing participation of citizens with disabilities in the electoral process’**. It was prepared in close cooperation with Member States in the framework of the European Cooperation Network on Elections, and by consulting different stakeholders active in the field of rights for persons with disabilities. The guide reflects the various measures taken by Member States to address the obstacles faced by citizens with disabilities when interacting with the electoral environment and to ensure the effectiveness of their electoral rights. It also highlights the emergence of common references on delivering accessible elections.

In addition, as part of the measures announced in the European Democracy Action Plan, the Commission has also developed a **Compendium of e-voting and other Information and communication technology practices** in cooperation with Member States and the Council of Europe. The Compendium also seeks to address the needs of persons with disabilities, fostering election accessibility.

These actions should be seen as complementary to other initiatives, such as the European Democracy Action Plan, but also the forthcoming ‘Defence of Democracy’ Package.

This is particularly important in view of the upcoming elections to the European Parliament in June 2024. Empowering EU citizens and ensuring inclusive democracies and equal opportunities in elections is essential for the Commission, whose democratic legitimacy is based among others on being responsible to the European Parliament elected by EU citizens, under Article 17(8) of the Treaty on European Union. The democratic and electoral rights of all EU citizens must be respected and implemented properly.

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

#### **3.1. Introduction**

Article 20 TFEU provides that any person who is a national of a Member State is also an EU citizen. EU citizenship is additional to and does not replace national citizenship<sup>12</sup>.

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<sup>12</sup> In addition, in its Title V, the EU Charter of Fundamental Rights sets out a series of fundamental rights that apply to EU citizens, such as the right to vote and to stand as a candidate at elections to the European

As mentioned in the introduction, the overwhelming majority of citizens feel like citizens of the EU. The 2023 Eurobarometer on citizenship and democracy also shows that 93% of respondents know that they are simultaneously EU citizens and citizens of their country of residence. Somewhat smaller majorities are aware that citizens of Member States do not need to apply to become EU citizens (74%) and that they cannot opt out of being EU citizens (67%). Yet, almost two thirds of respondents (64%) do not feel well-informed about what to do if their rights as an EU citizen are not respected. Meanwhile, just over a third (35%) feel either fairly well-informed (31%) or very well-informed (4%).

In 2023, the European Parliament published a study on EU citizens living in the United Kingdom, to investigate their attitudes regarding the EU and EU citizenship<sup>13</sup>. The results showed that EU citizens living in the UK are on average more interested in and more positive about the EU than the general EU population. This positive view is also mirrored by a strong feeling of EU citizenship, as 83% of respondents say that they consider themselves EU citizens.

During the reporting period, the Commission dealt with 109 complaints and more than 70 letters/individual queries relating to EU citizenship. These complaints were, for example, about dual citizenship or processing times for citizenship applications. 37 of the complaints were about the impact of the EU-UK Withdrawal Agreement on citizenship rights (*see also Section 6.2.1*). The Commission also dealt with 10 questions and three petitions from the European Parliament on EU citizenship, mainly on ‘investor citizenship schemes’ (*see also Section 3.2.2*).

EU citizens can also send enquiries to the Commission’s Europe Direct Contact Centre (EDCC)<sup>14</sup>, which provides general information on the EU and advice on EU citizens’ rights. Between 2021 and 2023, the EDCC replied to 646 enquiries on EU citizenship<sup>15</sup>.

## **3.2. Policy developments**

### **3.2.1. Enhancing EU citizenship rights**

In February 2019, the European Parliament adopted a ‘Resolution on the implementation of Treaty provisions related to EU citizenship’, in which it recommended further enhancing EU citizens’ awareness of their rights and further consolidating citizen-specific rights and freedoms. In May 2022, the final Report on the Conference on the Future of Europe (*see also Section 7.2.2*) also suggested several actions in the field of citizenship rights, including making

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Parliament and in municipal elections, and the right to good administration (Article 39, 40 and 41 of the Charter). These always apply to the EU institutions, bodies, offices and agencies of the Union and to the Member States when they are applying EU law (Article 51 of the Charter).

<sup>13</sup> <https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2023/eu-citizens-in-uk-2023-report-en.pdf>

<sup>14</sup> [https://europa.eu/european-union/contact\\_en](https://europa.eu/european-union/contact_en)

<sup>15</sup> Up to 1 July 2023.



‘European values tangible for EU citizens’ and strengthening the European citizenship through a ‘European citizenship statute’<sup>16</sup>.

As explained above, delivering on its commitment to make EU citizenship more tangible to citizens<sup>17</sup>, the Commission is therefore presenting a ‘**Guide to EU citizenship**’.

To promote EU citizenship education from an early stage, the **Jean Monnet actions** have been extended to ‘other levels of education and training’ for the new Erasmus+ funding period. Under this new ‘Jean Monnet for Schools’ strand, the 2021 and 2022 Erasmus+ calls launched several activities aimed at training teachers on EU issues and better supporting learning about the EU in primary, secondary, and vocational education. The European Commission also launched the ‘EU democracy in action - Have your say with the European Citizens’ Initiative’<sup>18</sup> toolkit for secondary schools, enabling young people to learn about and develop the skills they need to be active EU citizens. **Erasmus+ and the European Solidarity Corps**, the two flagship EU programmes supporting youth, continue to strengthen European identity and active citizenship among young people through relevant volunteering, educational and professional activities.

In winter 2023, the Commission is also carrying out a **communication campaign celebrating the 30<sup>th</sup> anniversary of EU citizenship**, to further raise awareness and understanding among EU citizens of the rights they have, and to highlight the key milestones related to EU citizenship of the last 30 years. The campaign includes an online event<sup>19</sup> and a targeted social media campaign in certain focus countries where young citizens do not feel well-informed about their EU citizenship rights<sup>20</sup>. With the tagline ‘Move, Vote, Speak up’, the campaign raises awareness in particular on the right to move and reside in another Member State, the right to vote in elections to the European Parliament and municipal elections, and the right to participate in a European Citizens’ Initiative.

In addition, the Commission’s Communication ‘Digital compass 2030: a European way forward for the digital decade’<sup>21</sup> of 9 March 2021 presented the vision for a digitally transformed Europe by 2030, in line with European values. It was translated in a Decision<sup>22</sup> of the Council and European Parliament establishing a set of commitments to shape EU’s digital transformation based on general objectives and targets taking into account the **European**

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<sup>16</sup> <https://www.europarl.europa.eu/resources/library/media/20220509RES29121/20220509RES29121.pdf>. The request for a ‘European citizenship Statute’ has also been reiterated more recently, for example in the AFCO Report on Parliamentarism, European Citizenship and Democracy (2023/2017(INI)).

<sup>17</sup> In its Communication on the follow-up to the Conference on the Future of Europe, the Commission committed to delivering on the Conference proposals within the framework of its competences and in accordance with the Treaties. See Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – Conference on the Future of Europe: Putting Vision into Concrete Action, COM(2022)404 final.

<sup>18</sup> [ECI educational toolkit \(europa.eu\)](#)

<sup>19</sup> The event ‘30 years of EU citizenship rights’ took place online on 28 November.

<sup>20</sup> The focus countries are Belgium, Cyprus, Denmark, Greece, Spain, France, Croatia and Latvia.

<sup>21</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘2030 Digital Compass: the European way for the Digital Decade’, COM/2021/118 final.

<sup>22</sup> Decision (EU) 2022/2481 establishing the Digital Decade Policy Programme 2030.

**Declaration on Digital Rights and Principles for the digital decade**<sup>23</sup>. It was signed on 15 December 2022 by the Presidents of the Commission, the European Parliament and the Council. The Digital Decade Decision as well as Declaration on Digital Rights and Principles<sup>24</sup> present the EU's commitment to a secure, safe and sustainable digital transformation that puts people at the centre, in line with EU core values and fundamental rights. They are particularly important to ensure that citizens acquire the necessary digital skills to engage in the democratic process at all levels (*see also Section 7.2.2*). On 27 September 2023, the 2023 Report on the state of the Digital Decade was adopted, the first report that takes stock of the EU's progress towards a successful digital transformation as set out in the Digital Decade Policy Programme 2030<sup>25</sup>.

### 3.2.2. Investor citizenship schemes

While it is for each Member State to lay down the conditions for the acquisition and loss of its nationality, granting Member State citizenship also entails granting EU citizenship and the rights that go with it, which can be exercised throughout the EU. Member States' rules in the sphere of nationality must therefore have due regard to EU law<sup>26</sup>. The Commission considers that granting EU citizenship in return for pre-determined payments or investments without any genuine link to the Member State concerned is not compatible with the principle of sincere cooperation and with the concept of EU citizenship.

On 20 October 2020, the Commission launched **infringement procedures** against two Member States regarding their investor citizenship schemes<sup>27</sup>. Since then, one Member State has suspended its scheme<sup>28</sup>.

As the other Member State did not satisfactorily address the concerns raised by the Commission, the Commission decided to **refer this Member State to the Court of Justice of the European Union for its investor citizenship scheme** on 29 September 2022<sup>29</sup>.

In March 2022, the Commission adopted a **Recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes**<sup>30</sup>. This recommendation reiterated that Member States need to immediately repeal any existing investor citizenship schemes and to ensure that robust checks are in place to address the risks posed by investor residence schemes also in light of the Russian aggression against Ukraine. The Member States concerned should assess whether to withdraw

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<sup>23</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_452](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_452)

<sup>24</sup> <https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles>  
<sup>25</sup> [2023 Report on the state of the Digital Decade | Shaping Europe's digital future \(europa.eu\)](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_1925)

<sup>26</sup> Judgment of 18 January 2022, *Wiener Landesregierung (Révocation d'une assurance de naturalisation)*, C-118/20, EU:C:2022:34, paragraph 37 and the case-law cited).

<sup>27</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1925](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925). The Commission considered that by establishing and operating investor citizenship schemes that offer citizenship in exchange for pre-determined payments and investments, these two Member States failed to fulfil their obligations under Article 4(3) TEU and Article 20 TFEU.

<sup>28</sup> The infringement procedure is currently at the stage of reasoned opinion.

<sup>29</sup> [https://ec.europa.eu/commission/presscorner/detail/EN/IP\\_22\\_5422](https://ec.europa.eu/commission/presscorner/detail/EN/IP_22_5422). The Court referral took place on 21 March 2023 (Case C-181/23).

<sup>30</sup> Commission Recommendation of 28.3.2022 on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes, C(2022)2028 final.

citizenship previously granted to Russian or Belarusian nationals subject to sanctions or significantly supporting the war in Ukraine. In their assessments, the Member States concerned are to take into account the principles established by the Court of Justice of the European Union regarding the loss of EU citizenship.

### 3.3. Case law developments

From 2020 to 2023, the Court issued several key judgments on EU citizenship. These cases covered, for example, the loss of EU citizenship due to loss of nationality of a Member State.

The three cases *Silver and Others v Council*<sup>31</sup>, *Shindler and Others v Council*<sup>32</sup> and *David Price v Council*<sup>33</sup> are particularly interesting in the context of British citizens, who have lost their rights as EU citizens as a result of the United Kingdom's withdrawal from the EU. The three actions were brought separately before the Court by British citizens who tried to challenge the EU-UK Withdrawal Agreement and the Council's decision on the conclusion of that agreement, claiming, among other things, that those acts had deprived them of rights that they had exercised and acquired as EU citizens. The Court rejected these actions and confirmed that the loss of the status of EU citizen, and consequently the loss of the rights attached to that status, was an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the EU, and not of the Withdrawal Agreement or the Council's decision.

The *JY v Wiener Landesregierung*<sup>34</sup> judgment is also highlighted in this report as it tackles the relationship between Member State nationality and EU citizenship. The case builds on the two previous judgments - *Rottmann*<sup>35</sup> and *Tjebbes*<sup>36</sup> -, in which the Court was confronted with the question of whether EU law imposed limits on the competence of national authorities withdrawing the nationality of a Member State in situations where the status of EU citizen is equally lost. In the JY case, an Estonian national voluntarily renounced her Estonian nationality after obtaining assurances that she would be granted Austrian nationality upon renouncing other nationalities. However, due to several administrative offences the competent Austrian authority later revoked its assurance as to the granting of Austrian nationality. The Court confirmed that the loss of the status of EU citizen falls, by reason of its nature and its consequences, within the scope of EU law where the assurance as to the grant of another Member State nationality is revoked with the effect of preventing that person from recovering the status of EU citizen. Although Member States hold exclusive competence to establish rules

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<sup>31</sup> Judgment of the Court (Eighth Chamber) of 15 June 2023, *Silver and Others v Council*, [C-499/21 P](#), EU:C:2023:479.

<sup>32</sup> Judgment of the Court (Eighth Chamber) of 15 June 2023, *Shindler and Others v Council*, [C-501/21 P](#), EU:C:2023:480.

<sup>33</sup> Judgment of the Court (Eighth Chamber) of 15 June 2023, *David Price v Council*, [C-502/21 P](#), EU:C:2023:482.

<sup>34</sup> Judgment of the Court (Grand Chamber) of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34.

<sup>35</sup> Judgment of the Court (Grand Chamber) of 2 March 2010, *Janko Rottmann v Freistaat Bayern*, C-135/08, EU:C:2010:104.

<sup>36</sup> Judgment of the Court (Grand Chamber) of 12 March 2019, *M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*, C-221/17, EU:C:2019:189.

for the acquisition or loss of nationality, the authorities of the naturalising Member State must take into account the EU law principle of proportionality when seeking to revoke a previously given assurance as to the grant of the host Member State's nationality. In this case, the Court confirmed that the principle of proportionality is not satisfied where such a revocation decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.

These and other cases concerning EU citizenship are explained in more detail in Annex II.

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

### **4.1. Introduction**

Article 18 TFEU<sup>37</sup> prohibits discrimination on grounds of nationality within the scope of application of the Treaties. According to the 2023 Eurobarometer on citizenship and democracy, 77% of EU citizens know that, when in another EU Member State, they have the right to be treated in the same way as a national of that Member State.

### **4.2. Case law developments**

During the period covered by this report, the Court issued three key judgements relating to non-discrimination of EU citizens on grounds of nationality.

*Generalstaatsanwaltschaft München v S.M*<sup>38</sup> and *Generalstaatsanwaltschaft Berlin v BY*<sup>39</sup> concerned the interaction between national rules precluding the extradition of the host Member State's own nationals and the EU principle of non-discrimination on grounds of nationality. The cases concerned extradition requests filed by non-EU countries, in the first case for the purpose of enforcing a custodial sentence, and in the second for the purposes of criminal prosecution. The Court concluded that, where national rules on extradition introduce a difference in treatment between nationals and other EU citizens resident in that Member State, the concerned Member State must assess whether there is an alternative measure to extradition that is less prejudicial to the exercise of free movement by the EU citizen.

*OE v VY*<sup>40</sup> concerned the residency requirements a Member State may adopt in order for its courts to have jurisdiction in matrimonial matters and matters of parental responsibility, and whether these may differ from the requirements applicable to its own nationals. The Court concluded that differentiated minimum periods of residence, depending on whether or not the

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<sup>37</sup> See also Article 21(2) of the Charter of Fundamental Rights, which states that 'Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited'.

<sup>38</sup> Judgment of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017.

<sup>39</sup> Judgement of the Court (Grand Chamber) of 17 December 2020, *BY*, [C-398/19](#), EU:C:2020:1032.

<sup>40</sup> Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87.

applicant is a national of that Member State, are justifiable in view of the need to establish a real link with the Member State.

These cases are explained in more detail in Annex II.

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

### **5.1. Introduction and policy developments**

Article 19 TFEU stipulates that the EU may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation<sup>41</sup>.

Since 2020, the Commission has proposed various new equality and anti-discrimination measures.

The Commission delivered on several of the key objectives of its **Gender Equality Strategy 2020-2025**<sup>42</sup>, which sets out policy objectives and actions in this area. The aim of the strategy is to build a Europe where women and men, girls and boys, in all their diversity, are equal, where they can live the life they choose, thrive in a gender equal economy and lead equally throughout our societies. In March 2023, the Commission issued its annual report on gender equality<sup>43</sup>, highlighting the EU's achievements in the five key areas covered by the strategy.

In June 2023, the Commission finalised the EU accession to the Council of Europe Convention on preventing and combating **violence against women and domestic violence** ('Istanbul Convention'). The EU signed the Convention in June 2017, and the procedure was completed with the deposit of two instruments of approval on 28 June 2023, triggering the entry into force of the Convention for the EU on 1 October 2023. The EU is now bound by ambitious and comprehensive standards to prevent and combat violence against women and domestic violence in the area of judicial cooperation in criminal matters, asylum and non-refoulement, and with regard to its public administration.

In March 2022, the Commission adopted a proposal for a directive combating violence against women and domestic violence<sup>44</sup>. It sets measures of prevention, protection, access to justice for victims and sets a common definition of certain criminal offences such as rape based on lack of consent and cyberviolence. The proposal aims to prevent and combat violence against

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<sup>41</sup> See also Article 21(1) of the Charter of Fundamental Rights, which states that 'Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited'.

<sup>42</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Union of Equality: Gender Equality Strategy 2020-2025, COM(2020)152 final.

<sup>43</sup> [2023 report on gender equality in the EU \(europa.eu\)](https://european-council.europa.eu/media/402023/1/2023-report-on-gender-equality-in-the-EU_en.pdf)

<sup>44</sup> Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, COM(2022)105 final.



women and domestic violence online and offline, to ensure a high level of security and the full enjoyment of fundamental rights within the EU, including the right to equal treatment and non-discrimination between women and men. The co-legislators are currently negotiating with a view of reaching an agreement and adopting the directive before the end of the current legislative term. Once adopted, the directive will implement the Istanbul Convention in the areas of EU competence.

In 2022 and 2023, the Commission facilitated agreements between the European Parliament and the Council on Directive 2022/2381 on **gender balance in company boards**<sup>45</sup> and Directive 2023/970 on **pay transparency**<sup>46</sup>. The two Directives aim respectively at achieving a more balanced representation of men and women among the directors of listed companies and at combating pay discrimination and helping close the gender pay gap in the EU. In November 2022, the Council adopted two Recommendations, which the Commission had put forward as part of the **European Care Strategy**: one on early childhood education and care and another one on affordable high-quality long-term care (the Barcelona targets for 2030). Their aim is to ensure high quality, affordable and accessible care services across the EU<sup>47</sup>. In 2023, the Commission launched an EU-wide communication campaign to challenge gender stereotypes and raise awareness about the role they play in society. The #EndGenderStereotypes campaign tackles gender stereotypes in different areas of life, such as career choices, sharing care responsibilities and decision-making.

The Commission continued implementation of its ambitious **EU anti-racism action plan 2020-2025**<sup>48</sup>. In June 2021, the Commission appointed its very first Anti-racism Coordinator. The Commission strongly encouraged Member States to adopt national action plans against racism and racial discrimination. Furthermore, Member States committed to this aim in the Council Conclusions on Combating Racism and Antisemitism in May 2022. To support Member States, the Commission launched common guiding principles for national action plans against racism and racial discrimination in March 2022<sup>49</sup>. These principles are intended to serve as a basis for Member States and to facilitate the process of developing and implementing a national action plan. Currently 11 Member States have adopted national action plans against racism and five are in the process of adopting one.

In order to respond promptly and effectively to the threats to democracy and citizens' fundamental rights represented by hate speech and hate crime, in December 2023 the Commission adopted a Communication which sets out a series of actions to combat hatred in

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<sup>45</sup> Directive 2022/2381 of 23 November 2022 on improving the gender balance among directors of listed companies and related measures, *OJ L 315*, 7.12.2022, p. 44.

<sup>46</sup> Directive 2023/970 of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, *OJ L 132*, 17.5.2023, p. 21.

<sup>47</sup> Council Recommendation on access to affordable high-quality long-term care, of 25 November 2022, Council doc. Ref. 13948/22; Council recommendation on early childhood education and care: the Barcelona targets for 2030, of 29 November 2022, Council doc. ref. 14785/22.

<sup>48</sup> [EU Anti-racism Action Plan 2020-2025 \(europa.eu\)](https://european-council.europa.eu/media/e300042f-3260-4f30-b0f8-207b0007602f/attachment_data/data/eu-anti-racism-action-plan-2020-2025.pdf)

<sup>49</sup> [https://commission.europa.eu/system/files/2022-05/common\\_guiding\\_principles\\_for\\_national\\_action\\_plans\\_against\\_racism\\_and\\_racial\\_discrimination.pdf](https://commission.europa.eu/system/files/2022-05/common_guiding_principles_for_national_action_plans_against_racism_and_racial_discrimination.pdf)

all its forms. A key priority is to ensure the effective transposition of the **Framework Decision on combating racism and xenophobia**<sup>50</sup>. The Framework Decision provides a criminal law response to racist and xenophobic hate crime and hate speech, while fully respecting freedom of expression as enshrined in the EU Charter of Fundamental Rights. Since 2020, the Commission has launched 13 infringement proceedings where gaps in transposition were detected. In response, several Member States have changed their legislation or are in the process of doing so.

Moreover, in December 2021, the Commission adopted a Communication to extend the list of ‘EU crimes’ laid down in Article 83(1) of the TFEU to include **hate crime and hate speech**<sup>51</sup>. The current EU legislation only requires the criminalisation of racist and xenophobic hate speech and hate crime on certain grounds, such as race, colour, religion, descent or national or ethnic origin. The criminalisation of other forms of hate speech and hate crime – for example on grounds of disability, sex or sexual orientation – varies across the Member States. A Council decision to extend the list of ‘EU crimes’ would enable the Commission to propose, in the future, minimum rules to criminalise hate speech and hate crime on more grounds.

To enhance the response against illegal hate speech online, since end of August 2023, under the new Digital Services Act (DSA), the Commission has made use of its supervisory powers to tackle hate speech and terrorist and violent content on a number of designated Very Large Online Platforms, notably X, TikTok, Instagram and YouTube. The DSA is a cornerstone of the EU's digital strategy and sets out an unprecedented new standard for the accountability of online platforms regarding disinformation, illegal content, such as illegal hate speech, and other societal risks. It includes overarching principles and robust guarantees for freedom of expression and other users' rights. In addition, the Regulation on addressing the dissemination of terrorist content online complements the DSA by addressing the misuse of hosting services for the dissemination to the public of such content.

The Commission is also negotiating a revision of the 2016 Code of conduct on countering illegal hate speech online<sup>52</sup> with the online platforms. The main objective of revision of the Code is to transform it from a solely reactive tool, measuring companies’ response to existing hate speech, to a prevention tool that, together with civil society organisations and experts, can help to anticipate threats of waves of hate speech before content has gone viral.

The Commission also continued to implement the 2020-2030 **EU Roma Strategic Framework** for Equality, Inclusion and Participation<sup>53</sup>, which is one of the first deliverables of the EU Anti-racism Action Plan. In January 2023, the Commission adopted a

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<sup>50</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>51</sup> Communication from the Commission to the European Parliament and the Council - A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime, COM(2021)777 final.

<sup>52</sup> [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en)

<sup>53</sup> Communication from the Commission to the European Parliament and the Council, A Union of Equality: EU Roma strategic framework for equality, inclusion and participation, COM(2020)620 final.

Communication assessing Member States' national Roma strategic frameworks<sup>54</sup>. In the Communication, it strongly encouraged Member States to increase their level of ambition in addressing the challenges confronting Roma<sup>55</sup>.

The Commission made progress on implementing the first ever EU **Strategy on Combating Antisemitism** and **Fostering Jewish Life 2021–2030**<sup>56</sup>. Of the almost 100 measures, 70 have been implemented or set in motion over the past 2 years. Importantly, 12 EU Member States have adopted national strategies against antisemitism and seven have included specific measures against antisemitism in general anti-racism strategies. The Council adopted conclusions on combating racism and antisemitism in March 2022 and invited Member States to develop national strategies against antisemitism by the end of 2022<sup>57</sup>.

In 2023, the Commission also appointed a new Coordinator on **combating anti-Muslim hatred**. The Coordinator works with Member States, European institutions, civil society and academia to strengthen policy responses in the field of anti-Muslim hatred. The Coordinator is the main point of contact for organisations working in this field in the EU.

The Commission also continued to make progress on the **Strategy on the Rights of Persons with Disabilities**<sup>58</sup>. It set up the Disability Platform, where EU Member States, civil society and institutions work together on making the goals of the strategy a reality. A Disability Employment Package<sup>59</sup> was launched in September 2022, to support Member States in improving labour market outcomes of persons with disabilities aimed at increasing quality employment of persons with disabilities.

On 6 September 2023, the Commission also adopted a proposal for a directive establishing the **European Disability Card (EDC)** and the **European Parking Card** for persons with disabilities<sup>60</sup>. This proposal builds on the experience with the EU parking card for people with

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<sup>54</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Assessment report of the Member States' national Roma strategic frameworks, COM(2023)7 final.

<sup>55</sup> In addition, a corresponding thematic enabling condition was introduced into the Common Provisions Regulation for the ESF+, requiring that, where Member States select this specific objective, they have a national Roma inclusion strategic policy framework in place. See Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.6.2021, p. 159-706.

<sup>56</sup> [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-antisemitism/eu-strategy-combating-antisemitism-and-fostering-jewish-life-2021-2030/about-eu-strategy\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-antisemitism/eu-strategy-combating-antisemitism-and-fostering-jewish-life-2021-2030/about-eu-strategy_en)

<sup>57</sup> <https://www.consilium.europa.eu/en/press/press-releases/2022/03/04/council-adopts-conclusions-on-combating-racism-and-antisemitism/>

<sup>58</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030, COM(2021)101 final.

<sup>59</sup> <https://ec.europa.eu/social/main.jsp?catId=1597&langId=en>

<sup>60</sup> Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities, COM(2023)512 final.



disabilities, and the EU Disability Card pilot project<sup>61</sup>. The aim of the initiative is to provide for the mutual recognition of disability status. Under the proposal, preferential conditions should be offered equally in the EU to persons with disabilities travelling for short periods, thereby facilitating the exercise of their free movement rights. Special conditions and treatment may include free access; reduced tariffs, tolls, or user charges; priority access; personal assistance; support (such as access to braille and audio guides); and mobility aids when, for instance, using public and private transport, attending cultural events and spaces such as museums or concerts, or visiting leisure and sport centres or amusement parks.

Improved rights for persons with disabilities and with reduced mobility are also part of the initiative ‘Better protection for passengers and their rights’. For instance, if persons with disabilities and with reduced mobility have to be accompanied to their flights by a person assisting to comply with aviation safety requirements, that person will travel free of charge<sup>62</sup>. A recast of the Rail Passenger Rights Regulation<sup>63</sup>, which entered into application on 7 June 2021, promotes cross-border travel and also contains improved rules for persons with disabilities and persons with reduced mobility (in particular a reduction of the pre-notification period for assistance requests to 24 hours).

The Commission also renewed its Human Resources strategy, with measures to promote diversity among its staff, including for persons with disabilities. The strategy aims to foster a diverse and inclusive work environment, free of discrimination. As explained above, as a follow-up to the strategy on the rights of persons with disabilities, the Commission is now also presenting a ‘Guide of good electoral practices in Member States addressing participation of citizens with disabilities in the electoral process’, as well as a compendium on e-voting rights, fostering accessibility of elections (*see also Section 6.2.2*).

On 11 October 2023, the Commission published the Communication ‘Demographic change in Europe: a toolbox for action’ which presents Member States with the tools available to address demographic challenges and their impacts, including to empower older generations and sustain their welfare. It reminds that respect for older citizens and their well-being is a cornerstone of a thriving ‘longevity society’ at large. The Union of Equality strategies adopted by the Commission in 2020 and 2021 stress the need to combat stereotypes, fight **age-based discrimination** within their respective remit, to promote diversity and inclusion in the workplace, and give everyone equal chances to contribute and thrive. In particular, the Employment Equality Directive protects against age-based discrimination at work<sup>64</sup>.

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<sup>61</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card_en)

<sup>62</sup> PRMs will be also protected from discrimination when performing multimodal journeys and will be assisted at connecting points by carriers and terminal operators where they travel under a single contract of carriage. In case of certain multimodal passenger hubs, they will be able to pre-notify their journey to all the operators concerned by means of one single notification, using the Single Contact Points established on the basis of the new legislation.

<sup>63</sup> Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers’ rights and obligations (recast), *OJ L 172, 17.5.2021, p.1-52*.

<sup>64</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

The Commission continued to implement the EU **Strategy on the Rights of the Child** adopted in 2021<sup>65</sup>, which aims to uphold children's rights in all areas of EU activity and to implement almost 40 activities under the current Commission and beyond. The strategy includes recommendations for Member States across six thematic areas. It addresses discrimination based on socio-economic factors and promotes equal opportunities in accessing education, health services and justice systems. The Commission also set up the EU Children's Participation Platform<sup>66</sup>, which brings together children involved in various existing child participation mechanisms across the EU and involves them in conversations and activities contributing to democratic processes and policy making. In this context, the European Child Guarantee aims to address social exclusion by guaranteeing children in need effective access to key services, including free early childhood education and care<sup>67</sup>.

In 2022, the Commission also adopted a proposal to **ensure the recognition of parenthood between Member States**<sup>68</sup>. The proposal aims to provide legal clarity for all types of families who find themselves in a cross-border situation within the EU, be it because they move from one Member State to another to travel or reside, or because they have family members or property in another Member State. Under the proposal, the parenthood established in one Member State should be recognised in all other Member States without any special procedure. This is notably relevant to the rights derived from parenthood under national law, such as the child's right to maintenance or inheritance in another Member State<sup>69</sup>.

The Commission also made further progress on its first ever **LGBTIQ Equality Strategy 2020-2025**<sup>70</sup>. On 12 April 2023, it issued a progress report, presenting the state of implementation of the strategy in the period up to February 2023<sup>71</sup>. The LGBTIQ equality subgroup of the High-level Group on Non-Discrimination, Equality and Diversity developed a set of guidelines to support Member States in taking concrete action to enhance protection of the rights of LGBTIQ people<sup>72</sup>.

<sup>65</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy on the rights of the child, COM(2021)142 final.

<sup>66</sup> <https://eu-for-children.europa.eu/>

<sup>67</sup> Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee.

<sup>68</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7509](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7509); Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM(2022)695 final. This proposal is based on Article 81(3) TFEU, providing for Union competence to adopt measures concerning family law with cross-border implications.

<sup>69</sup> For the exercise of the rights derived from EU law Member States are already bound by the case law of the Court to recognise parenthood established in another Member States. These rights include, but are not limited to, free movement rights.

<sup>70</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM(2020)698 final.

<sup>71</sup> [https://commission.europa.eu/system/files/2023-04/JUST\\_LGBTIQ%20Strategy\\_Progress%20Report\\_FINAL\\_WEB.pdf](https://commission.europa.eu/system/files/2023-04/JUST_LGBTIQ%20Strategy_Progress%20Report_FINAL_WEB.pdf)

<sup>72</sup> [https://commission.europa.eu/system/files/2022-09/guidelines\\_for\\_strategies\\_and\\_action\\_plans\\_to\\_enhance\\_lgbtiq\\_equality\\_2022final16\\_05.pdf](https://commission.europa.eu/system/files/2022-09/guidelines_for_strategies_and_action_plans_to_enhance_lgbtiq_equality_2022final16_05.pdf)

In December 2020, the Commission adopted a **strategy to strengthen the application of the Charter of Fundamental Rights in the EU**<sup>73</sup>. The strategy complements the targeted policy measures taken in several areas, including as regards the rights of EU citizens. It provides a set of measures to make fundamental rights more effective across the EU over a ten-year period. Since 2020, the Commission presents thematic annual reports on the application of the Charter focusing on areas of strategic relevance. In 2023, the report is dedicated to ‘effective legal protection and access to justice’ as a precondition for enjoying fundamental rights.

In December 2022, the Commission presented legislative proposals to strengthen the role of **equality bodies**<sup>74</sup>, in particular by endowing them with greater independence, resources and powers, so they can combat discrimination in Europe more effectively. Equality bodies are essential in assisting victims of discrimination and making sure that EU non-discrimination law is implemented on the ground. This new legislation aims to ensure that equality bodies can achieve their full potential. It will better protect victims of discrimination and help prevent discrimination.

In April 2022, the Commission announced the winners of the first ever European Capitals of Inclusion and Diversity Awards; the second were announced in April 2023<sup>75</sup>. The Commission raises awareness of the importance of inclusion and diversity at the workplace and in the society across the EU by celebrating the EU Diversity Month. Celebrated annually since 2020, the EU Diversity Month honours efforts by organisations to help build equal and inclusive environments for the benefit of all. The European Commission continued promoting diverse and inclusive workplaces and sharing good practices between employers in Europe through the EU Platform of Diversity Charters.

## 5.2. Case law developments

During the period covered by this report, the Court issued some key judgments relating to non-discrimination of EU citizens on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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<sup>73</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020)/711.

<sup>74</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7507](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7507). Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC, COM(2022)689 final; Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU, COM(2022)688 final.

<sup>75</sup> <https://eudiversity2023.eu/>

Regarding freedom of religion, in *L.F. v S.C.R.L.*<sup>76</sup>, the Court ruled that religion and belief must be regarded as a single ground of discrimination, covering both religious belief and philosophical or spiritual belief<sup>77</sup>.

In case *A v HK Danmark and HK/Privat*<sup>78</sup>, it was established that an age limit laid down in the articles of association of an employees' organisation for eligibility for the post of president of that organisation was discriminatory on the basis of age.

When it comes to non-discrimination on the basis of sexual orientation, the Court ruled that sexual orientation cannot be a reason to refuse or conclude a contract with a self-employed worker in *J.K. v TP S.A.*<sup>79</sup>.

These and other cases on non-discrimination are explained in more detail in Annex II.

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

### **6.1. Introduction**

Under Articles 20(2)(a) and 21 TFEU, EU 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<sup>80</sup>.

According to the 2023 Eurobarometer on citizenship and democracy, 80% of EU citizens are aware of their right to reside in any Member State provided certain conditions are met. A large majority of respondents hold positive attitudes towards the free movement of EU citizens within the EU. About 9 out of 10 (89%) agree that this right personally benefits them, with about 7 in 10 (69%) strongly agreeing. Similarly, more than 8 out of 10 (83%) agree that the free movement of EU citizens benefits the economy, with about half (51%) strongly agreeing.

There are 13.7 million 'mobile' EU citizens (citizens who have moved to live, work or study in another Member State)<sup>81</sup>. In 2021, for example, 1.4 million people previously residing in one EU Member State migrated to another Member State, an increase of almost 17% compared with 2020<sup>82</sup>.

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<sup>76</sup> Judgment of the Court (Second Chamber) of 13 October 2022, *L.F. v S.C.R.L.*, [C-344/20](#), EU:C:2022:774.

<sup>77</sup> [See press release](#).

<sup>78</sup> Judgment of the Court (Second Chamber) of 2 June 2022, *A v HK Danmark and HK/Privat*, [C-587/20](#), EU:C:2022:419.

<sup>79</sup> Judgment of the Court (Second Chamber) of 12 January 2023, *J.K. v TP S.A.*, [C 356/21](#), EU:C:2023:9.

<sup>80</sup> See in particular Directive 2004/38/EC on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *OJ L 158*, 30.4.2004, p. 77 (hereinafter also referred to as the 'Free Movement Directive').

<sup>81</sup> As of 1 January 2022, source Eurostat ([demo\\_pop1ctz](#)).

<sup>82</sup> Source Eurostat ([migr\\_imm5prv](#)).

In the reporting period, the Commission dealt with 480 complaints from citizens and more than 4100 letters/individual enquiries as regards the exercise of the right to free movement. These high numbers can partly be explained by the COVID-19 pandemic. To limit the spread of COVID-19, EU Member States adopted various measures, some of which had an impact on citizens' right to move freely across the EU, such as requirements to undergo quarantine or a coronavirus test (*see also Section 6.2.3*). Apart from these COVID-19 related enquiries, many other complaints and questions 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. The Commission also dealt with 101 questions and 13 petitions from the European Parliament concerning free movement. Most of these also related to the exercise of free movement during the COVID-19 pandemic, and, in particular, the use of the EU Digital COVID Certificate.

Citizens also addressed questions about their personal EU rights to the Your Europe Advice service<sup>83</sup>. Between 2021 and 2023<sup>84</sup>, Your Europe Advice received more than 18 899 enquiries on entry procedures and residence rights and more than 786 enquiries on political and judicial rights. Together, these topics cover 28% of all enquiries received by Your Europe Advice.

Mobile EU citizens who have been negatively affected by the incorrect application of EU law by public authorities can also get help from SOLVIT<sup>85</sup>, which was set up to react quickly and find solutions at national level. From 2020 to 2023<sup>86</sup>, SOLVIT handled around 994 cases involving the free movement of persons.

EU citizens can also send enquiries to the Commission's Europe Direct Contact Centre (EDCC). Between 2021 and 2023, the EDCC replied to a total of almost 17 000 enquiries on the free movement of persons<sup>87</sup>.

## 6.2. Policy developments

### 6.2.1. Facilitating free movement

The Commission has recently taken a number of steps to ensure that Member States fully comply with EU law on free movement, including through infringement proceedings in cases of incompatibility of national legislation with EU law.

As explained above, and as announced in the 'Citizenship Report 2020' Communication, the Commission is now **updating the 2009 guidance for better transposition and application**

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<sup>83</sup> <https://europa.eu/youreurope/advice/>

<sup>84</sup> Up to 7 July 2023.

<sup>85</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 them resolve their problems out of court and free of charge.

<sup>86</sup> Up to 30 June 2023, and based on cases closed (resolved and unresolved cases).

<sup>87</sup> Up to 1 July 2023. 13925 enquiries concerned 'free movement of EU nationals (residence, travel)', and 3041 enquiries concerned 'family members of EU nationals (residence, travel)'.



**of Directive 2004/38/EC**<sup>88</sup> ('Free Movement Directive'), as part of the 'Citizenship Package'. The guidance provides legal interpretations, practical orientations and examples of key questions on the right of free movement, including the scope of beneficiaries, entry requirements for EU citizens and their non-EU family members, residence rights for more than 3 months and the right of permanent residence. It also includes guidance for EU citizens and their family members benefitting from equal treatment in accessing social assistance, social benefits and healthcare<sup>89</sup> in the host Member State, and on the restrictions on free movement rights based on public policy and public security.

In line with the 'Citizenship Report 2020' Communication and the LGBTIQ Equality Strategy 2020-2025<sup>90</sup>, the reviewed guidance takes into account the diversity of families and therefore helps all members (including children) of all families (including rainbow families) to exercise their right to free movement in practice, in line with the case law of the Court. It clarifies that where relationships such as same-sex marriages and same-sex parenthood are duly attested by a certificate issued by a Member State, these relationships must be accepted by other Member States for the purpose of the exercise of rights granted under EU law, even if such relationships are not legally provided for in national law.

In addition, based on the lessons learned from the COVID-19 pandemic, the updated guidance also addresses the application of restrictive measures on free movement due to public health concerns. The Commission will continue to closely monitor the correct application and implementation of free movement rules and the new guidance will be a useful tool for that purpose.

The Commission also continued to work on the **citizens' rights part of the EU-UK Withdrawal Agreement** in the Member States. This includes ensuring that the rights of Withdrawal Agreement beneficiaries and their family members are respected in other policy areas, in particular as regards travel into and inside the Schengen area.

In addition, the Commission regularly raises **concerns regarding the UK's implementation of the part of the Withdrawal Agreement on citizens' rights** in the Specialised Committee on Citizens' Rights and in the Joint Committee, both in written exchanges and during meetings. Thirteen Specialised Committee meetings have taken place since 2020.

While a number of implementation concerns were resolved on this basis, the Commission continues to be concerned about two systemic implementation deficiencies in the UK affecting

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<sup>88</sup> Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313 final.

<sup>89</sup> Persons who temporarily stay in a Member State other than the one where they are insured are entitled to any necessary medical treatment on the basis of the European Health Insurance Card. Besides Regulation (EC) No 883/2004 on the coordination of social security systems, persons may also access healthcare in any EU country other than the one in which they reside and to be reimbursed for care abroad under Directive 2011/24/EU on patients' rights in cross-border healthcare.

<sup>90</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee Of The Regions, 'Union of Equality: LGBTIQ Equality Strategy 2020-2025', COM(2020)698 final.

EU citizens with residence status under the UK domestic residence scheme implementing the Withdrawal Agreement. The first deficiency relates to the lack of legal certainty as to whether they are protected by the Withdrawal Agreement. The second relates to the possible expiry of pre-settled status, in which case EU citizens were required to re-apply to be granted settled status<sup>91</sup>. On the latter issue, the Commission participated, as a third party, in domestic judicial review proceedings before the High Court in the UK in 2022. The High Court found that the expiry of pre-settled status and the requirement for a second constitutive application to switch to settled status was not compliant with the Withdrawal Agreement. The UK is currently working on implementing this judgment. The Commission is also concerned about the integrity of the UK's digital status in light of incorrect information having been displayed in the past and the digital system having been unavailable.

The Commission also works on measures in **other areas of EU law with potential effects for the free movement of mobile EU citizens**. In 2022, for example, the Commission submitted a legislative proposal aimed at digitalising the visa procedure for the Schengen countries. This new legislation aims to ensure that family members of mobile EU citizens will be able to submit visa applications online<sup>92</sup>.

On 6 September 2023, the Commission also proposed concrete steps to further digitalise the **coordination of social security systems** in Europe, in a Communication on this issue<sup>93</sup>. It lays out actions to make access to social security services quicker and simpler across borders by making full use of digital tools and reducing administrative burden for citizens and business. This will improve exchanges of information between national social security institutions and speed up the recognition and granting of eligible benefits across borders. It will thus make it easier for Europeans to live, work and travel abroad, for companies to do business in other EU countries, and for national administrations to coordinate social security across borders.

### 6.2.2. Developments on identity cards and residence documents

Since 2 August 2021, the Regulation on strengthening the **security of EU citizens' identity cards and of residence documents** issued to EU citizens and their family members exercising their right of free movement has been applicable to all Member States<sup>94</sup>. On 20 September

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<sup>91</sup> Pre-settled status should correspond to the right of non-permanent residence under the EU Free Movement Directive and settled status to the right of permanent residence.

<sup>92</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 767/2008, (EC) No 810/2009 and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No 1683/95, (EC) No 333/2002, (EC) No 693/2003 and (EC) No 694/2003 and Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure, COM(2022)658 final.

<sup>93</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'On digitalisation in social security coordination: facilitating free movement in the Single Market', COM(2023)501 final.

<sup>94</sup> As indicated in the last progress Report under Article 25 TFEU, in June 2019 the European Parliament and the Council adopted a Regulation on strengthening the security of EU citizens' identity cards and of residence documents issued to EU citizens and their family members exercising their right of free movement (Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their

2023, the Commission published a report on the implementation of the Regulation, in particular on the protection of fundamental rights and personal data<sup>95</sup>.

The Commission also announced that, following an in-depth assessment and the necessary consultations, it intends to present a proposal for a **regulation on digitalisation of travel documents and facilitation of travel**<sup>96</sup>. By introducing digital travel documents for EU citizens, the Commission aims to facilitate travel across external borders, to relieve pressure and bottlenecks at border-crossing points to shorten waiting times and increase the security and efficiency of border checks. It also aims to facilitate the exercise of free movement for EU citizens and their family members.

The Commission is also continuing to explore ways to encourage the use of digital tools and innovations that make use of the capabilities offered by identity cards issued according to the new rules for **e-government and e-business** services, as well as ways to ensure that mobile EU citizens can also profit from such services.

On 8 November 2023, the European Parliament and the Council reached a political agreement on the Regulation establishing a framework for a **European Digital Identity**, as proposed by the Commission in June 2021<sup>97</sup>. The framework requires Member States to make European Digital Identity Wallets (EDIWs) available to all EU citizens, residents, and businesses, allowing them to identify themselves online and offline seamlessly across borders for public and private services. The new regulation will establish a harmonised secure framework where citizens can link their national digital identities with digital attributes and credentials (e.g. professional qualifications or diplomas) that will enable them to replace a variety of physical cards and passes and sign electronically, thus simplifying their everyday lives. For example, travelling will be made significantly easier as the EDIWs can be used for checking in to a hotel or renting a car in all Member States. It will also have positive effects in terms of professional mobility: when starting a new job in another Member State, the EDIWs will make it much easier to sign an employment contract, deregister from the previous place of residence and register at a new address. Other administrative steps, such as registering a car, could also be supported by the EDIWs. The EDIWs will provide more convenient, secure and privacy-enhancing alternatives to private identity solutions offered by the platforms.

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family members exercising their right of free movement, *OJ L 188*, 12.7.2019, p. 67–78). The Regulation introduced minimum common security standards making identity cards and residence documents more secure and reliable.

<sup>95</sup> Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee pursuant to Article 13(1) of Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, COM(2023)538 final.

<sup>96</sup> Communication from the Commission of the European Parliament and the Council ‘A strategy towards a fully functioning and resilient Schengen area’, COM(2021)277 final, p. 8. The Schengen area includes the majority of States in which rights of free movement can be exercised.

<sup>97</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity, COM (2021) 281 final.



### 6.2.3. Free movement during the COVID-19 pandemic

The COVID-19 outbreak has presented a number of unprecedented challenges to free movement across the EU. To limit the spread of COVID-19, EU Member States adopted various measures, some of which had an impact on citizens' right to move freely across the EU, such as requirements to undergo quarantine or a coronavirus test.

Any restrictions on free movement of persons within the EU to limit the spread of COVID-19 had to be based on specific and limited public interest grounds, namely the protection of public health. So, in response to the pandemic, Member States could impose measures limiting the free movement of persons within the EU but such measures could not go beyond what was strictly necessary and proportionate or distinguish between travellers based on their nationality. The Commission has monitored Member States' compliance with these principles.

In addition, the Commission has worked relentlessly to foster cooperation and coordination among Member States since the beginning of the pandemic. A well-coordinated, predictable and transparent approach to the adoption of restrictions on freedom of movement was established through several Council Recommendations. Indeed, the 'Citizenship Report 2020' Communication already mentioned that the Commission had presented a proposal for a Council Recommendation on a **coordinated approach to the restriction of free movement** in response to the COVID-19 pandemic, which was adopted by the Council on 13 October 2020. Since then, and in response to the ways in which the pandemic developed, this Recommendation was updated a number of times<sup>98</sup>.

To facilitate the right to free movement, the Commission also presented the proposal for the **EU Digital COVID Certificate**, adopted by the European Parliament and the Council in June 2021<sup>99</sup>, which has been a crucial element in Europe's response to the COVID-19 pandemic. Its rapid adoption and rollout enabled European citizens to move freely, and to open the European travel sector in time for summer 2021. The tool provided a reliable and trustworthy system to demonstrate proof of COVID-19 vaccination, recovery, or test status. It also avoided a fragmented and likely incompatible system of national certificates. When a Member State waived pandemic-related travel restrictions for people with proof of vaccination, test, or recovery, the EU Digital COVID Certificates guaranteed that all EU citizens holding them could benefit from those exemptions. On 29 June 2022, the European Parliament and the

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<sup>98</sup> Council Recommendation (EU) 2021/119 of 1 February 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, *OJ L 361*, 2.2.2021, p. 1; and Council Recommendation (EU) 2021/961 of 14 June 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, *OJ L 2131*, 16.6.2021, p. 1; Council Recommendation (EU) 2022/107 of 25 January 2022 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475, *OJ L 18*, 27.1.2022, p. 110.

<sup>99</sup> Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, *OJ L 211*, 15.6.2021, p. 1.

Council extended the EU Digital COVID Certificate Regulation until 30 June 2023<sup>100</sup>. That extension ensured that travellers could continue to use their certificate should a significant worsening of the epidemiological situation have made it necessary for Member States to temporarily reintroduce travel restrictions.

The EU Digital COVID Certificate also rapidly became a standard in Europe and beyond, with 51 non-EU countries and territories connected to the system in addition to the 27 Member States. With more than two billion certificates issued, the EU Digital COVID Certificate has demonstrated the capacity of EU institutions to develop and adapt innovative and functional solutions in record time. This was also recognised by the European Ombudsman, with the EU Digital COVID Certificate winning an Ombudsman Award for Good Administration in the innovation category<sup>101</sup>.

The Commission has continuously sought to provide people with accurate and user-friendly information on the EU Digital COVID Certificate and travel restrictions, for example by setting up the **Re-open EU** platform and by publishing answers to the most frequently asked questions on these topics. The Re-open EU platform received around 44.7 million visits between June 2020 and October 2022 and the frequently asked questions page received 1.5 million unique views.

Once the epidemiological situation improved, the Commission focused its efforts on ensuring the lifting of restrictions in a well-coordinated manner. Since August 2022, Member States have lifted all intra-EU travel restrictions, including the requirement to present an EU Digital COVID Certificate<sup>102</sup>.

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<sup>100</sup> Regulation (EU) 2022/1034 of the European Parliament and of the Council of 29 June 2022 amending Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, *OJ L 173*, 30.6.2022, p.37.

<sup>101</sup> <https://www.ombudsman.europa.eu/en/press-release/en/171613>. An important acknowledgement of the potential of the EU Digital COVID Certificate technical infrastructure, which is in line with EU values such as data protection, open source software and accessibility, has also come from the Global Digital Health Certification Network, launched by the World Health Organization, which is based on the EU Digital COVID Certificate technology and supported by the Commission at technical level as part of a landmark digital health partnership. See [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_3043](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3043)

<sup>102</sup> More information on the efforts made by the Commission to facilitate free movement during the COVID-19 pandemic can be found in the various Commission Reports on the implementation of the EU Digital COVID Certificate Regulation in 2021 and 2022: Report from the Commission to the European Parliament and the Council pursuant to Article 16(1) of Regulation (EU) 2021/953 of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, COM(2021) 649 final; Report from the Commission to the European Parliament and the Council pursuant to Article 16(2) of Regulation (EU) 2021/953 of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, COM(2022) 123 final; Report from the Commission to the European Parliament and the Council pursuant to Article 16(3) of Regulation (EU) 2021/953 of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, COM(2022)753 final.

After all Member States had lifted intra-EU travel restrictions, and the World Health Organization (WHO), on 5 May 2023, declared that COVID-19 was no longer a public health emergency of international concern<sup>103</sup>, there was no reason for a further extension of the Regulation. The Regulation therefore expired on 30 June 2023 and is no longer in force.

### 6.3. Case law developments

The Court has delivered a number of judgments in relation to Article 21 TFEU (including its implementation through the Free Movement Directive<sup>104</sup>). The cases dealt, for example, with free movement and (derived) residence rights, entry and residence rights of ‘other family members’, and access to benefits and/or social assistance by mobile EU citizens<sup>105</sup>.

One of the most important judgments in the period covered by this report is the ruling in *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*<sup>106</sup>, which clarified that, if one parent is an EU citizen, all Member States must recognise the parent-child relationship, as established in the birth certificate drawn up by a Member State for the purposes of the exercise of the rights enjoyed under EU law, without any additional formality. This applies regardless of the status of such a relationship in the law of other Member States and particularly the Member State(s) of which the child is a national. The case in question concerned two same-sex parents but the principle of recognition of a parent-child relationship for the purpose of the exercise of the rights derived from EU law extends to all parenthood.

This case, and all other relevant judgments on Article 21 TFEU and its implementation through the Free Movement Directive, are explained in more detail in Annex II.

The Court has also delivered a number of judgments on the topic of derived rights of residence for non-EU family members of EU citizens, following the Court’s line of rulings starting from *Ruiz Zambrano*, based on Article 20 TFEU. These build on the idea that Article 20 TFEU recognises a derived right of residence on the part of the non-EU family members of a ‘static’ EU citizen (who has not exercised free movement) where there is a relationship of dependency, which would otherwise lead to the effectiveness of EU citizenship to be undermined. A summary of the judgements is also available in Annex II.

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<sup>103</sup> [https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic)

<sup>104</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), *OJ L 158, 30.4.2004, p. 77–123*.

<sup>105</sup> This section will not address the judgments of the Court based primarily on the status of ‘Union worker’ pursuant to Article 45 et seq. TFEU.

<sup>106</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008.

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

### 7.1. Introduction

Under Articles 20(2)(b) and 22 TFEU, all EU citizens residing in a Member State of which they are not nationals are entitled to vote and stand as candidates in elections to the European Parliament and municipal elections in their Member State of residence, under the same conditions as that state's nationals. According to the 2023 Eurobarometer on citizenship and democracy, about two thirds of EU citizens (67%) correctly identify that a citizen of the EU living in their country has the right to vote or stand as a candidate in elections to the European Parliament. An appreciably smaller majority (55%) correctly identify that such a citizen has the right to vote or stand as a candidate in municipal elections.

During the reporting period, the Commission replied to 20 complaints and more than 220 letters/individual queries, and 31 questions and five petitions from the European Parliament on these rights. These included questions on the electoral rights of persons with disabilities, electoral rolls and electronic voting. Some of the questions also concerned the broader topic of democratic participation, for example relating to electoral fraud, political advertising, foreign interference or the funding of political parties.

### 7.2. Policy developments

#### 7.2.1. Right to vote and stand as a candidate in municipal and elections to the European Parliament

A growing number of citizens entitled to vote and stand as candidates in elections to the European Parliament are 'mobile' EU citizens: citizens who have moved to live, work or study in another Member State. It is important to ensure that mobile EU citizens can fully exercise their EU citizenship rights, in particular in the context of the next elections to the European Parliament in 2024.

On 25 November 2021, the Commission adopted a **package of measures to reinforce democracy and protect the integrity of elections** (*see also Section 7.2.2*). The package includes **two legislative proposals to recast the Directives**<sup>107</sup> on the right to vote and stand as candidates in elections to the European Parliament and municipal elections by EU citizens residing in a different Member State from their state of origin. These initiatives aim to update, clarify and strengthen the existing rules to address the difficulties faced by mobile EU citizens, and to ensure broad and inclusive participation in the 2024 elections to the European Parliament, support mobile EU citizens in the exercise of their rights and protect the integrity of elections.

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<sup>107</sup> Council Directive 94/80/EC and Directive 93/109/EC.

The proposal relating to the elections to the European Parliament<sup>108</sup>, and the proposal related to municipal elections<sup>109</sup> both set higher standards for providing electoral information to mobile EU citizens. They propose to require Member States to appoint authorities to proactively inform mobile EU citizens residing there of the conditions and detailed rules for registration as a voter or candidate in elections to the European Parliament and municipal elections respectively. They also propose to introduce standard templates for the formal declarations that have to be produced by mobile EU citizens to register as voters and candidates. The European Parliament adopted its opinions on these proposals on 13 February 2023. They are currently being discussed in the Council.

The package adopted on 25 November 2021 also included a **Communication on protecting election integrity and promoting democratic participation**<sup>110</sup>. In the Communication the Commission announced the establishment of a **contact point on electoral rights**, as part of the commitment to deliver on the shared resource to support EU citizens in exercising their electoral rights<sup>111</sup>. This function will be fulfilled by the European Direct Contact Centre which will serve as an elections helpline for the 2024 elections to the European Parliament.

Together with the European Parliament, the Commission has also launched a **communication campaign** intended to increase the number of mobile EU citizens voting in the 2024 elections. This campaign intends to encourage mobile EU citizens to register and vote in these elections by raising awareness about registration deadlines and procedures in the home and residence countries<sup>112</sup>.

In accordance with Article 14(1) of the Directive on the right to vote and to stand as a candidate in elections to the European Parliament<sup>113</sup>, Member States may provide for certain **derogations** if the proportion of mobile EU citizens of voting age exceeds 20% of the total number of EU

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<sup>108</sup> Proposal for a Council Directive laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals (recast), COM(2021)732 final.

<sup>109</sup> Proposal for a Council Directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by Union citizens residing in a Member State of which they are not nationals (recast), COM(2021)733 final.

<sup>110</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Protecting election integrity and promoting democratic participation, COM(2021)730 final.

<sup>111</sup> In the 'EU Citizenship Report 2020' Communication, the Commission said it would 'explore, in close cooperation with the Parliament, the possibility of creating a dedicated shared resource to support EU citizens in exercising their electoral rights, as well as providing additional avenues for them to report hurdles and incidents affecting their political participation. This should be made available to both EU citizens (including mobile EU citizens) and relevant authorities by autumn 2023.'

<sup>112</sup> A dedicated website was set up: <https://elections.europa.eu/en/>

<sup>113</sup> Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, *OJ L 329, 30.12.1993, p.34*.



citizens of voting age residing in that Member State,<sup>114</sup>. On 7 November 2023, the Commission adopted a report on granting a derogation under Article 22(2)<sup>115</sup>.

EU citizenship rights do not grant mobile EU citizens the **right to vote in national elections** in their Member State of residence, even though they are active members of society and are affected by national policies. The ‘EU Citizenship Report 2020’ Communication noted that there was a certain public support to grant mobile EU citizens such a right. A European citizens’ initiative on this subject was registered in 2020 but did not manage to gather the necessary support<sup>116</sup>. Several EU Member States deprive their own nationals of the right to vote in national elections if they permanently reside in other countries. As reiterated in the ‘EU Citizenship Report 2020’ Communication, the Commission continues to call on the Member States concerned to abolish these rules.

### 7.2.2. Empowering democratic participation

Every citizen has the right to participate in the democratic life of the EU<sup>117</sup>. Ensuring **inclusive democracies and equal opportunities in elections** is essential for the Commission, in particular in light of the upcoming elections to the European Parliament. Therefore, the Commission has worked to promote inclusiveness, including by supporting exchanges among Member States on participation in elections of different groups, and to ensure that the democratic and electoral rights of all EU citizens are respected and properly implemented.

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<sup>114</sup> Article 14(1) of the Directive establishes: ‘If on 1 January 1993, in a given Member State, the proportion of citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20 % of the total number of citizens of the Union residing there who are of voting age, that Member State may, by way of derogation from Articles 3, 9 and 10: (a) restrict the right to vote to Community voters who have resided in that Member State for a minimum period, which may not exceed five years; (b) restrict the right to stand as a candidate to Community nationals entitled to stand as candidates who have resided in that Member State for a minimum period, which may not exceed 10 years. These provisions are without prejudice to appropriate measures which this Member State may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national citizens of the Union. However, Community voters and Community nationals entitled to stand as candidates who, owing to the fact that they have taken up residence outside their home Member State or by reason of the duration of such residence, do not have the right to vote or to stand as candidates in that home State shall not be subject to the conditions as to length of residence set out above.’ Luxembourg is the only Member State that reaches this threshold. Under Luxembourgish law, lists for the European parliament elections must be composed of a majority of Luxembourgish citizens.

<sup>115</sup> Report from the Commission to the European Parliament and the Council on granting a derogation under Article 22(2) on the treaty on the Functioning of the European Union, presented under Article 14(3) of Directive 93/109/EC on the right to vote and stand as a candidate in elections to the European Parliament, COM(2023)688 final.

<sup>116</sup> On 4 March 2020, the European Commission agreed on admissibility and registered a European Citizens’ Initiative entitled ‘Voters without borders, full political rights for EU citizens’. The organisers called for ‘reforms to strengthen the existing rights of EU citizens to vote and stand in European and municipal elections in their country of residence and new legislation to extend them to regional, national elections and referenda’. However, the organisers did not manage to collect the necessary support by 13 June 2022.

<sup>117</sup> Article 10(3) TEU.

Throughout the COVID-19 pandemic, the Commission monitored the impacts of COVID-19-related measures on democratic debate and elections. On 6 June 2020, at the start of the pandemic, the Commission issued a **Communication on tackling COVID-19 disinformation**<sup>118</sup>, addressing the negative impact disinformation can have on democratic institutions and societies.

On 2 December 2020, the Commission presented its **European Democracy Action Plan**<sup>119</sup>, to promote free, fair and resilient elections and strong democratic participation, protect media freedom and pluralism and counter disinformation. This is coupled with an increasing focus on bolstering societal resilience through cross-cutting support for active citizenship and civil society engagement, in complementarity with the ‘Citizenship Report 2020’ Communication. The Democracy Action Plan is constructed around three integrated themes:

- electoral integrity and how to ensure that electoral systems are free and fair, including key issues such as the transparency of political advertising online, possible threats to the integrity of elections and the role of European political parties;
- strengthening freedom of expression and democratic debate, looking at media freedom and media pluralism, and the role of civil society; and
- tackling disinformation in a coherent manner considering the need to examine all the means used to interfere in our democratic system.

The main aim of the European Democracy Action Plan is to empower citizens to make their democratic choices in the public space with best knowledge and free from any manipulation and interference. This is also reiterated in the European Declaration on Digital Rights and Principles for the digital decade which sets out commitments to ensure that citizens acquire and share the necessary digital skills and competences to engage in the democratic process at all levels, and be protected from disinformation, information manipulation and other forms of harmful content online.

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<sup>118</sup> Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Tackling COVID-19 disinformation - Getting the facts right, JOIN/2020/8 final.

<sup>119</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘On the European Democracy Action Plan’, COM(2020)790 final.

With the strengthened Code of Practice on Disinformation and the DSA, the EU has taken important measures to make the online environment more transparent, accountable and safer for citizens<sup>120</sup>. Notably, risks that have any actual or foreseeable negative effects on civic discourse and electoral processes on designated Very Large Online Platforms and Search Engines must be diligently identified, analysed and assessed, and effectively mitigated. The DSA obligations started applying to 19 Very Large Online Platforms and Search Engines at the end of August 2023. In this context, the Commission has been monitoring actions taken by platforms to safeguard the integrity of recent elections, notably in Slovakia, Poland, Luxembourg, and the Netherlands, in cooperation with the relevant national authorities.

On 25 November 2021, the Commission adopted a package of measures to reinforce democracy and protect the integrity of elections. This includes a flagship legislative proposal on **transparency and targeting of political advertising**<sup>121</sup>. On 6 November, a political agreement was reached between the European Parliament and the Council on the Regulation on transparency of political advertising. Once it is adopted, the measures will enter into application 18 months after they enter into force<sup>122</sup>.

Under these new rules, political adverts will need to be clearly labelled as such and will be required indicate who paid for them, how much, to which elections, referendum or regulatory process they are linked and whether they have been targeted. Further information will be available at transparency notices, accessible from the adverts. Citizens will be able to distinguish messages that seek to shape their political views and decisions. Specific information will need to be provided to the data subject including regarding the parameters being used to target individuals. Targeting and ad delivery techniques will be clearly framed and only be available for online political advertising based on personal data collected from the data subject and subject to consent. Targeting and ad delivery through profiling based on special categories of personal data will be prohibited. This will limit abusive use of personal data to potentially manipulate individuals. All online political ads will be available in an online ad repository. Sponsoring ads from outside the EU will be prohibited three months before elections.

The Commission also proposed updating the current EU **rules on European political parties and foundations**<sup>123</sup>. The proposal aims to ensure the financial viability of European political parties, while strengthening the transparency requirements applicable to their sources of funding. It contains measures to cut administrative burdens, modulate the sanctioning regime,

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<sup>120</sup> The DSA aims to create a safer online environment for consumers and companies in the EU, with a set of rules designed to protect consumers and their fundamental rights more effectively. It also defines clear responsibilities for online platforms and social media and deals with illegal content and products, hate speech and disinformation. Effective enforcement of the DSA will help address systemic risks threatening the EU's democratic processes such as the use of very large online platforms as tools for disinformation campaigns.

<sup>121</sup> Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, COM/2021/731 final.

<sup>122</sup> However, the definitions and the non-discrimination clause, which provides that political advertising services cannot be restricted solely based on place of residence or establishment of the sponsor of political advertising, will apply in time for the elections to the European Parliament.

<sup>123</sup> Proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (recast), COM/2021/734 final.



and strengthen transparency on gender representation and compliance with EU fundamental values.

The Commission has also continued to work with the Member States through the **European Cooperation Network on Elections** (ECNE) to facilitate and improve the ability of EU citizens to exercise their voting rights including by supporting the exchange of best practices and mutual assistance to ensure free and fair elections<sup>124</sup>. Member States have expressed their desire to continue and intensify work in the ECNE, and to consider further concrete and practical avenues of cooperation.

This includes a '**joint mechanism for electoral resilience**' organised and coordinated through the ECNE in close cooperation with the Network and Information Systems (NIS) Cooperation Group and the Rapid Alert System. The mechanism's primary operational focus has been to support deployment of joint expert teams and expert exchanges with the aim of building resilient electoral processes, in particular in the area of online forensics, disinformation and cybersecurity of elections. It has provided several Member States with support since it started operating in 2022.

Work is ongoing in the framework of the ECNE to support free and fair elections to the European Parliament in 2024. For instance, the 'joint mechanism for electoral resilience' was used by the Commission to organise on 21 November 2023 in close cooperation with the European Parliament, the EU Agency for cybersecurity (ENISA) and Member States a table-top exercise to test the Member States' preparedness to respond to cybersecurity incidents capable of affecting the 2024 elections.

Moreover, the NIS Cooperation Group established a dedicated work stream on cybersecurity of elections in order to share experiences and provide guidance, as well as an overview of tools, techniques and protocols to detect, prevent, and mitigate threats to electoral processes and technologies. Primary tasks of the work stream include the update of the Compendium on Cyber Security of Election Technology<sup>125</sup> published in 2018.

On 10 June 2021, a joint meeting of the ECNE and the Expert Group on Electoral Matters held an open discussion on supporting the **broad and inclusive participation** of mobile EU citizens in elections to the European Parliament and municipal elections, including the development and collection of indicators. The ECNE has also held dedicated sessions for instance on practices in **e-voting** and electronic democratic participation. In addition, ECNE has worked on election accessibility for persons with disabilities.

**A Compendium of e-voting and other ICT practices** and a '**Guide of good electoral practices in Member States addressing participation of citizens with disabilities in the**

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<sup>124</sup> This network, which gathers representatives of national authorities with competence in electoral matters, meets regularly, to discuss practical solutions to issues such as disinformation and other manipulations, data protection, enhanced transparency, interactions with platforms, equal and inclusive democratic participation etc.

<sup>125</sup> [https://ec.europa.eu/information\\_society/newsroom/image/document/2018-30/election\\_security\\_compendium\\_00BE09F9-D2BE-5D69-9E39C5A9C81C290F\\_53645.pdf](https://ec.europa.eu/information_society/newsroom/image/document/2018-30/election_security_compendium_00BE09F9-D2BE-5D69-9E39C5A9C81C290F_53645.pdf)

**electoral process**’ prepared in close cooperation with the ECNE are also being published as part of the ‘Citizenship Package’, in time for the next elections to the European Parliament in 2024.

As announced in the ‘EU Citizenship Report 2020’ Communication, the Commission organised a **high-level event on elections**<sup>126</sup>, addressing topics such as political campaigning, interference, disinformation, protection of election-related infrastructure and the resilience of the entities operating it, ways to empower citizens to participate in the democratic process as voters and candidates, and inclusive democracy. The event, which took place on 23 and 24 October 2023, provided a unique opportunity for Member States to engage in discussions and exchange ideas and best practices to strengthen electoral processes in the run-up to the 2024 elections to the European Parliament.

On 16 September 2022, the Commission proposed a new **European Media Freedom Act**<sup>127</sup> (the Act), a new set of rules to strengthen the operation of the internal market for media services and protect media pluralism and independence in the EU. The proposed regulation<sup>128</sup> includes safeguards against political interference in editorial decisions and against surveillance, among other measures. It focuses on the independence and stable funding of public-service media, and on the transparency of media ownership and of the allocation of state advertising. It also sets out measures to protect the independence of editors and disclose conflicts of interest. Finally, the Act aims to address the issue of media concentrations and to create a new independent European Board for Media Services, comprised of national media authorities.

The Commission is preparing a set of initiatives on the ‘**Defence of Democracy**’ to support common EU standards in addressing specific threats and encouraging inclusive civic engagement and citizen participation in our democracies, building on the European Democracy Action Plan. The legislative initiative under the Defence of Democracy package would introduce common transparency and accountability standards in the internal market for interest representation activities seeking to influence the decision-making process in the EU and carried out on behalf of third countries. The package should also include – in form of a Commission Recommendation – a dedicated initiative to foster an enabling civic space and promote the inclusive and effective participation of citizens and civil society organisations in the public policy making processes. At the same time, a Recommendation on inclusive and resilient electoral processes should be added to the package to promote high standards on European and other elections and referenda at national level. These proposed measures are beneficial at all institutional levels and for all democratic processes.

**Increasing citizens’ involvement at all stages of the democratic process is also key for European democracy.** The **Conference on the Future of Europe**, held from April 2021 to May 2022, was a major pan-European deliberative democracy exercise. The Commission was

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<sup>126</sup> <https://roadtoep2024.eu/>

<sup>127</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5504](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5504)

<sup>128</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM/2022/457 final.

one of the EU institutions to have supported the organisation of the Conference on the Future of Europe and is committed to its follow-up.

In a Communication published in June 2022<sup>129</sup>, the Commission committed to embedding participatory and deliberative processes in key moments and areas of its policymaking, with the **European Citizens' Panels**<sup>130</sup> becoming a 'regular feature of our democratic life'. Citizens' Reports inform the Commission ahead of the adoption of each initiative and the recommendations are an integral part of each package. Over the course of 2022 and 2023, three Citizens' Panels were organised to harness citizens' insights on how to step up action to reduce food waste which informed the proposal to revise the Waste Framework Directive by introducing legally binding food waste reduction targets, the Communication on virtual worlds and the Council recommendation on learning mobility. The Panels completed their deliberations in April 2023.

Following up on the Conference, the Commission is also developing a revamped '**Have Your Say**' portal as a one-stop-shop for online citizens' engagement. The new portal is the gateway to the Commission's public online consultations, the European citizens' initiatives and to a new interactive platform, where citizens can share their views and ideas about EU policies and EU laws.

The **EU Youth Dialogue** (EUYD), supported by the Erasmus+ programme, has been instrumental in fostering young people's participation in decision-making processes and in developing public policies through consultations and exchanges. It is a flagship instrument of the EU Youth Strategy, which also came to the forefront in the 2022 European Year of Youth. The Council Resolution (15 May 2023) on the Outcomes of the 9th Cycle of the EUYD, under the title 'Engaging Together for a Sustainable and Inclusive Europe', manifests the commitment to ensuring quality and continuity in the dialogue and to feeding its outcomes into policymaking at all levels. The 10th cycle of the EUYD will run under the Spain-Belgium-Hungary Presidency Trio from July 2023 to June 2024 and will focus on European Youth Goal #3 'Inclusive Societies'. A Communication on the European Year of Youth legacy is planned for the end of 2023.

The renewed Resolution on the EU Youth Strategy for 2019-2027<sup>131</sup> recognises the need to 'Encourage young people to become active citizens, agents of solidarity and positive change for communities across Europe, inspired by EU values and a European identity' as one of its key objectives. In line with this goal, **Erasmus+ and the European Solidarity Corps**, the two flagship EU programmes supporting youth, continue to strengthen European identity and active

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<sup>129</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Conference on the Future of Europe – Putting Vision into Concrete Action', COM(2022) 404 final.

<sup>130</sup> [https://citizens.ec.europa.eu/index\\_en](https://citizens.ec.europa.eu/index_en)

<sup>131</sup> Resolution of the Council of the European Union and the Representatives of the Governments of the Member States meeting within the Council on a framework for European cooperation in the youth field: The European Union Youth Strategy 2019-2027, which was adopted by the Council in November 2018.

citizenship among young people through relevant volunteering, educational and professional activities.

As part of the **Horizon Europe** research and innovation funding programme, various collaborative research projects, which bring together academia and stakeholders in the field are starting to collect evidence to improve the connection between citizens and democratic institutions. Under the Work Programmes 2021-2022 and 2023-2024, funds are dedicated to developing recommendations that support EU institutions and national decision-makers to improve impact policy making in this area and to foster more inclusive and representative models of citizen engagement. This research is funded in the ground of other Horizon 2020 projects that have supported projects on participatory and deliberative democracy.

In addition to these efforts specifically dedicated to research to increase citizen participation in decision-making processes, the Horizon programs are also starting to fund projects that can provide the competent EU bodies with the tools to improve the EU response to disinformation campaigns and actions of Foreign Interference and Manipulation of Information (FIMI)<sup>132</sup>.

Lastly, **election observation** is a good way to engage citizens with the electoral process, and to improve public trust in free and fair elections. The Citizens, Equality, Rights and Values (CERV) programme, which was launched in 2021 and will run until 2027, seeks to support and develop open, rights-based, democratic, equal and inclusive societies based on the rule of law. Under the ‘citizens’ engagement and participation’ strand, the CERV work programme for 2023-2024 provides funding, among other activities, for independent election observation activities, including monitoring by citizens. Under the ‘Union Values’ strand, the Commission may also support independent election observation by funding capacity building for civil society organisations active in this area.

### 7.3. Case law developments

In *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*<sup>133</sup>, the Court held that, since the entry into force of the EU-UK Withdrawal Agreement (1 February 2020), United Kingdom nationals are treated as non-EU nationals and are not guaranteed the right to vote or stand as candidates in municipal elections in their Member State of residence. To this effect, the loss of voting rights in the Member State of nationality has no bearing on this conclusion<sup>134</sup>.

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<sup>132</sup> This includes projects in response to a [call](#) on detecting, analysing and countering foreign information manipulation and interference, and a [call](#) on developing a better understanding of information suppression by state authorities as an example of foreign information manipulation and interference. For this last one, projects will be explicitly requested to analyse particularly the means of influence embedded within diaspora communities, and to develop lists of indicators that allow legislators and policymakers to elaborate adequate policy responses.

<sup>133</sup> Judgment of 9 June 2022, *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*, [C-673/20](#), EU:C:2022:449.

<sup>134</sup> *Ibid.*, para. 58.

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

### 8.1. Introduction

Under Articles 20(2)(c) and 23 TFEU, EU citizens have the right to be protected by diplomatic and consular authorities of any other Member State under the same conditions as that state's nationals when they are in a non-EU country in which their Member State of origin does not have representation. This right is an expression of the external dimension of EU citizenship, a manifestation of Member States' solidarity, and strengthens the identity of the EU in non-EU countries. It protects EU citizens who find themselves in difficulty abroad. Its importance is most clearly felt in the context of large-scale crisis situations, natural or caused by human activity, which may require urgent relief and repatriation of large numbers of EU citizens.

According to the 2023 Eurobarometer on Citizenship and democracy, 69% of EU citizens are aware of this right. A large majority of respondents (93%) agree that EU Member States should cooperate closely to help EU citizens who need consular protection outside the EU. A similar proportion (91%) agree that, if they were in a non-EU country where their national government had no consulate or embassy and they needed help, they would seek support from an EU Delegation instead.

### 8.2. Policy developments

As explained above, the Commission is adopting a proposal to amend the **Consular Protection Directive** as part of the Citizenship Package<sup>135</sup>.

As indicated in the last progress Report under Article 25 TFEU, in June 2019 the Council adopted a Directive establishing an **EU Emergency Travel Document**<sup>136</sup>. The Directive introduced a new, more secure EU Emergency Travel Document format and simplified the formalities for unrepresented EU citizens in non-EU countries whose passport or travel document has been lost, stolen or destroyed. After the adoption of the necessary technical specifications in December 2022<sup>137</sup>, Member States are currently transposing the Directive into national law and will apply it as of December 2025.

### 8.3. Case law developments

No major decisions on this subject were issued during the reporting period.

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<sup>135</sup> COM(2023)930.

<sup>136</sup> Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP (OJ L 163, 20.6.2019, p. 1, ELI: <http://data.europa.eu/eli/dir/2019/997/oj>).

<sup>137</sup> Commission Implementing Decision (EU) 2022/2452 of 8 December 2022 laying down additional technical specifications for the EU Emergency Travel Document established by Council Directive (EU) 2019/997 (OJ L 320, 14.12.2022, p. 47, ELI: [http://data.europa.eu/eli/dec\\_impl/2022/2452/oj](http://data.europa.eu/eli/dec_impl/2022/2452/oj)).

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

### **9.1. Introduction**

Articles 20(2)(d) and 24(2), (3) and (4) TFEU refer to 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 any of the EU's official languages<sup>138</sup>, and to receive an answer in the same language.

According to the 2023 Eurobarometer on citizenship and democracy, 84% of EU citizens are aware that they have the right to make a complaint to the European Commission, the European Parliament or the European Ombudsman.

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

Under Article 24(2) and 227 TFEU, any EU citizen and any natural or legal person residing or having its registered office in a Member State has the right to petition to the European Parliament, in any of the EU's official languages, on EU matters that affect them and to receive a reply in the same language. In order to be admissible, petitions must concern matters which fall within the EU's fields of activity and which affect the petitioners directly.

In 2021<sup>139</sup>, the European Parliament Committee on Petitions received 1 392 petitions, around half of the number received in 2013 (2 891) and 2014 (2 715), when the total number of petitions received reached its peak. The number of petitions submitted in 2021 also represents a decrease of 11.5 % compared to the 1 573 petitions submitted in 2020 but a slight increase of 2.5 % compared to the 1 357 petitions submitted in 2019. Of the petitions submitted in 2021, 368 were declared inadmissible and 17 were withdrawn. The Committee on Petitions held 12 committee meetings, at which 159 petitions were discussed with 113 petitioners present remotely<sup>140</sup>.

Of the petitions received in 2021, 78.6% were submitted via the European Parliament's Petitions Web Portal. The number of users supporting one or more petitions on this portal was 209 272, a very sizeable increase from the 48 882 users recorded in 2020<sup>141</sup>.

As in previous years, the main subjects for petitions were the environment (biodiversity and nature) and health. Among the health-related petitions, 17.3% concerned the COVID-19 pandemic. This included petitions on the impact of Member States' COVID-19 emergency

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<sup>138</sup> See Article 55(1) TEU.

<sup>139</sup> Data for 2022 is currently being prepared for the draft report on the outcome of the Committee on Petitions' deliberations during 2022, [https://www.europarl.europa.eu/doceo/document/PETI-PR-749894\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/PETI-PR-749894_EN.pdf).

<sup>140</sup> Report on the outcome of the Committee on Petitions' deliberations in 2021, 10.11.2022, [2022/2024\(INI\)](#).

<sup>141</sup> Ibid.



measures on freedom of movement, and on the implementation of the EU Digital COVID Certificate<sup>142</sup> (*see also Section 6.2.3*).

Between 2021 and 2023, the European Parliament requested that the Commission provide information on 1 471 petitions<sup>143</sup>.

### **9.3. 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 EU institutions, bodies and agencies. Problems range from a lack of transparency in decision-making and refusal to allow access to documents to violations of fundamental rights. In 2020-2022, the Ombudsman's office handled 6 552 complaints, around 2 212 of which fell within its remit, and opened 1 041 inquiries<sup>144</sup>.

Compliance with the Ombudsman's suggestions increased from 77% in 2018 to 79% in 2019 to 81% in 2020 but decreased again to 79% in 2021. The Ombudsman's office helped over 57 427 citizens in the three-year period, by opening inquiries, answering requests for information and giving advice via its interactive online guide<sup>145</sup>.

This core work of handling complaints was supplemented by strategic own-initiative inquiries, aimed at helping as many citizens as possible by examining issues which appeared to be systemic, rather than one-off. In 2020-2022, the Ombudsman's office opened 15 own-initiative inquiries.

### **9.4. Case law developments**

No decisions on this subject were issued during the reporting period.

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

### **10.1. Introduction**

The European Citizens' Initiative was introduced by the Treaty of Lisbon and operational since 2012. It is part of EU citizenship rights and an important instrument for participatory democracy in the EU. Article 24 TFEU and Article 11(4) TEU, first implemented by Regulation 211/2011/EU<sup>146</sup>, allow at least one million citizens from at least seven Member

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<sup>142</sup> Ibid.

<sup>143</sup> Data includes petitions received until end of August 2023.

<sup>144</sup> Numbers are based on the European Ombudsman Annual Report 2020 (<https://www.ombudsman.europa.eu/en/doc/annual-report/en/141317>), Annual Report 2021 (<https://www.ombudsman.europa.eu/en/doc/annual-report/en/156017>), Annual Report 2022 (<https://www.ombudsman.europa.eu/en/doc/annual-report/en/167855>).

<sup>145</sup> Ibid.

<sup>146</sup> Regulation (EU) 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, *OJ L 65, 11.3.2011, p. 31-52*.

States to ask the Commission to submit a proposal for a legal act that implements the EU Treaties.

According to the 2023 Eurobarometer on citizenship and democracy, 64% of EU citizens are aware of their right to participate in a European citizens' initiative.

## 10.2. Policy developments

In parallel to this report, the Commission is also adopting a Report on the application of Regulation (EU) 2019/788 on the European citizens' initiative, taking stock of the functioning of the European Citizens' Initiative and summarising follow-up on the successful initiatives the Commission has replied to since 2020. The report also announces several practical improvements within the existing legal framework aimed at further enhancing the functioning and visibility of the European Citizens' Initiative and its impact on EU policies.

The **new European Citizens' Initiative Regulation**<sup>147</sup> (ECI Regulation) that has applied since January 2020 simplified the rules, making it easier to run or support European citizens' initiatives. The new rules introduce the central online collection system. This system, offered free of charge by the Commission, relieves organisers of the burden of setting up their own collection system and the data protection responsibilities that come with processing the personal data of online supporters. However, the COVID-19 pandemic significantly disrupted the functioning of the European Citizens' Initiative during the first years in which the new rules applied. The temporary measures adopted by the co-legislators on 15 July 2020<sup>148</sup> limited the impact of the pandemic on ongoing initiatives, by **extending the collection periods** for those initiatives by up to 12 months.

Since 2020, the Commission has registered 37 initiatives; only one request for registration had to be refused for not meeting the criteria set out in the ECI Regulation. Overall, 107 initiatives have been registered since the launch of the European Citizens' Initiative. Since 2020, six initiatives were submitted to the Commission for examination after collecting over 1 million valid statements of support from across the EU. The Commission replied to five of these initiatives, and a sixth reply should be adopted by mid-December 2023. This will bring the total number of replies to initiatives to ten.

## 10.3. Case law developments

Since 2020, only a very limited number of cases involving European citizens' initiatives have been brought to the General Court. No new cases concerning refused registrations have been brought to court by organisers. This can be attributed to the improvements to the registration procedure introduced by the new European Citizens' Initiative Regulation, as a result of which only one registration request had to be refused on grounds that the Commission did not have

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<sup>147</sup> Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European Citizens' Initiative, *OJ L 130*, 17.5.2018, p.55.

<sup>148</sup> [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_20\\_1359](https://ec.europa.eu/commission/presscorner/detail/en/mex_20_1359)



the competence to propose a legal act in that area<sup>149</sup>. The only cases in which Commission refusals have been challenged in the last few years concerned refusal decisions adopted under the previous Regulation (EU) 211/2011<sup>150</sup>.

Since 2020, one Commission's reply to a successful initiative has been challenged before court. In case *Minority SafePack v. European Commission*<sup>151</sup>, European citizens' initiative organisers brought an action for annulment against the Commission's Communication refusing to take the action requested in the European citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe'. In its judgment of 9 November 2022, the General Court held that the Commission complied with its obligation to state reasons when considering that no additional legal act was necessary to achieve the objectives pursued by the initiative, given the initiatives already undertaken by the EU institutions in the areas covered by the initiative and the Commission's monitoring of their implementation. On 21 January 2023, the organisers lodged an appeal against this judgment of the General Court.

## 11. CONCLUSIONS

Since the last progress Report under Article 25 TFEU and the accompanying 'EU Citizenship Report 2020' Communication, many Commission initiatives have achieved meaningful advances for the rights of EU citizens. The security of EU citizens' identity cards and residence documents has been strengthened, and the EU Digital Identity Wallet will further simplify citizens everyday lives. In addition, the EU Digital COVID Certificate facilitated the exercise of free movement during the COVID-19 pandemic. The Commission has also adopted initiatives to address the difficulties faced by mobile EU citizens seeking to exercise their right to vote and stand as candidates in elections to the European Parliament and municipal elections and has made it easier to run or support European Citizens' Initiatives.

Moreover, the Commission has worked to step up inclusive democratic processes and ensure equal opportunities in elections, guaranteeing that every citizen can participate in the EU's democratic life. Building on the European Democracy Action Plan, the Commission adopted a flagship legislative proposal on transparency and targeting of political advertising. The Commission also made progress on increasing citizens' involvement at all stages of the democratic process, including with the European Citizens' Panels.

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<sup>149</sup> Only one since 2020.

<sup>150</sup> *Case T-789/19* (Tom Moerenhout and Others v. European Commission) in which the General Court annulled the Commission's decision to refuse registration, after which the initiative was registered on 8 September 2021; *Case T-611/19* (Iniciativa 'Derecho de la UE'), in which the General Court upheld the Commission's decision to refuse registration. In the case *T-495/19* (Romania v. European Commission), Romania challenged the Commission's decision to register the initiative 'Cohesion Policy'. This decision was upheld by the General Court. The case is now under appeal (C-54/22). Romania also challenged the registration decision of the initiative 'Minority SafePack – one million signatures for diversity in Europe', which was upheld in two instances (T-391/17 and C-899/19).

<sup>151</sup> Judgment of the General Court (Eighth Chamber) of 9 November 2022, *Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission*, [T-158/21](#), under appeal, EU:T:2022:696.

In addition, the Commission has continued to work towards achieving a true Union of Equality. It has proposed various new equality and anti-discrimination measures, including on measures on equality bodies, protecting the rights of LGBTIQ people, promoting gender equality and fighting violence against women and domestic violence, ensuring meaningful participation of Roma in society, and addressing racism, antigypsyism, antisemitism and anti-Muslim hatred. The Commission has worked on improving the rights of persons with disabilities by adopting specific tools to support their inclusion. The Commission has continued its efforts to ensure that hate speech and hate crime are criminalised throughout the EU.

The Citizenship Package that is presented together with this report, will further advance EU citizenship rights. This is a fitting celebration of the 30<sup>th</sup> anniversary of EU citizenship and will help make citizenship rights more tangible for citizens.

The Commission will continue to monitor and assess the situation in the Member States and act in accordance with the EU Treaties and the case law of the Court of Justice. In view of the upcoming elections to the European Parliament, the Commission will continue to work on the electoral rights of all EU citizens, and their democratic participation. The full enjoyment of all EU citizens' rights remains a priority for the Commission.

The Commission will continue to work in partnership with other EU institutions, Member States, local and regional authorities, civil society, and citizens themselves, to lay the groundwork for reflections on further work on EU citizenship during the next Commission's term of office. In 2026, the Commission will adopt another progress report on EU citizenship and the implementation of the measures set out in this report.



EUROPEAN  
COMMISSION

Brussels, 6.12.2023  
COM(2023) 931 final

ANNEXES 1 to 2

## **ANNEXES**

*to the*

**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 2020-2023**

## ANNEX I

This Annex provides an overview of the implementation by the Commission of the specific priority actions announced in the “EU Citizenship Report 2020” Communication<sup>1</sup> for 2020-2022.

Priority 2020-2022	Actions
<b>Strengthening democratic participation, citizens’ empowerment and fostering inclusion of citizens in the EU</b>	
<i>Effective exercise of voting rights</i>	
1. In 2021, the Commission will update the directives on voting rights of mobile EU citizens in municipal and European elections, to facilitate the provision of information to citizens and improve the exchange of relevant information among Member States, including to prevent double voting.	<ul style="list-style-type: none"> <li>On 25 November 2021, the Commission adopted a package of measures to reinforce democracy and protect the integrity of elections. The package includes two legislative proposals to <b>recast the Directives on the right to vote and stand as candidates</b> in elections to the European Parliament and municipal elections by EU citizens residing in a different Member State from their state of origin. <i>(for more information see Report pg. 27-28)</i></li> </ul>
2. The Commission will explore the possibility of creating a dedicated shared resource to support EU citizens in exercising their electoral rights. The Commission will continue to work with the Member States through the European Cooperation Network on Elections to facilitate and improve the ability of EU citizens to exercise their voting rights including by supporting the exchange of best practices and mutual assistance to ensure free and fair elections.	<ul style="list-style-type: none"> <li>In its Communication on protecting election integrity and promoting democratic participation, the Commission announced the establishment of a <b>contact point on electoral rights</b>. This function will be fulfilled by the European Direct Contact Centre (EDCC) which will serve as an elections helpline for the 2024 elections to the European Parliament. <i>(for more information see Report pg. 28)</i></li> <li>The <b>European Cooperation Network on Elections (ECNE)</b> continued its work on facilitating the exercise of voting rights and ensuring free and fair elections. The ECNE held dedicated sessions on, among others, e-voting; broad and inclusive participation of mobile EU citizens; and election accessibility for persons with disabilities. As a follow-up, a ‘<b>Compendium of e-voting and other ICT practices</b>’ and a ‘<b>Guide of good electoral practices in Member States addressing participation of citizens with disabilities in the</b></li> </ul>

<sup>1</sup> [“EU Citizenship Report 2020” Communication](#) (Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Citizenship Report 2020 - Empowering citizens and protecting their rights, COM(2020)730 final).

	<p><b>electoral process</b>', are being published as part of the Citizenship Package, in time before the next elections to the European Parliament in 2024. <i>(for more information see Report pg. 6 and 32)</i></p> <ul style="list-style-type: none"> <li>• In October 2023, the Commission organised a <b>high-level event on elections</b>, bringing together various authorities to address the challenges related to electoral processes and empowering citizens to participate in the democratic process as voters and candidates. <i>(for more information see Report pg. 33)</i></li> </ul>
<p>3. The Commission will fund projects on independent election observation, including monitoring by citizens.</p>	<ul style="list-style-type: none"> <li>• The <b>Citizens, Equality, Rights and Values (CERV)</b> programme was launched in 2021 and will run for seven years until 2027. The CERV programme seeks to support and develop open, rights-based, democratic, equal and inclusive societies based on the rule of law.</li> <li>• Under the <i>Citizens' engagement and participation</i> strand, the CERV work programme for 2023-2024 provides funding, among other activities, to independent election observation activities, including monitoring by citizens.</li> <li>• Under the <i>Union Values</i> strand, the Commission may also support independent election observation by funding capacity building of civil society organisations active in this area.</li> </ul>
<p><i>Empowering citizens' participation in the democratic process</i></p>	
<p>4. The Commission will support the active participation of citizens in the democratic process, and will take innovative approaches to involving them in the legislative process to ensure that EU laws are fit-for-purpose and align with EU values. It will lead by example by funding projects that support European citizens' engagement, via the Citizens, Equality, Rights and Values programme, deliberation and participation in</p>	<ul style="list-style-type: none"> <li>• The Commission was one of the EU institutions to have supported the organisation of the Conference on the Future of Europe and is committed to its follow-up. In a Communication published in June 2022, the Commission committed to embedding participatory and deliberative processes in key moments and areas of its policymaking, with the <b>European Citizens' Panels</b> becoming a 'regular feature of our democratic life'. Over the course of 2022 and 2023, three Citizens' Panels were organised. <i>(for more information see Report pg. 34)</i></li> <li>• Following up on the Conference, the Commission is also developing a revamped '<b>Have Your Say</b>' portal as a one-stop-shop for online citizens' engagement. <i>(for more info see Report pg. 34)</i></li> </ul>

<p>the Horizon Europe programme and in the European Green Deal transitions.</p>	<ul style="list-style-type: none"> <li>• The Commission manages the <b>European Citizens' Initiative</b>, a participatory democracy instrument enabling at least 1 million EU citizens to ask the Commission to submit a proposal for a legal act that implements the EU Treaties. Since 2020, the revised ECI Regulation makes it easier for citizens to run and support citizens' initiatives. <i>(for more information see Report pg. 38)</i></li> <li>• The <b>CERV</b> work programmes for 2021-2022 and 2023-2024 both included calls that <b>support European citizens' engagement and participation</b>. The 2023-2024 work programme for example indicated a focus on debating the future of Europe, on citizens' societal engagement, and innovative approaches and tools to help citizens make their voices heard and publicly exchange views on all areas of EU action. The programme particularly encourages projects that collect citizens' views but also ensure a practical link with the policymaking process, thus showing citizens how to engage in practice. The cumulative budget of these calls in 2021-2023 amounts to more than EUR 42 million. In 2024, a new call with a focus on children's engagement and participation will take place.</li> <li>• In addition to the research and innovation projects currently underway under Horizon 2020 on participatory and deliberative democracy, there are new projects on <b>the future of civic participation now launched under Horizon Europe</b>. Another aspect of relevant research on which funding from the Horizon Europe programme is focusing is that of the fight against disinformation and Foreign Interference and Manipulation of Information (FIMI). <i>(for more information see Report pg. 35)</i></li> <li>• Citizen engagement is also an important part of initiatives such as the <b>EU Missions</b>.</li> <li>• As part of the European Green Deal, the <b>European Climate Pact</b> provides a space for continuous conversation and for citizens and organisations across Europe to learn from and inspire each other and accelerate action. In 2021-2022, the Pact invited citizens to share their views on climate and environmental issues</li> </ul>
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	<p>through participatory 'Peer Parliaments'. 461 Peer Parliaments – small groups of 5-10 individuals – across 26 EU Member States brainstormed ideas and solutions, which were then shared with EU policymakers and fed into the Conference on the Future of Europe. On 29 April 2022, citizens presented their recommendations on the climate transition to the Commission. The Pact also has also offered citizens opportunities to communicate directly with those in power to share their thoughts and opinions and to challenge them on complex issues – for example, through dialogues between young people and policymakers, with the organisation of two Youth Dialogues with the Commission on sustainable consumption and sustainable mobility.</p> <ul style="list-style-type: none"> <li>• The <b>EU Youth Dialogue (EUYD)</b>, supported by the <b>Erasmus+ programme</b>, has been instrumental in fostering young people's participation in decision-making processes and in developing public policies through consultations and exchanges. It is a flagship instrument of the EU Youth Strategy, which also came to the forefront in the 2022 European Year of Youth. <b>Erasmus+ and the European Solidarity Corps</b> continue to strengthen European identity and active citizenship among young people through relevant volunteering, educational and professional activities. <i>(for more info see Report pg. 34)</i></li> </ul>
<p>5. The Commission will fund specific local actions that aim to support the inclusion of EU citizens in EU society via the Citizens, Equality, Rights and Values programme.</p>	<ul style="list-style-type: none"> <li>• Under the <i>Citizens' engagement and participation</i> strand of CERV, the '<b>Network of Towns</b>' includes funding activities to promote awareness and building knowledge of EU citizenship rights and associated European common values and common democratic standards, ensuring the provision of information to mobile EU citizens, including those in a precarious situation and EU citizens with a migrant background, and their family members, and encouraging the inclusion and democratic participation of mobile EU citizens and under-represented groups.</li> <li>• Different calls for proposals for <b>town-twinning and networks of towns</b> were launched between 2021 and</li> </ul>

	<p>2023. The cumulative budget of these calls in 2021-2023 amounted to 26 million EUR.</p> <ul style="list-style-type: none"> <li>• The range of actions implemented by the CERV framework partners working in the area of citizens' engagement include those in support to inclusion of mobile EU citizens.</li> </ul>
<p>6. The Commission will raise EU-wide awareness about the importance of participation in culture for society and democracy through targeted actions including funding.</p>	<ul style="list-style-type: none"> <li>• In June 2023, the Commission published the report <b>“Culture and Democracy – the evidence: how citizens’ participation in cultural activities enhances civic engagement, democracy and social cohesion”</b>. The report demonstrates, with international evidence, that citizens’ participation in cultural activities has a clear and positive correlation with civic engagement, democratic attitudes and social cohesion. The report shows that citizens who participate regularly in inclusive and meaningful cultural activities are more likely to vote, to volunteer, and to participate in community activities, projects, and organisations. The report illustrates the many ways in which citizen participation in cultural activities, and in the social settings that support them, helps individuals and communities engage in civic and democratic life. It reviews international evidence on this topic, distils key policy lessons and highlights examples of successful actions from several EU Member States and beyond. The evidence leaves no doubt that investing in citizens’ participation in inclusive cultural activities is essential in any effort to promote civic engagement, democratic vitality and social cohesion in the EU.</li> <li>• The Council Work Plan for Culture 2023-2026 (adopted at the end of November 2022), under its priority theme “Culture for the people: enhancing cultural participation and the role of culture in society” includes an <b>action “Culture and promoting democracy: towards cultural citizenship in Europe”</b>. Peer-learning and a possible conference bringing together policymakers and relevant stakeholders in the cultural and educational sectors are expected in this context.</li> </ul>

Facilitating the exercise of free movement and simplifying daily life	
<i>Improving legal certainty when exercising free movement rights</i>	
<p>7. In 2022, the Commission will improve legal certainty for EU citizens exercising their free movement rights and for national administrations by updating the 2009 EU guidelines on free movement. The updated guidelines will take into account the diversity of families (rainbow families), the application of specific measures, such as those introduced due to public health concerns, as well as the relevant judgments by the Court of Justice.</p>	<ul style="list-style-type: none"> <li>Seeking to improve the legal certainty and to facilitate in practice the application of the current free movement acquis across the EU, the Commission is adopting a <b>review of the 2009 Communication on guidance for better transposition and application of Directive 2004/38/EC</b> as part of the ‘Citizenship Package’. The updated guidance provides legal interpretations, practical orientations and examples on key questions. It aims to guarantee a more effective and uniform application of the free movement legislation across the EU. It integrates the relevant case law of the Court of Justice of the EU handed down since 2009 and provides clarifications on specific issues faced by citizens and national administrations. It takes into account the diversity of families (including rainbow families). <i>(for more information see Report pg. 5 and 20-21)</i></li> </ul>
<p>8. In line with the Withdrawal Agreement, the Commission will continue to support the protection of the rights of EU citizens who as a result of exercising their right to free movement while the UK was still a member of the EU, were resident in the UK before the end of the transition period.</p>	<ul style="list-style-type: none"> <li>The Commission continued to work on the <b>citizens’ rights part of the EU-UK Withdrawal Agreement</b>. This includes ensuring that the rights of Withdrawal Agreement beneficiaries and their family members are respected in other policy areas, in particular as regards travel into and inside the Schengen area. <i>(for more information see Report pg. 21)</i></li> <li>The Commission regularly raises <b>concerns regarding the UK’s implementation of the part of the Withdrawal Agreement on citizens’ rights</b>. In addition, the Commission is concerned about the integrity of the UK’s digital status. <i>(for more information see Report pg. 21-22)</i></li> </ul>
<i>Simplifying cross-border work and travel</i>	
<p>9. The Commission will work with Member States to promote the inclusions of cross-border e-government and e-business solutions into newly issued ID cards.</p>	<ul style="list-style-type: none"> <li>On 8 November 2023, the European Parliament and the Council reached a political agreement on the Regulation establishing a framework for a <b>European Digital Identity</b>. The European Digital Identity Wallets (EDIWs) will be available to all EU citizens, residents, and businesses, allowing them to identify themselves online and offline seamlessly across borders for public and private services. <i>(for more information see Report pg. 23)</i></li> </ul>

<p><b>10.</b> The Commission will launch in 2021 an initiative on EU taxpayers' rights and to simplify tax obligations for EU citizens.</p>	<ul style="list-style-type: none"> <li>• The Commission is in discussion with Member States on a number of questions that touch upon <b>taxpayers' rights</b>, including taxpayers' obligations. The scope of the discussion has been widened to cover the developments triggered by the pandemic and the increased use of information technology solutions.</li> </ul>
<p><b>11.</b> The Commission will launch an initiative to support further the development of multimodal journey planners, as well as digital services facilitating the booking and payment of the different mobility offers.</p>	<ul style="list-style-type: none"> <li>• The revision of the Delegated <b>Regulation on Multimodal Travel Information Services</b> (MMTIS) has been adopted on 29 November 2023. With the revision expanding the obligation to make dynamic (real-time) data accessible via National Access Points, multimodal travel information services will be able to better provide the passenger with accurate and real-time information to plan a journey and to travel. With the revision, service providers could for example offer passengers real-time information on delays or cancellation of their plane, ferry, or transport on demand service at a greater scale thanks to the harmonised requirements.</li> <li>• In parallel, the Commission is still working on the enablers needed to further support distribution of tickets across modes, facilitating the development of MDMS services (B2B and B2C) and therefore facilitating multimodality.</li> </ul>
<p><b>Promoting and protecting EU citizenship</b></p>	
<p><i>Protecting EU citizenship</i></p>	
<p><b>12.</b> The Commission will continue to monitor the risks posed by investor schemes for EU citizenship, including in the context of ongoing infringement procedures, and intervene as necessary.</p>	<ul style="list-style-type: none"> <li>• The Commission considers that granting EU citizenship in return for pre-determined payments or investments without any genuine link to the Member State concerned is not compatible with the principle of sincere cooperation and with the concept of EU citizenship.</li> <li>• In 2020, the Commission launched <b>infringement procedures</b> against two Member States regarding their investor citizenship schemes. Since then, one Member State has suspended its scheme. As the other Member State did not satisfactorily address the concerns raised by the Commission, the Commission decided to refer this Member State to the Court of Justice of the European Union. <i>(for more information see Report pg. 9)</i></li> </ul>

*Promoting EU citizenship and EU values*

**13.** The Commission will propose new equality and anti-discrimination measures, as announced in the strategic documents.

- The Commission delivered on several of the key objectives of its **Gender Equality Strategy**. In March 2022, the Commission adopted a proposal for a directive on violence against women and domestic violence. In 2022 and 2023, the Commission also facilitated an agreement between the European Parliament and the Council on the Directive on gender balance in company boards and the Directive on Pay Transparency as well as the finalisation of the EU accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence. *(for more information see Report pg. 12-13)*
- The Commission continued implementation of its ambitious **EU anti-racism action plan 2020-2025**. This included, among others, the appointment of the first Anti-Racism coordinator, and work on supporting Member States to develop national action plans against racism and racial discrimination. *(for more information see Report pg. 13-14)*
- In its efforts to combat **hate speech and hate crime**, the Commission is ensuring the effective transposition of the Framework Decision on combating racism and xenophobia. The Commission adopted a Communication to extend the list of 'EU crimes' laid down in the Treaty on the Functioning of the European Union to include hate crime and hate speech. The Commission is also negotiating a revision of the 2016 Code of conduct on countering illegal hate speech online. *(for more information see Report pg. 14)*
- The Commission also continued to implement the 2020-2030 EU **Roma Strategic Framework** for Equality, Inclusion and Participation, which is one of the first deliverables of the EU Anti-racism Action Plan. This included, among others, a Communication assessing Member States' national Roma strategic frameworks. *(for more information see Report pg. 14)*
- The implementation of the first ever EU Strategy **on Combating Antisemitism** and Fostering Jewish Life 2021–2030 progressed, including with Council

	<p>conclusions on combating racism and antisemitism in March 2022, inviting Member States to develop national strategies against antisemitism by the end of 2022. <i>(for more information see Report pg. 15)</i></p> <ul style="list-style-type: none"> <li>• In 2023, the Commission also appointed a new Coordinator on <b>combating anti-Muslim hatred</b>. <i>(for more information see Report pg. 15)</i></li> <li>• The Commission also continued to make progress on the Strategy on the <b>Rights of Persons with Disabilities</b>. Work included launching the Disability Platform, a Disability Employment Package, and the adoption of a proposal for a directive establishing the European Disability Card and the European Parking Card for persons with disabilities. The recast of the Rail Passenger Rights Regulation and the ‘Better protection for passengers and their rights’ initiative also contain improved rights for persons with disabilities and with reduced mobility. Finally, the Commission is also presenting a “Guide of good electoral practice addressing participation of citizens with disabilities in the electoral process” as part of the Citizenship Package. <i>(for more information see Report pg. 15-16)</i></li> <li>• The Commission continued to implement the EU Strategy on the <b>Rights of the Child</b> and set up the EU Childrens’ Participation Platform. <i>(for more information see Report pg. 16-17)</i></li> <li>• The Commission also made further progress on its first-ever <b>LGBTIQ Equality Strategy 2020-2025</b>. Work included the adoption of guidelines to support Member States in taking concrete action to enhance protection of the rights of LGBTIQ people. <i>(for more information see Report pg. 17)</i></li> <li>• In December 2020, the Commission adopted a strategy to <b>strengthen the application of the Charter of Fundamental Rights</b> in the EU. <i>(for more information see Report pg. 17-18)</i></li> <li>• In December 2022, the Commission presented legislative proposals to <b>strengthen the role of equality bodies</b>. <i>(for more information see Report pg. 18)</i></li> </ul>
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	<ul style="list-style-type: none"> <li>• The Commission celebrated EU Diversity Month and held the first ever European Capitals of Inclusion and Diversity Awards. <i>(for more information see Report pg. 18)</i></li> </ul>
<p><b>14.</b> The Commission will support young Europeans' sense of European identity through the ERASMUS+ programme, the European Solidarity Corps Programme and the Jean Monnet Actions.</p>	<ul style="list-style-type: none"> <li>• To promote EU citizenship education from an early stage, the <b>Jean Monnet actions</b> were extended to 'other levels of education and training' for the new Erasmus+ funding period. The European Commission also launched the 'EU democracy in action - Have your say with the European Citizens' Initiative' toolkit for secondary schools. As indicated above, <b>Erasmus+ and the European Solidarity Corps</b> continue to strengthen European identity and active citizenship among young people through relevant volunteering, educational and professional activities. <i>(for more information see Report pg. 8)</i></li> </ul>
<p><b>15.</b> The Commission will continue to monitor the impact of restrictive measures, specifically those put in place during crises, on EU citizenship rights, free and fair elections and a fair democratic debate until such measures are lifted and will continue to facilitate Member States exchange best practices on these issues in the European Cooperation Network on Elections.</p>	<ul style="list-style-type: none"> <li>• The Commission continuously underlined that <b>any restrictive measures must respect EU law and fundamental rights</b>. In particular, emergency measures have to be limited in time and respect the principles of legality, proportionality and non-discrimination. Equally critical is the ability to maintain the checks and balances, particularly through the continued scrutiny by national parliaments and courts as well as independent authorities.</li> <li>• As reflected in the successive Rule of Law Reports, the Commission monitored closely all emergency regimes adopted by Member States and took stock of the progressive lifting of such regimes and related restrictions across the EU.</li> <li>• When it comes to the <b>exercise of the right to move and reside freely within the EU</b>, the Commission emphasised that any measures limiting this right to protect public health, must respect EU law principles such as proportionality and non-discrimination. The Commission worked relentlessly to foster cooperation and coordination among Member States on this issue. In particular, the Commission established the <b>EU Digital COVID Certificate</b>, as a reliable and trustworthy way to demonstrate proof of COVID-19 vaccination, recovery, or test status, which avoided a fragmented and likely incompatible system of national certificates. Together</li> </ul>

	<p>with different <b>Council Recommendations on a coordinated approach to the restriction of free movement</b>, the EU Digital COVID Certificate facilitated free movement within the EU when travel restrictions were still deemed necessary, and, at the same time, allowed for a coordinated lifting of these restrictions once possible. <i>(for more information see Report pg. 23-25)</i></p> <ul style="list-style-type: none"> <li>• When it comes to the issue of free and <b>fair elections and a fair democratic debate</b>, Member States exchanged best practices during different dedicated sessions of the European Cooperation Network on Elections. This included the participation of the Venice Commission and ODIHR to present on high election standards during pandemics.</li> </ul>
<b>Protecting EU citizens in Europe and abroad, including in times of crisis/emergency</b>	
<i>Solidarity in action for citizens in the EU</i>	
<p><b>16.</b> The Commission will implement the EU strategy for COVID-19 vaccines together with the Member States, giving all citizens quick, equitable and affordable access to these vaccines. The Commission will continue its work on building a strong European Health Union, in which Member States prepare and respond together to health crises, medical supplies are available, affordable and innovative, and countries work together to improve prevention, treatment and aftercare for diseases such as cancer.</p>	<ul style="list-style-type: none"> <li>• The <b>EU's COVID-19 vaccine strategy</b> continued to prove successful. In total, between the start of the pandemic and October 2023, more than 981 million doses have been administered to Europeans.</li> <li>• The EU contributed to <b>international solidarity</b> by sharing COVID-19 vaccines. By end of 2023, Team Europe shared over 530 million vaccines doses, of which over 444 million through COVAX and 86 million bilaterally.</li> <li>• Together with its Member States, the EU is building a strong <b>European Health Union</b> to better protect the health of EU citizens, prevent and prepare for future pandemics and improve Europe's overall health systems. The new <b>Cross-border Health Threats Regulation</b>, adopted in 2022, will provide the EU with a comprehensive legal framework to govern coordinated action on preparedness, surveillance, risk assessment, and early warning and response measures.</li> <li>• The <b>European Health Data Space</b> is a key pillar of a strong European Health Union. It supports individuals to take control of their own health data, supports the use of health data for better healthcare delivery, better research, innovation and policy making, and enables the EU to</li> </ul>

	<p>make full use of the potential offered by a safe and secure exchange, use and reuse of health data.</p> <ul style="list-style-type: none"> <li>• In 2022, the EU increased the authority of an existing health agency. The <b>European Medicines Agency</b> can now monitor the health sector and take action to prevent medicine shortages and facilitate faster approvals of medicines to end a public health crisis. The <b>European Centre for Disease Prevention and Control</b> has also received more authority to support the EU and its Member States in the prevention and control of communicable disease threats.</li> <li>• Adopted in 2021, <b>Europe's Beating Cancer Plan</b> signals the EU's renewed commitment to cancer prevention and providing equal access to cancer diagnosis and treatment.</li> </ul>
<p><b>17.</b> The Commission will increase its support for young EU citizens, including those from disadvantaged groups, to help them access education, training and finally the labour market through the strengthened Youth Guarantee scheme.</p>	<ul style="list-style-type: none"> <li>• In response to the recession triggered by the COVID-19 pandemic, in 2020 the Commission presented the '<b>Youth Employment Support (YES): a bridge to jobs for the next generation</b>' package.</li> <li>• The <b>reinforced Youth Guarantee</b> was at the heart of the YES package as the EU's reference policy framework to fight youth unemployment and inactivity. It built on the experience and lessons learnt from 7 years implementation of the 2013 Youth Guarantee and included an ambitious headline commitment. Member States should ensure that all young people under 30 years of age receive a good quality offer of employment, continued education, an apprenticeship or a traineeship within a period of four months of becoming unemployed or leaving formal education.</li> <li>• The reinforced recommendation places particular attention to reaching out to and supporting the most vulnerable young people. This includes NEETs (people Not in Education, Employment or Training), but also young people with low skills and those living in rural or disadvantaged urban areas paying attention to the gender and diversity of the young people who are being targeted through targeted and individualised support that takes into account their diversity.</li> </ul>

*Solidarity in action for citizens outside the EU*

<p><b>18.</b> The Commission will review in 2021 EU rules on consular protection in order to improve the EU's and Member States' preparedness and capacity to protect and support European citizens in times of crisis.</p>	<ul style="list-style-type: none"><li>• As part of the Citizenship Package, the Commission is adopting a proposal to <b>amend the Consular Protection Directive</b> to strengthen the right of EU citizens to consular protection, especially in crisis situations. <i>(for more information see Report pg. 5 and 36)</i></li></ul>
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## **ANNEX II**

### **1. INTRODUCTION**

This Annex sets out an overview of relevant judgments by the Court of Justice of the European Union (the ‘Court’) on non-discrimination and EU citizenship for the period from 30 June 2020 to 25 August 2023<sup>2</sup>. In particular, this overview contains summaries of:

- 3 cases related to non-discrimination on grounds of nationality (Article 18 TFEU);
- 5 cases related to combating discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19 TFEU);
- 7 cases related to EU citizenship (Article 20(1) TFEU);
- 18<sup>3</sup> cases related to the right to move and reside freely in the territory of the Member States (Articles 20(2) and 21 TFEU) and its implementation through the Free Movement Directive<sup>4</sup>;
- 2 cases related to the European Citizens’ Initiative (Art. 24 TFEU, Art. 11(4) TEU).

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

During the period covered by this Report, the Court issued 3 key judgements relating to the non-discrimination of EU citizens on grounds of nationality. These decisions dealt with the treatment of mobile EU citizens in cases of extradition, and the residency requirements a Member State may adopt in order for its courts to gain jurisdiction in matrimonial matters and matters of parental responsibility, and whether those may differ from the applicable ones to its own nationals.

#### **2.1. Non-discrimination on grounds of nationality and extradition of mobile EU citizens**

When it comes to non-discrimination on the basis of nationality and extradition to a non-EU country of EU citizens residing in a Member State other than the Member State of their nationality,

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<sup>2</sup> Article 25(1) TFEU provides that the “Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this Part. This report shall take account of the development of the Union”. Through its interpretation of the different Articles under Part 2 of the TFEU, the Court clarifies and specifies the rights flowing from EU citizenship. The Commission plays an active role in relevant procedures, notably in infringement procedures against Member States for alleged breaches of the respective Articles or by intervening in references for a preliminary ruling. The overview of cases in this Annex is not an exhaustive list of all cases with a link to EU citizenship but focuses on those deemed most relevant.

<sup>3</sup> This number includes cases on residence rights derived from EU citizenship based on Article 20 TFEU.

<sup>4</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), *OJ L 158, 30.4.2004, p. 77–123*.

we can single out *Generalstaatsanwaltschaft München v S.M*<sup>5</sup> and *Generalstaatsanwaltschaft Berlin v BY*<sup>6</sup>. In each case, the issue at hand was the interaction between national rules precluding the extradition of the host Member State's own nationals and the EU principle of non-discrimination of EU citizens on grounds of nationality.

The case *Generalstaatsanwaltschaft München v S.M* concerns the extradition of an EU citizen for the purpose of enforcing a custodial sentence. As a preliminary issue, the Court clarified that the fact that the EU citizen held also the nationality of the non-EU country which made the extradition request could not prevent the EU citizen from asserting the rights and freedoms guaranteed by Articles 18 and 21 TFEU<sup>7</sup>. Then, the Court, referred to its previous case-law<sup>8</sup> and confirmed that if the rules on extradition of a Member State introduce a difference in treatment between its nationals and nationals of other Member States permanently residing in its territory by prohibiting only the extradition of its own nationals, that Member State is under an obligation to ascertain whether there is an alternative measure to extradition that is less prejudicial to the exercise of the freedom of movement and residence of an EU citizen who is a permanent resident of that Member State<sup>9</sup>. In the case at stake, according to national law of the requested Member State, the individual concerned could serve his sentence in its territory if the non-EU country which made the request for extradition consented to that.

Thus, where the application of such an alternative to extradition consists in EU citizens being able to serve their sentence in that Member State under the same conditions as its own nationals, but such application is conditional upon obtaining the consent of the requesting non-EU country, the requested Member State should actively seek the consent of that non-EU country and use all the mechanisms for cooperation and assistance in criminal matters which are available to it<sup>10</sup>. If the non-EU country which made the request for extradition consents to the custodial sentence being enforced in the territory of the requested Member State, that Member State will be in a position to allow EU citizens who reside permanently in its territory to serve their sentence there, and thus to ensure that they are treated in the same way as its own nationals. If such consent is not obtained, the extradition of the person would constitute a justified restriction to the right to move and reside, so far as the extradition itself does not infringe obligations under the Charter of Fundamental Rights of the European Union.<sup>11</sup>

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<sup>5</sup> Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017.

<sup>6</sup> Judgement of the Court (Grand Chamber) of 17 December 2020, *BY*, [C-398/19](#), EU:C:2020:1032.

<sup>7</sup> Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017, para. 31.

<sup>8</sup> See: Judgement of the Court (Grand Chamber) of 13 November 2018, *Raugeivicius*, [C-247/17](#), EU:C:2018:898.

<sup>9</sup> Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017, para. 31.

<sup>10</sup> Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017, para. 35-42.

<sup>11</sup> Judgment of the Court (Grand Chamber) of 2 April 2020, *I.N. v Ruska Federacija*, [C-897/19 PPU](#), EU:C:2020:262.



In the case *Generalstaatsanwaltschaft Berlin v BY*<sup>12</sup> an extradition request, for the purposes of criminal prosecution of a dual Ukrainian and Romanian national living in Germany, was filed by the Ukrainian authorities. The citizen in question had moved from Ukraine to Germany, at a time when he did not possess EU citizenship. As a follow up to its *Petruhhin* judgment<sup>13</sup>, the Court clarifies the obligations incumbent on the Member States in the exchanging of information in the framework of an extradition request. The Court also held that Articles 18 and 21 TFEU are applicable to the situation of an EU citizen- who has acquired the nationality of a Member State, and, therefore, EU citizenship, after having moved to another Member State.<sup>14</sup>

In particular, the Court confirmed that priority must be given to informing the offender's Member State of the request for extradition to afford the authorities of that Member State the opportunity to issue a European arrest warrant for the purposes of prosecution.<sup>15</sup> However, neither the Member State from which extradition is requested nor the Member State of which the requested EU citizen is a national are obliged to ask the non-EU country requesting extradition to send to them a copy of the criminal investigation file in order to enable the Member State of which that person is a national to assess the possibility that it might itself conduct a criminal prosecution of that person. Moreover, the host Member State does not have a duty to refuse extradition and take charge of the prosecution even if admissible under its national law.<sup>16</sup>

Related case *WS v Bundesrepublik Deutschland* is discussed under section 5.5.

## 2.2. Non-discrimination on grounds of nationality and rules on jurisdiction

When it comes to non-discrimination on the basis of nationality and the question of court jurisdiction, the Court issued a judgment in the case *OE v VY*<sup>17</sup>. The matter concerned a couple, married in Ireland, where they had their habitual residence. After their split, one of the husbands changed residence to Austria in whose courts the divorce papers were filed. The issue at hand concerned whether national requirements of a minimum residence period in order for the courts of a particular Member State (Austria in the case) to exercise jurisdiction are discriminatory in the context of matrimonial matters and parental responsibilities. The Court was called upon to provide clarification in light of the Regulation No 2201/2003<sup>18</sup> ("Brussels IIa Regulation") and the national

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<sup>12</sup> Judgement of the Court (Grand Chamber) of 17 December 2020, *Generalstaatsanwaltschaft Berlin v BY*, C-389/19, EU:C:2020:1032, para. 28.

<sup>13</sup> Judgment of the Court (Grand Chamber) of 6 September 2016, *Aleksei Petruhhin*, [C-182/15](#), EU:C:2016:630.

<sup>14</sup> Judgement of the Court (Grand Chamber) of 17 December 2020, *Generalstaatsanwaltschaft Berlin v BY*, [C-389/19](#), EU:C:2020:1032, para. 31.

<sup>15</sup> Judgement of the Court (Grand Chamber) of 17 December 2020, *Generalstaatsanwaltschaft Berlin v BY*, [C-389/19](#), EU:C:2020:1032, para. 43-47.

<sup>16</sup> Judgement of the Court (Grand Chamber) of 17 December 2020, *Generalstaatsanwaltschaft Berlin v BY*, C-389/19, EU:C:2020:1032, para. 67.

<sup>17</sup> Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87.

<sup>18</sup> Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

rules on a minimum period of stay of 6 months for the rules on court jurisdiction to apply. In this context, the Court established that article 18 must be interpreted as meaning that the requirement for a minimum period of residence for the purposes of granting jurisdiction to the courts of the host Member State should not be considered a case of discrimination based on nationality.<sup>19</sup> The Court reasoning concluded that differentiated rules on court jurisdiction in cases of nationals of that particular Member State as opposed to non-nationals, who must reside in that country for a minimum period, are justifiable on the account of the need to establish a real link with the Member State whose courts exercise jurisdiction to rule on the dissolution of the matrimonial ties concerned.<sup>20</sup> According to the Court, a person who is a national of a Member State does not only have institutional and legal ties with that Member State but “as a general rule” also “cultural, linguistic, social, family or property ties”.<sup>21</sup>

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

During the period covered by this Report, the Court issued 4 key judgements relating to the non-discrimination of EU citizens on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

#### **3.1. Non-discrimination on the basis of religion or belief**

Regarding the freedom of religion, the Court found that an internal rule of prohibiting the visible wearing of religious, philosophical or spiritual signs does not constitute direct discrimination if it is applied to all workers in a general and undifferentiated way. This has been confirmed in the judgment *L.F. v S.C.R.L.*<sup>22</sup>, where the Court ruled that religion and belief must be regarded as a single ground of discrimination, covering both religious belief and philosophical or spiritual belief, otherwise the general framework for equal treatment in employment and occupation provided for by EU law will be undermined<sup>23</sup>. Indeed, the judgment of the Court explicitly states that Article 1 of the “Equality Framework Directive”<sup>24</sup>) refers to ‘religion’ and ‘belief’ together, as does the wording of various provisions of primary EU law, namely Article 19 TFEU, according to which

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<sup>19</sup> Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87, para. 19 - 21.

<sup>20</sup> Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87, para. 38-44.

<sup>21</sup> Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87, para. 31.

<sup>22</sup> Judgement of the Court (Second Chamber) of 13 October 2022, *L.F. v S.C.R.L.*, [C-344/20](#), EU:C:2022:774, para. 33. See also judgment of 14 March 2017, *G4S Secure Solutions*, [C-157/15](#), EU:C:2017:203, paragraphs 30 and 32.

<sup>23</sup> [See press release](#).

<sup>24</sup> Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

the EU legislature may take appropriate action to combat discrimination based on, inter alia, ‘religion or belief’.<sup>25</sup>

In a similar judgment in the joined *WABE eV and MH Müller Handels GmbH v MJ*<sup>26</sup>, two employees of companies governed by German law wore an Islamic headscarf at their respective workplaces. In both cases, the employees were subject to instructions and warnings against displaying any major signs of political, philosophical or religious beliefs, and were told not to wear their headscarves. The Court stated that a prohibition on wearing any visible form of expression of political, philosophical or religious beliefs in the workplace may be justified by the employer's need to present a neutral image towards customers or to prevent social disputes. However, it added that such obligation cannot put persons adhering to a particular religion or belief at a particular disadvantage.<sup>27</sup> In any case, the justification of such prohibition must correspond to a genuine need from the employer, and national courts may take into account the specific context of their Member State when weighting the rights and interests at issue.<sup>28</sup>

### 3.2. Non-discrimination on the basis of age

In case *A v HK Danmark and HK/Privat*<sup>29</sup> it has been ruled that an age limit laid down in the articles of association of an employees' organisation to be eligible for the post of president of that organisation is discriminatory on the basis of age<sup>30</sup>. Indeed, an individual born in 1948 was recruited in 1978 as a trade union officer by a local branch of a Danish workers' organization, and subsequently elected as president. At the age of 63, the individual had exceeded the age limit provided in the association's statutes for standing for re-election to the presidency. Following a complaint, the Danish Equal Treatment Commission ruled that prohibiting the individual from standing for re-election to the presidency on the grounds of her age was contrary to the Danish Anti-Discrimination Act. As a result of the failure to comply with that decision, the Court of Appeal held that the resolution of the dispute depended on whether, as the elected chair of the worker's organisation and a member of its political staff, the individual fell within the scope of the Anti-Discrimination Directive<sup>31</sup>. In its ruling, the Court confirmed the opinion of the Advocate General that the Equality Framework Directive, being legally based on Article 19(1) TFEU, aims at eliminating, on grounds of social and public interest, all obstacles based on discriminatory

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<sup>25</sup> Judgement of the Court (Second Chamber) of 13 October 2022, *L.F. v S.C.R.L.*, C-344/20, EU:C:2022:774, para. 25.

<sup>26</sup> Judgement of the Court (Grand Chamber) of 15 July 2021, *IX v WABE eV and MH Müller Handels GmbH v MJ*, [Joined Cases C-804/18 and C-341/19](#), EU:C:2021:594, para. 52.

<sup>27</sup> Judgement of the Court (Grand Chamber) of 15 July 2021, *IX v WABE eV and MH Müller Handels GmbH v MJ*, [Joined Cases C-804/18 and C-341/19](#), EU:C:2021:594, para. 44.

<sup>28</sup> See: judgement of the Court (Grand-Chamber) of 15 July 2021, *IX v WABE eV and MH Müller handels GmbH v MJ*, [joined Cases C-804/18 and C-341/19](#), EU:C:2021:594, paras. 70, 90.

<sup>29</sup> Judgement of the Court (Second Chamber) of 2 June 2022, *A v HK Danmark and HK/Privat*, [C-587/20](#), EU:C:2022:419.

<sup>30</sup> Judgement of the Court (Second Chamber) of 2 June 2022, *A v HK Danmark and HK/Privat*, [C-587/20](#), EU:C:2022:419, para. 54.

<sup>31</sup> See also [press release](#).

grounds to access to livelihoods and to the capacity to contribute to society through work, irrespective of the legal form in which it is provided.<sup>32</sup>

### 3.3. Non-discrimination on the basis of sexual orientation

In *J.K. v TP S.A.*<sup>33</sup> the Court of Justice has ruled that sexual orientation cannot be a reason to refuse or conclude a contract with a self-employed worker<sup>34</sup>. In this matter, a self-employed worker and his partner published a music video on YouTube aimed at promoting tolerance towards same-sex couples. Shortly after the video went public, although J.K. had previously concluded a series of consecutive short-term contracts on a self-employed basis with the Poland's public television channel, no new contract for specific work was concluded with him. The Court in its judgment recognized the rights of self-employed persons not to be discriminated on the basis of their sexual orientation. Indeed, the Court stated that the concept of 'conditions for access to employment, self-employment or to occupation' must be construed broadly, covering the access to any occupational activity, whatever the nature and characteristics of such activity<sup>35</sup>. The Court's decision thus reasserted that the Equality Framework Directive aims to eliminate, on grounds relating to social and public interest, all discriminatory obstacles to access to livelihoods and to the capacity to contribute to society through work, irrespective of the legal form in which they are provided.<sup>36</sup>

### 3.4. Non-discrimination on the basis of sex

In *CJ v Tesorería General de la Seguridad Social (TGSS)*<sup>37</sup> the Court ruled that a Spanish provision of social security legislation that excludes domestic workers from unemployment insurance is indirectly discriminatory on the grounds of sex, since most of those workers are women. Following the Commission's position, the Court ruled that the provision is contrary to Directive 79/7 on sex equality in statutory social security<sup>38</sup>, because it places female workers at a particular disadvantage in relation to male workers and is not justified by objective factors unrelated to any discrimination.

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<sup>32</sup> Judgement of the Court (Second Chamber) of 2 June 2022, *A v HK Danmark and HK/Privat*, [C-587/20](#), EU:C:2022:419, para. 34.

<sup>33</sup> Judgment of the Court (Second Chamber) of 12 January 2023, *J.K. v TP S.A.*, [C 356/21](#), EU:C:2023:9.

<sup>34</sup> See also [press release](#).

<sup>35</sup> Judgment of the Court (Second Chamber) of 12 January 2023, *J.K. v TP S.A.*, [C 356/21](#), EU:C:2023:9, para. 36.

<sup>36</sup> Judgment of the Court (Second Chamber) of 12 January 2023, *J.K. v TP S.A.*, [C 356/21](#), EU:C:2023:9, para. 43.

<sup>37</sup> Judgment of the Court (Third Chamber) of 24 February 2022, *CJ v Tesorería General de la Seguridad Social (TGSS)*, C-389/20, ECLI:EU:C:2022:120.

<sup>38</sup> Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979, p. 24.

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

From 2020 to 2023, the Court issued 7 key judgements concerning EU citizenship. These cases covered for example the loss of EU citizenship due to loss of nationality of a Member State. Cases on the topic of derived rights of residence for non-EU family members of EU citizens based on Article 20 TFEU are discussed under section 5.4.

The three cases *Silver and Others v Council*<sup>39</sup>, *Shindler and Others v Council*<sup>40</sup> and *David Price v Council*<sup>41</sup> were brought separately before the Court by British citizens that tried to challenge the EU-UK Withdrawal Agreement and the Council's decision, claiming, among other things, that those acts had deprived them of rights that they had exercised and acquired as EU citizens. The Court rejected these actions and confirmed that the loss of the status of citizen of the EU, and consequently the loss of the rights attached to that status, is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the EU, and not of the withdrawal agreement or the Council's decision<sup>42</sup>.

Another case on the loss of EU citizenship is *JY v Wiener Landesregierung*<sup>43</sup>. In this matter, an Estonian national voluntarily renounced her Estonian nationality after having obtained assurances as to the grant of Austrian nationality once she had renounced her other nationality. However, due to several administrative offences the Austrian competent authority later revoked its assurance as to the grant of Austrian nationality. The Court in its judgment confirmed that the loss of the status of EU citizen falls, by reason of its nature and its consequences, within the scope of EU law also where the assurance as to the grant of another Member State nationality is revoked with the effect of preventing that person from recovering the status of EU citizen. Although it is ascertained that the Member States hold exclusive competence to establish the rules for the acquisition or loss of nationality, the authorities of the naturalising Member State must take into account the EU law principle of proportionality when seeking to revoke a previously given assurance as to the grant of the host Member State's nationality. In this case the Court<sup>44</sup> confirmed that the principle of proportionality has not been satisfied where such a withdrawal decision is based on administrative

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<sup>39</sup> Judgment of the Court (Eighth Chamber) of 15 June 2023, *Silver and Others v Council*, [C-499/21 P](#), EU:C:2023:479.

<sup>40</sup> Judgment of the Court (Eighth Chamber) of 15 June 2023, *Shindler and Others v Council*, [C-501/21 P](#), EU:C:2023:480.

<sup>41</sup> Judgment of the Court (Eighth Chamber) of 15 June 2023, *David Price v Council*, [C-502/21 P](#), EU:C:2023:482.

<sup>42</sup> Judgment of the Court (Eighth Chamber) of 15 June 2023, *Silver and Others v Council*, [C-499/21 P](#), EU:C:2023:479, para. 46 and 47; Judgment of the Court (Eighth Chamber) of 15 June 2023, *Shindler and Others v Council*, [C-501/21 P](#), EU:C:2023:480, para. 69 and 70; Judgment of the Court (Eighth Chamber) of 15 June 2023, *David Price v Council*, [C-502/21 P](#), EU:C:2023:482, para. 75 and 76.

<sup>43</sup> Judgment of the Court (Grand Chamber) of 18 January 2022, *JY v Wiener Landesregierung*, [C-118/20](#), EU:C:2022:34.

<sup>44</sup> The Court has relied on the prior case-law: judgments of 2 March 2010, *Rottmann*, [C-135/08](#), EU:C:2010:104, para.55 and 56, and of 12 March 2019, *Tjebbes and Others*, [C-221/17](#), EU:C:2019:189, para. 40.

traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty<sup>45</sup>.

In the case *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*<sup>46</sup>, the Court considered, in essence, the question of whether, after the withdrawal of the United Kingdom from the EU, nationals of that State who exercised their right to reside in a Member State before the end of the transition period, have the guaranteed right to vote and to stand as a candidate in municipal elections in the Member State of residence, especially where they are deprived of the right to vote on elections held in the Member State of nationality<sup>47</sup>. The Court ruled that, as of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the EU, on 1 February 2020, nationals of that State who exercised their right to reside in a Member State before the end of the transition period no longer enjoy the status of citizen of the Union, nor, more specifically the right, pursuant to Article 20(2)(b) TFEU and Article 22 TFEU, to vote and to stand as a candidate in municipal elections in their Member State of residence, including where they are also deprived, by virtue of the law of the State of which they are nationals, of the right to vote in elections held by that State.

In the order *WY v Steiermärkische Landesregierung*<sup>48</sup> the CJEU dealt with another case concerning the loss of nationality. The case concerned WY who had acquired the Austrian nationality in 1992 after having renounced his Turkish nationality. In 2018, an Austrian court confirmed that WY had automatically lost Austrian nationality in 1994 upon reacquisition of the Turkish nationality. This means that WY ceased to be an Austrian citizen before the accession of the Austria on 1 January 1995. The Court confirmed that WY was no longer an Austrian national when the provisions on EU citizenship came into force in Austria, and thus never obtained the EU citizenship.<sup>49</sup> In these circumstances, the specific situation of WY does not fall within the scope of Article 20 TFEU or Article 21 TFEU<sup>50</sup>.

Finally, *Minority SafePack v. European Commission*<sup>51</sup> concerned a European citizens' initiative (see further info under section 6) seeking to obtain, among others, the extension of citizen-related

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<sup>45</sup> Judgment of the Court (Grand Chamber) of 18 January 2022, *JY v Wiener Landesregierung*, [C-118/20](#), EU:C:2022:34, para. 74.

<sup>46</sup> Judgment of 9 June 2022, *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*, [C-673/20](#), EU:C:2022:449.

<sup>47</sup> Judgment of 9 June 2022, *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*, [C-673/20](#), EU:C:2022:449, para. 45.

<sup>48</sup> Order of the Court (Ninth Chamber) of 15 March 2022, *WY v Steiermärkische Landesregierung*, [C-85/21](#), EU:C:2022:192.

<sup>49</sup> Order of the Court (Ninth Chamber) of 15 March 2022, *WY v Steiermärkische Landesregierung*, [C-85/21](#), EU:C:2022:192, para. 29.

<sup>50</sup> Order of the Court (Ninth Chamber) of 15 March 2022, *WY v Steiermärkische Landesregierung*, [C-85/21](#), EU:C:2022:192, para. 31.

<sup>51</sup> Judgment of the General Court (Eighth Chamber) of 9 November 2022, *Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission*, [T-158/21](#), under appeal, EU:T:2022:696.



rights to stateless persons and their families, who have been living in their country of origin for their whole lives. The Court considered that possession of the nationality of a Member State is an essential condition for a person to be able to acquire and retain the status of EU citizen and to benefit fully from the rights attaching to that status. Thus, in accordance with the judgment in *Préfet du Gers and Institut national de la statistique et des études économiques* (see Section 4), rights connected with the status of EU citizen cannot be extended to persons who are not nationals of a Member State.

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

The Court has delivered multiple judgements in relation to Article 21 TFEU (including its implementation through the Free Movement Directive)<sup>52</sup>. The cases dealt, for example, with (derived) residence rights, entry and residence rights of “other family members”, or access to benefits and/or social assistance by mobile EU citizens.

The Court has also delivered multiple judgments on the topic of derived rights of residence for non-EU family members of EU citizens, following the Court’s line of case law starting with *Ruiz Zambrano*, based on Article 20 TFEU.

### **5.1. Free movement rights and (derived) residence rights**

*G.M.A. (Demandeur d'emploi)*<sup>53</sup> concerned the right of residence of jobseekers. Article 45 TFEU and Article 14(4)(b) of The Free Movement Directive require the host Member State to grant an EU citizen ‘a reasonable period of time’ to look for work which, should the EU citizen decide to register as a jobseeker in the host Member State, starts from the time of registration’<sup>54</sup>. This reasonable period of time should ‘allow that person to acquaint himself or herself with potentially suitable employment opportunities and take the necessary steps to obtain employment’<sup>55</sup>. ‘During that period, the host Member State may require the jobseeker to provide evidence that he or she is

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<sup>52</sup> This Annex does not address several cases which are, while not based on Article 21 TFEU or on the Free Movement Directive, still relevant in the context of the exercise of free movement during the COVID-19 pandemic. They concern in particular the EU Digital COVID Certificate Regulation (Regulation (EU) 2021/953). These are T-527/21 (*Abenante and Others v Parliament and Council*), T-101/22 (*OG and Others v Commission*), T-103/22 (*ON v European Commission*) and T-503/21 (*Lagardère, unité médico-sociale v Commission*). This Annex does not address the judgments of the Court based primarily on the status of ‘Union worker’ pursuant to Article 45 et seq. TFEU either.

<sup>53</sup> Judgment of the Court (First Chamber) of 17 December 2020, *GMA Demandeur d'emploi*, [C-710/2019](#), EU:C:2020:1037.

<sup>54</sup> Judgment of the Court (First Chamber) of 17 December 2020, *GMA Demandeur d'emploi*, [C-710/2019](#), EU:C:2020:1037, para. 51.

<sup>55</sup> Judgment of the Court (First Chamber) of 17 December 2020, *GMA Demandeur d'emploi*, [C-710/2019](#), EU:C:2020:1037, para. 45.

seeking employment'<sup>56</sup>. A period of 6 months from the date of registration 'does not appear, in principle, to be insufficient'<sup>57</sup>. 'It is only after the reasonable period of time has elapsed that the jobseeker is required to provide evidence not only that he or she is continuing to seek employment but also that he or she has a genuine chance of being engaged'. Where an EU citizen enters a host Member State with the intention of seeking employment there, his or her right of residence during the first 3 months is also covered under Art. 6 of The Free Movement Directive. Accordingly, during that three-month period, no condition other than the requirement to hold a valid identity document is to be imposed on that citizen<sup>58</sup>.

In *Staatssecretaris van Justitie en Veiligheid*<sup>59</sup> the Court held that an expulsion decision taken on the ground that an EU citizen no longer enjoys a right of residence under Article 7 of The Free Movement Directive in the territory of a Member State, cannot be regarded as having fully been complied with, merely because the person concerned has physically left the host Member State. The EU citizen needs to have genuinely and effectively terminated his or her residence there under the referred to Article 7<sup>60</sup>. Only once these EU citizens have genuinely and effectively terminated that residence, can they again exercise their right of residence under Article 6 of The Free Movement Directive in the same host Member State, as their new residence cannot be regarded as constituting in fact a continuation of their preceding residence in that territory<sup>61</sup>.

In the event of failure to comply with such an expulsion decision, the Member State is not obliged to adopt a new decision but may rely on the initial one in order to oblige the person concerned to leave its territory<sup>62</sup>. However, a material change in circumstances enabling the EU citizen to satisfy the conditions of the right of residence for more than 3 months under Article 7 (e.g. the EU citizen becomes a worker), would deprive the expulsion decision of any effect and would require, despite the failure to comply with that decision, that the residence on the territory of the Member State be regarded as legal<sup>63</sup>. Finally, an expulsion decision taken under Article 15(1) of The Free Movement Directive does not preclude the exercise of the right of entry under Article 5 of that directive, when

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<sup>56</sup> Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d'emploi, C-710/2019, EU:C:2020:1037, para. 43.

<sup>57</sup> Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d'emploi, C-710/2019, EU:C:2020:1037, para. 42.

<sup>58</sup> Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d'emploi, C-710/2019, EU:C:2020:1037, para. 28.

<sup>59</sup> Judgement of the Court (Grand Chamber) of 22 June 2021, *Staatssecretaris van Justitie en Veiligheid*, [C-719/19](#), EU:C:2021:506.

<sup>60</sup> Judgement of the Court (Grand Chamber) of 22 June 2021, *Staatssecretaris van Justitie en Veiligheid*, [C-719/19](#), EU:C:2021:506, para. 81.

<sup>61</sup> Judgement of the Court (Grand Chamber) of 22 June 2021, *Staatssecretaris van Justitie en Veiligheid*, [C-719/19](#), EU:C:2021:506, para. 81.

<sup>62</sup> Judgement of the Court (Grand Chamber) of 22 June 2021, *Staatssecretaris van Justitie en Veiligheid*, [C-719/19](#), EU:C:2021:506, para. 94.

<sup>63</sup> Judgement of the Court (Grand Chamber) of 22 June 2021, *Staatssecretaris van Justitie en Veiligheid*, [C-719/19](#), EU:C:2021:506, para. 95.

the EU citizen travels to the territory of the Member State ‘on an *ad hoc* basis for purposes other than to reside there’<sup>64</sup>.

In its judgment *V.M.A. v Stolichna obshtina, rayon Pancharevo*<sup>65</sup>, the Court has held that, if a child is an EU citizen, he or she has a right to be issued a passport or identity card by the Member State of nationality, stating the nationality and the name as it appears on the birth certificate drawn up by another Member State<sup>66</sup>. In addition, such a travel document, alone or accompanied by others (such as the birth certificate issued by the Member State of birth), must enable the child to travel with either parent whose parenthood has been established by another Member State<sup>67</sup>. The parents, too, are each entitled to a document mentioning them as persons who can travel alone with that child<sup>68</sup>. This does not entail an obligation, for the Member State of nationality, to issue a birth certificate with the same content as the one issued in the other Member State. The Court clarified however that the Member State of nationality is obliged to issue the identity card or passport without requiring a birth certificate drawn up by its national authorities. A Member State cannot rely on such a requirement, or on any other requirement stemming from its national law, in order to refuse issuing a passport or identity card<sup>69</sup>. The Court also recalled that the rights of EU citizens under Article 21 TFEU include the right to lead a normal family life, together with their family members, both in their host Member State and in the Member State of which they are nationals when they return to the territory of that Member State<sup>70</sup>. As a consequence, all Member States must recognise the parent-child relationship for the purposes of the exercise of the rights that the child derives from EU law<sup>71</sup>. The Court also insisted on the importance of fundamental rights, in particular the right to private and family life and the rights of the child – ‘in the situation with which the main proceedings are concerned, the right to respect for private and family life guaranteed in Article 7 of the Charter of Fundamental Rights and the rights of the child guaranteed in Article 24 of the Charter of Fundamental Rights, in particular the right to have the child’s best interests taken into account as a primary consideration in all actions relating to children, and the

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<sup>64</sup> Judgement of the Court (Grand Chamber) of 22 June 2021, Staatssecretaris van Justitie en Veiligheid, [C-719/19](#), EU:C:2021:506, para. 102-103.

<sup>65</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008.

<sup>66</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 44.

<sup>67</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 46.

<sup>68</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 50.

<sup>69</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 45.

<sup>70</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 45.

<sup>71</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 49 and 57.

right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, are fundamental’<sup>72</sup>.

This does not require the Member State of which the child concerned is a national to provide, in its national law, for the parenthood of persons of the same sex, or to recognise, for purposes other than the exercise of the rights which that child derives from EU law, the parent-child relationship between that child and the persons mentioned on the birth certificate drawn up by the authorities of the host Member State as being the child’s parents’<sup>73</sup>.

The holding in the *V.M.A* judgment was confirmed by the Court in *Rzecznik Praw Obywatelskich*<sup>74</sup>.

In *X v Belgian State*<sup>75</sup>, the Court confirmed the validity of Article 13(2) of The Free Movement Directive in the light of Articles 20 and 21 of the Charter of Fundamental Rights of the European Union.

More specifically, it ruled that Article 13(2) of The Free Movement Directive is valid though, in the event of divorce, annulment of marriage or termination of a registered partnership, that provision makes the retention of the right of residence by a non-EU citizen whose spouse is a mobile EU citizen and who has been a victim of domestic violence subject to the condition, inter alia, of having sufficient resources<sup>76</sup>; whereas Article 15(3) of Directive 2003/86/EC does not make the retention of the right of residence by a non-EU national who has benefited from the right to family reunification subject to that condition in the event of divorce or separation.

The Court concludes that a difference in the treatment of non-EU citizens who are victims of domestic violence by their spouse, depending on whether they have been granted family reunification with an EU citizen or with a non-EU citizen does not infringe the right to ‘equality before the law’, enshrined in Article 20 of the Charter, of non-EU citizens in either situation because of their differences of status and rights<sup>77</sup>.

In addition, the Court took the opportunity of this case to reverse its position adopted in *NA*<sup>78</sup> on the application of Article 13(2)(c) of The Free Movement Directive. While in *NA*, the Court had ruled that the divorce proceedings must have started before the EU mobile citizen leaves the

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<sup>72</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 59.

<sup>73</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, [C-490/20](#), EU:C:2021:1008, para. 47-49, 52, 57, 67 and 68.

<sup>74</sup> Order of the Court (Tenth Chamber) of 24 June 2022, *Rzecznik Praw Obywatelskich*, C-2/21, EU:C:2022:502.

<sup>75</sup> Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657.

<sup>76</sup> Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657, para. 61 – 62 – 64.

<sup>77</sup> Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657, para. 61 – 90.

<sup>78</sup> Judgment of the Court (First Chamber) of 30 June 2016, *NA*, [C-115/15](#), EU:C:2016:487, para. 51.

Member State of residence in order for the non-EU citizen to retain his/her right of residence, in the present case, it ruled that where a non-EU citizen has been the victim of acts of domestic violence committed by his or her EU spouse, the non-EU citizen can rely on the retention of his or her right of residence based on Article 13(2)(c) as long as the divorce proceedings are initiated within a reasonable period following the departure of the EU citizen from the host Member State<sup>79</sup>.

In case *A (Soins de santé publics)*<sup>80</sup>, the Court examined how Regulation 883/2004 (on social security) interacts with the requirement to hold a comprehensive sickness insurance laid down in Article 7(1)(b) of the Free Movement Directive. Pursuant to this article, Member States may require EU citizens who are nationals of another Member State and who wish to exercise their right of residence in their territory for a period of longer than three months without being economically active to have, for themselves and their family members, comprehensive sickness insurance cover in the host Member State and sufficient resources not to become a burden on the social assistance system of that Member State during their period of residence.

The Court held that economically non-active EU citizens who move to another Member State and are exercising their right of residence for a period of more than three months but of less than five years have the right to be affiliated to the public sickness insurance scheme of the host Member State. Indeed, the Court considered that a Member State cannot, under its national legislation, refuse to affiliate to its public sickness insurance scheme an EU citizen who, under Article 11(3)(e) of Regulation No 883/2004, on the determination of the legislation applicable, comes under the legislation of that Member State<sup>81</sup>.

Nevertheless, under such circumstances, the host Member State may provide that, until the EU citizen obtains the right of permanent residence, access to this system is not free of charge, in order to prevent economically non-active EU citizens from becoming an unreasonable burden on its public finances<sup>82</sup>.

As a result, the host Member State may, subject to compliance with the principle of proportionality, make the affiliation to its public sickness insurance system of an economically non-active EU citizen subject to conditions intended to ensure that the EU citizen does not become an unreasonable burden on its public finances. These conditions may include the EU citizen concluding or maintaining a comprehensive private sickness insurance enabling the host Member State to be reimbursed for the health expenses it has incurred for that citizen's benefit, or the EU

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<sup>79</sup> See Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657, para. 43 and 45, clarifying that initiating divorce proceedings almost 3 years after the EU spouse has left the host Member State does not appear to represent a reasonable period.

<sup>80</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, *A (Soins de santé publics)*, [C-535/19](#), EU:C:2021:595.

<sup>81</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, *A (Soins de santé publics)*, [C-535/19](#), EU:C:2021:595, para. 50.

<sup>82</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, *A (Soins de santé publics)*, [C-535/19](#), EU:C:2021:595, para. 58.

citizen paying a contribution to that Member State's public sickness insurance system<sup>83</sup>. The Court has held that, in this context, the host Member State must ensure that the principle of proportionality is observed 'and, therefore, that it is not excessively difficult for that citizen to comply with such conditions'<sup>84</sup>.

***VI v The Commissioners for Her Majesty's Revenue & Customs***<sup>85</sup>, concerned the situation of an Irish child and her non-EU citizen parent and primary carer, both residing in the UK. The issue was related to the requirement to have comprehensive sickness insurance within the meaning of the Free Movement Directive.

First, the Court recalled that a minor's right of permanent residence in the host Member State, in order to ensure the effectiveness of that right of residence, necessarily implies a right for the parent who is the primary carer of that child to reside with him or her in the host Member State. As a consequence, the inapplicability of the condition of, among others, having comprehensive sickness insurance after the minor has acquired permanent residence extends to that parent. Therefore, after the child has acquired permanent residence, neither of them is required to have comprehensive sickness insurance in order to retain their right of residence<sup>86</sup>.

In addition, the Court clarified that, before the child acquires permanent residence, both the child and the parent who is the primary carer are required to have comprehensive sickness insurance. This requirement is satisfied both where this child has comprehensive sickness insurance which covers his or her parent, and in the inverse case where this parent has such insurance covering the child<sup>87</sup>.

The Court recalled that host Member State may, subject to compliance with the principle of proportionality, make an economically non-active EU citizen's affiliation to its public sickness insurance system subject to conditions intended to ensure that that citizen does not become an unreasonable burden on its public finances. The Court also stressed that, once an EU citizen is affiliated to such a public sickness insurance system in the host Member State, he or she has comprehensive sickness insurance within the meaning of the Free Movement Directive<sup>88</sup>. In a situation where the parent has worked and was subject to tax in the host State during the period at issue, it would be disproportionate to deny that child and the parent a right of residence on the sole

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<sup>83</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, A (Soins de santé publics, [C-535/19](#), EU:C:2021:595, paragraph 59 and C-247/20, VI, ECLI:EU:C:2022:177, para. 59.

<sup>84</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, A (Soins de santé publics, [C-535/19](#), EU:C:2021:595, paragraph 59.

<sup>85</sup> Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, [C-247/20](#), EU:C:2022:177.

<sup>86</sup> Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, C-247/20, EU:C:2022:177, para. 60.

<sup>87</sup> Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, C-247/20, EU:C:2022:177, para. 67.

<sup>88</sup> Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, [C-247/20](#), EU:C:2022:177, paragraph 69.



ground that, during that period, they were affiliated free of charge to the public sickness insurance system of that State. In these circumstances, such affiliation cannot be considered to constitute an unreasonable burden on the public finances of the Member State.

## 5.2. Entry and residence rights of “other family members” of EU citizens

Pursuant to Article 3(2) of the Free Movement Directive, Member States must facilitate the entry and residence of ‘extended family members’ of EU citizens. The case *Minister for Justice and Equality (Ressortissant de pays tiers cousin d’un citoyen de l’Union)*<sup>89</sup> concerned ‘members of the household’, one of the categories of ‘extended family members’. First, the Court held that the three situations falling under the category ‘extended family members’ - financial dependence, physical dependence and household membership - are not cumulative. This means that a person can be considered an ‘extended family member’ if he or she falls within one of these three situations. Second, the Court clarified that the term ‘member of the household’ refers to persons having a relationship of dependence with the EU citizen based on ‘close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience’<sup>90</sup>. Factors to consider in assessing whether such ties exist include the degree of kinship and, depending on the specific circumstances of the case, ‘the closeness of the family relationship in question, reciprocity and the strength of the ties’<sup>91</sup>. The ties must be of such a nature that, if the family member were prevented from being a member of the household of the EU citizen, ‘at least one of the two persons would be affected’<sup>92</sup>. The duration of the shared domestic life is also an important factor<sup>93</sup>. The EU citizen and the other family member need to be members of the same household, but the EU citizen does not need to be the head of this household<sup>94</sup>.

## 5.3. Access to benefits and/or social assistance by mobile EU citizens

*S. v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit*<sup>95</sup> concerned the issue whether mobile EU citizens who habitually reside in the host Member State and are economically inactive can be excluded from entitlement to family benefits during the first three months of

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<sup>89</sup> Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, [C-22/21](#), EU:C:2022:683.

<sup>90</sup> Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, [C-22/21](#), EU:C:2022:683, paragraph 30.

<sup>91</sup> Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, [C-22/21](#), EU:C:2022:683, paragraph 27.

<sup>92</sup> Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, [C-22/21](#), EU:C:2022:683, paragraph 27.

<sup>93</sup> Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, [C-22/21](#), EU:C:2022:683, paragraph 29.

<sup>94</sup> Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, [C-22/21](#), EU:C:2022:683, paragraph 22.

<sup>95</sup> Judgment of the Court (Grand Chamber) of 1 August 2022, *S. v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit*, [C-411/20](#), EU:C:2022:602.



residence. The Court ruled that such a condition is not compatible with EU law, insofar as it concerns persons having their habitual residence in the host Member State where they are lawfully resident. For what concerns the Free Movement Directive, the Court confirmed that an economically non-active EU citizen has the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. While, under Article 24(2) of the Free Movement Directive, Member States are entitled not to confer social assistance during the first three months of residence to EU citizens other than those who are workers or self-employed and their family members, the Court clarified that this derogation did not apply in this case. Indeed, where family benefits are granted independently of the individual needs of the beneficiary and are not intended to cover means of subsistence but to meet family expenses, they do not fall under the concept of ‘social assistance’ within the meaning of the Free Movement Directive. This is in particular the case for family benefits granted automatically to families meeting certain objective criteria relating in particular to their size, income and capital resources without any individual and discretionary assessment of personal needs <sup>96</sup>.

*Jobcenter Krefeld*<sup>97</sup> concerned the case of an EU citizen, who, before he became unemployed in the host Member State, had worked there and had sent his minor children to school there, and who, consequently, has the benefit of a right of residence based on Article 10 of Regulation No 492/2011 on freedom of movement for workers within the Union, by virtue of the children attending school in that State. The case relates to the right to equal treatment in relation to social advantages.

The Court held that Regulation No 492/2011 precludes legislation of a Member State which provides that a national of another Member State, and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of that regulation, by virtue of those children attending school in that State, are automatically and in all circumstances excluded from entitlement to benefits to cover their subsistence costs. The Court recalled that the right of residence granted to the children of a (former) migrant worker in order to guarantee their right to access to education and, secondarily, to the parent caring for those children has its original source in the status of that parent as a worker. However, once acquired, that right becomes independent and can continue after the loss of that status. The Court considered that persons who have a right of residence on the basis of Article 10 of Regulation No 492/2011 are also entitled to the right to equal treatment in relation to the granting of social advantages laid down in Article 7(2) of that regulation, even where those persons can no longer rely on the worker status from which they initially derived their right of residence<sup>98</sup>.

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<sup>96</sup> Judgment of the Court (Grand Chamber) of 1 August 2022, *S. v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit*, [C-411/20](#), EU:C:2022:602, paragraphs 34, 35, 47, 48, 53 and 55.

<sup>97</sup> Judgment of the Court (Grand Chamber) of 6 October 2020, *Jobcenter Krefeld - Widerspruchsstelle v JD*, [Case C-181/19](#), EU:C:2020:794.

<sup>98</sup> Judgment of the Court (Grand Chamber) of 6 October 2020, *Jobcenter Krefeld - Widerspruchsstelle v JD*, [Case C-181/19](#), EU:C:2020:794, paragraphs 50, 54 and 55.

The Court held that this interpretation is not called into question by Article 24(2) of the Free Movement Directive. In that regard, the Court clarified that the derogation from the principle of equal treatment laid down in Article 24(2) of the Free Movement Directive is not applicable to an EU citizen, who, before he or she became unemployed in the host Member State, had worked there and had sent his or her minor children to school there, and who, consequently, has the benefit of a right of residence based on Article 10 of Regulation No 492/2011, by virtue of the children attending school in that State<sup>99</sup>.

Lastly, the Court held that Regulation (EC) No 883/2004 on the coordination of social security systems precludes legislation of a Member State which provides that a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of Regulation No 492/2011, by virtue of those children attending school in that State, and are there covered by a social security system within the meaning of Regulation No 883/2004, are automatically and in all circumstances excluded from entitlement to special non-contributory cash benefits.<sup>100</sup>

*Case Department for Communities in Northern Ireland*<sup>101</sup> concerns an EU citizen who arrived in the UK in 2019 and who has never exercised an economic activity in the UK. In June 2020, the EU citizen was granted a national law residence right in the UK, with immediate effect, in the form of “pre-settled status” under the UK’s EU Settlement Scheme. The EU Settlement Scheme avows to implement Article 18(1) of the EU-UK Withdrawal Agreement (new residence status for EU citizens and family who had exercised free movement rights in the UK at the end of the transition period) but at the same time includes, as a matter of domestic UK policy, EU citizens who are not covered by the Withdrawal Agreement due to not having fulfilled the residence right conditions of EU law on free movement of EU citizens. In 2020, the UK authorities decided that such EU citizen did not qualify for universal credit, given that the person did not have a right to reside under EU rules on free movement.

The ruling clarifies under which conditions economically inactive EU citizens, who reside in the host Member State based on national law, can invoke the prohibition of discrimination on grounds of nationality in order to access social benefits in the host Member State.

The Court considers that the question as to whether such citizen faces discrimination on grounds of nationality must be assessed in the light of Article 24 of the Free Movement Directive, and not in that of Article 18 TFEU. Indeed, in that regard, the Court recalls that Article 24 of the Directive gives specific expression to the principle of non-discrimination on grounds of nationality laid down

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<sup>99</sup> Judgment of the Court (Grand Chamber) of 6 October 2020, Jobcenter Krefeld - Widerspruchsstelle v JD, [Case C-181/19](#), EU:C:2020:794, paragraph 67.

<sup>100</sup> Judgment of the Court (Grand Chamber) of 6 October 2020, Jobcenter Krefeld - Widerspruchsstelle v JD, [Case C-181/19](#), EU:C:2020:794, paragraph 75 - 79.

<sup>101</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, CG v The Department for Communities in Northern Ireland, [C-709/20](#), EU:C:2021:602.

on Article 18 TFEU, in relation to EU citizens who exercise their right to move and reside within the territory of the Member States and that EU citizens who move to or reside in a Member State other than that of which they are a national, and their family members who accompany or join them, fall within the scope of the directive<sup>102</sup>.

As concerns access to social assistance, the Court recalls that an EU citizen can claim equal treatment, by virtue of Article 24 of the Free Movement Directive, with nationals of the host Member State only if his or her residence in the territory of that Member State complies with the conditions of the Directive. An economically inactive EU citizen who does not have sufficient resources and resides in the host Member State without satisfying the residence requirements laid down in the Directive cannot rely on the principle of non-discrimination set out in Article 24(1) of the Directive. Indeed, otherwise, he or she would enjoy broader protection than he or she would have enjoyed under the provisions of that directive, under which that citizen would be refused a right of residence<sup>103</sup>.

Where Article 24 of the Free Movement Directive does not apply because the EU citizen does not reside in accordance with the Directive but resides legally on the basis of national law in the territory of the host Member State, the Court considers that competent national authorities may only refuse an application for social assistance after ascertaining that that refusal does not expose the mobile EU citizen to an actual and current risk of violation of their fundamental rights, as enshrined under the Charter of Fundamental Rights<sup>104</sup>.

#### **5.4. Derived rights of residence for non-EU family members of EU citizens on the basis of Article 20 TFEU**

In *M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága*<sup>105</sup> a non-EU citizen living with his EU partner and their EU minor child in their Member State of nationality, made a request for a permanent residence permit which was rejected as the applicant had been sentenced for a criminal offence. The national authorities found that the conduct of the applicant represented a threat to the national security. They adopted a decision banning his entry and stay, for a period of three years, and entered an alert relating to that ban in the Schengen Information System ('the SIS'). At the date on which his permit to reside was withdrawn, the non-EU citizen had a right of residence in a Member State other than the one of nationality of his partner and child.

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<sup>102</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, *CG v The Department for Communities in Northern Ireland*, [C-709/20](#), EU:C:2021:602, paragraphs 66-67.

<sup>103</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, *CG v The Department for Communities in Northern Ireland*, [C-709/20](#), EU:C:2021:602, paragraph 81.

<sup>104</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, *CG v The Department for Communities in Northern Ireland*, [C-709/20](#), EU:C:2021:602, paragraph 93.

<sup>105</sup> Judgment of the Court (Fourth Chamber) of 27 April 2023, *M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága*, [C-528/21](#), EU:C:2023:341.

The Court recalled that there are specific situations in which a right of residence must be granted to a non-EU national who is a family member of that EU citizen, since the effectiveness of EU citizenship would otherwise be undermined<sup>106</sup>. On that basis, the Court confirmed that Article 20 TFEU precludes national measures which have the effect of depriving EU citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their status as EU citizens<sup>107</sup>. The Court observed that the decision banning entry and stay of the non-EU citizen had a European dimension. It could not a priori be excluded that the ban on entry and stay would lead to the partner and the minor child -EU citizens- being, de facto, deprived of the genuine enjoyment of the substance of the rights which derive from their status as EU citizens. That would be the case if there exists, between that non-EU citizen and the EU citizen who is a family member, *a relationship of dependency* of such a nature that it would lead to the EU citizen being compelled to accompany the non-EU national concerned and to leave the territory of the EU as a whole.<sup>108</sup> The Court also recalled Member States may rely on an exception on grounds of public policy or public security in order to limit the right of residence based on Article 20 TFEU, where the person represents a real, immediate and sufficiently serious threat to public order or public or national security. The Court thus concluded that EU law precludes a Member State from adopting a decision banning entry into the EU of a non-EU citizen, who is a family member of a static EU citizen (a national of that Member State who has never exercised his or her right to free movement) without having examined whether there is, between those persons, a relationship of dependency which would de facto compel that EU citizen to leave the EU and, if so, whether the grounds on which that decision was adopted allow a derogation from the derived right of residence of that non-EU citizen<sup>109</sup>.

In *E.K. v Staatssecretaris van Justitie en Veiligheid*<sup>110</sup>, the Court confirmed that a non-EU national who enjoys a right of residence under Article 20 TFEU as a family member of a static EU citizen may acquire long-term resident status under Council Directive 2003/109/EC of 25 November 2003 concerning the status of non-EU nationals who are long-term residents ('Long-term Residents Directive') where the individual satisfies the conditions provided for by EU law. Firstly, the Court confirms that the Long-term Residents Directive excludes from its scope non-EU nationals who reside solely on temporary grounds<sup>111</sup>. However, the Court considers that the residence of a non-EU citizen in the territory of a Member State under Article 20 TFEU cannot be

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<sup>106</sup> Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 58.

<sup>107</sup> Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 57.

<sup>108</sup> Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 59.

<sup>109</sup> Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 70.

<sup>110</sup> Judgment of the Court (Grand Chamber) of 7 September 2022, E.K. v Staatssecretaris van Justitie en Veiligheid, [C-624/20](#), EU:C:2022:639.

<sup>111</sup> Judgment of the Court (Grand Chamber) of 7 September 2022, E.K. v Staatssecretaris van Justitie en Veiligheid, [C-624/20](#), EU:C:2022:639, para. 42.

regarded as constituting residence “solely on temporary grounds” within the meaning of the Long-term Residents Directive. Indeed, the right of residence of a non-EU citizen under Article 20 TFEU is justified on the ground that such residence is necessary in order for the EU citizen to be able to genuinely enjoy the substance of the rights conferred by that status for as long as the relationship of dependency with that non-EU citizen persists. Such a relationship of dependency is not, in principle, intended to be of short duration, but may extend over a considerable period<sup>112</sup>. Secondly, the Court concludes that a non-EU national who enjoys a right of residence under Article 20 TFEU as a family member of a static EU citizen must satisfy the conditions laid down by that Directive (on length of residence, sufficient resources and sickness insurance as well as proof of integration in the Member State, if required by the latter) in order to acquire long-term resident status<sup>113</sup>.

In *X v Staatssecretaris van Justitie en Veiligheid*<sup>114</sup> a minor Dutch citizen, born in Thailand, the State of which his mother is a national, has lived in this country all his life. There is no contact between the Dutch father and the child, and the mother has sole parental responsibility over him. The Court had to interpret the application of Article 20 TFEU in cases where the minor EU citizen has never lived in the EU. The Court confirmed that Article 20 TFEU does not preclude the parent, non-EU national, of a minor child, who is an EU citizen and who since birth has never resided in the territory of the EU, from benefiting from a derived right of residence flowing from Article 20 TFEU provided that:

- the required relationship of dependency exists between the child and the parent – as laid down per settled case law;
- it is established that that child will enter and reside in the territory of the Member State of which he or she has the nationality with the parent<sup>115</sup>.

Secondly, the Court considered that a Member State which has received an application for a derived right of residence by a non-EU national upon whom a minor EU child, who has never resided in the Union, is dependent, may not reject it on the ground that moving to the child’s Member State of nationality – which the exercise by that child of his or her rights as an EU citizen presupposes – is not in the real or plausible interests of that child<sup>116</sup>. Finally, for the assessment of

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<sup>112</sup> Judgment of the Court (Grand Chamber) of 7 September 2022, E.K. v Staatssecretaris van Justitie en Veiligheid, [C-624/20](#), EU:C:2022:639, para. 41.

<sup>113</sup> Judgement of the Court (Grand Chamber) of 7 September 2022, E.K. v Staatssecretaris van Justitie en Veiligheid, [C-624/20](#), EU:C:2022:639, para. 49.

<sup>114</sup> Judgment of the Court (First Chamber) of 22 June 2023, X v Staatssecretaris van Justitie en Veiligheid, [C-459/20](#), EU:C:2023:499.

<sup>115</sup> Judgment of the Court (First Chamber) of 22 June 2023, X v Staatssecretaris van Justitie en Veiligheid, [C-459/20](#), EU:C:2023:499, para. 38.

<sup>116</sup> Judgment of the Court (First Chamber) of 22 June 2023, X v Staatssecretaris van Justitie en Veiligheid, [C-459/20](#), EU:C:2023:499, para. 45.

whether a minor child, who is an EU citizen, is dependent on his or her non-EU national parent, the Member State concerned is required to take into account all the relevant circumstances<sup>117</sup>.

Lastly, the joined cases *Subdelegación del Gobierno en Toledo v XU and QP*<sup>118</sup> concerned also the right of residence, on the basis of Article 20 TFEU, of non-EU family members of an EU citizen who has not exercised their right of free movement. The non-EU family members concerned were the minor child of an EU citizen's spouse, and the spouse of an EU citizen respectively. In addition, the family units concerned included children who were EU citizens: the brother of the spouse's minor child and the daughter of the spouse.

The Court recalled that Article 20 TFEU recognises a derived right of residence to the non-EU family members of an EU citizen who has not exercised free movement, when there is a relationship of dependency between those family members and the EU citizen that, in the event of that non-EU family member being refused a derived right of residence, would oblige the EU citizen to accompany the non-EU national and to leave the territory of the EU as a whole<sup>119</sup>.

The Court considered that there is a rebuttable presumption of a relationship of dependency with respect to an EU child who has not exercised his or her right of free movement in the following situation: where the non-EU parent lives on a stable basis with the other parent, who is an EU citizen, sharing the daily care of that child and the legal, emotional and financial responsibility for that child. The relationship of dependency may be presumed, irrespective of the fact that the other parent has an unconditional right to remain in the Member State of which he or she is a national<sup>120</sup>.

In addition, the Court looked into the situation of a minor non-EU sibling of an EU citizen minor whose non-EU parent-carer is eligible for a right of residence under Article 20 TFEU. It concluded that a relationship of dependency capable of justifying the grant of a derived right of residence to the non-EU minor child of the non-EU spouse of an EU citizen who has never exercised his or her right of freedom of movement exists where (i) the marriage between that EU citizen and the non-EU spouse produced an EU child who has never exercised free movement rights, and (ii) that EU child would be forced to leave the territory of the EU as a whole if the non-EU minor child was forced to leave the territory of the Member State concerned. Indeed, in such a situation, the non-

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<sup>117</sup> Judgment of the Court (First Chamber) of 22 June 2023, *X v Staatssecretaris van Justitie en Veiligheid*, [C-459/20](#), EU:C:2023:499, para. 61.

<sup>118</sup> Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354.

<sup>119</sup> Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354, para. 45 - 47.

<sup>120</sup> Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354, para. 69.



EU parent-carer could be forced to accompany the non-EU minor sibling. This, in turn, could also force the other EU citizen child to leave that territory <sup>121</sup>.

## 5.5. Other cases on free movement rights

*WS v Bundesrepublik Deutschland*<sup>122</sup> concerned a German national who had been subject to an Interpol notice. In such cases, if the person is in a State affiliated to Interpol, that State must provisionally arrest the person or restrict his or her movements. Prior to the notice, Germany had initiated investigations into that national on the same facts and had discontinued the procedure. Germany informed Interpol that it considered that the *ne bis in idem* applied in this case. Under the *ne bis in idem* principle, a person whose trial has been finally disposed of cannot be prosecuted again for the same offence. The German national subsequently brought proceedings seeking a judicial order requiring Germany to take all necessary measures to arrange for the notice to be withdrawn. The citizen relied, among others, on his free movement rights, as he could not travel to any State that is a party to the Schengen Agreement or to any Member State without risking arrest.

The Court thus examined whether Article 21 TFEU on the free movement of persons, together with EU law provisions on the *ne bis in idem* principle, precludes the provisional arrest of the person in such a situation.

The Court held that, while a provisional arrest constitutes a restriction of free of movement rights<sup>123</sup>, it is justified by the legitimate aim of preventing evasion of punishment where the applicability of the *ne bis in idem* principle is uncertain. By contrast, subjecting the person to provisional arrest or custody is precluded if it is established by a final judicial decision that the *ne bis in idem* applies.

In *Staatsanwaltschaft Heilbronn vs ZW*<sup>124</sup>, the Court dealt with Romanian nationals who moved the residence of their child from Germany to Romania without the necessary consent of a government-appointed carer who was empowered to fix that child's place of residence. The questions referred to the Court concerned German criminal law rules providing for a different treatment depending on whether the child is retained by his parent inside or outside Germany (including in another Member State): only in the latter case would this conduct be punished by

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<sup>121</sup> Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354, para. 83-86.

<sup>122</sup> Judgment of the Court (Grand Chamber) of 12 May 2021, *WS v Bundesrepublik Deutschland*, [C-505/19](#), EU:C:2021:376.

<sup>123</sup> Judgment of the Court (Grand Chamber) of 12 May 2021, *WS v Bundesrepublik Deutschland*, [C-505/19](#), EU:C:2021:376, para. 84-86.

<sup>124</sup> Judgment of the Court (Fourth Chamber) of 19 November 2020, *Staatsanwaltschaft Heilbronn vs ZW*, [C-454/19](#), EU:C:2020:947.



criminal penalties even in the absence of force, threat of serious harm or deception.<sup>125</sup> The Court stressed that non-German EU citizens residing in Germany are more likely than German citizens to remove or send their child to another Member State and retain them there. Therefore, such difference in treatment is likely to affect or even restrict the free movement of EU citizens. While the protection of the child is a legitimate interest which, in principle, justifies a restriction on free movement, the national provision at issue was considered to go beyond what is necessary to attain that legitimate objective. The Court referred in particular to the EU legislation on judicial cooperation in international child abduction.<sup>126</sup> The Court concluded that Article 21 TFEU on the free movement of persons precludes a provision such as that at issue in the case.

Case *Ligue des droits humains*<sup>127</sup> provided important clarifications on the interpretation of the PNR (Passenger Name Record) Directive and on data protection issues. It also clarified the modalities for the use of PNR data on intra-EU flights.

The PNR Directive requires the systematic processing of a significant amount of PNR (Passenger Name Record) data relating to air passengers on extra-EU flights entering and leaving the EU, for the purposes of combating terrorist offences and serious crime. In addition, Article 2 of that Directive provides Member States with the possibility to apply the directive to intra-EU flights too.

Within the framework of an action for annulment before the Cour constitutionnelle (Constitutional Court, Belgium) against the Belgian Law which transposed into domestic law the PNR Directive<sup>128</sup> and the API Directive<sup>129</sup>, the Belgian Constitutional Court referred ten questions to the Court of Justice of the European Union for a preliminary ruling on, among other things, the validity of the PNR Directive and the compatibility of the Belgian law with EU law.

The Court concluded that the examination of the questions referred had revealed nothing capable of affecting the validity of the said Directive<sup>130</sup>.

In addition, and among other issues, the Court provided clarifications on a possible application of the system established by the PNR Directive for the purpose of combating terrorist offences and serious crime, to intra-EU flights and other modes of transport carrying passengers in the EU. In

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<sup>125</sup> Judgment of the Court (Fourth Chamber) of 19 November 2020, Staatsanwaltschaft Heilbronn vs ZW, [C-454/19](#), EU:C:2020:947, para. 31-32.

<sup>126</sup> Judgment of the Court (Fourth Chamber) of 19 November 2020, Staatsanwaltschaft Heilbronn vs ZW, [C-454/19](#), EU:C:2020:947, para. 40 and 50.

<sup>127</sup> Judgment of the Court (Grand Chamber) of 21 June 2022, *Ligue des droits humains*, C-817/19, EU:C:2022:491.

<sup>128</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, *OJ L 119*, 4.5.2016, p. 132-149.

<sup>129</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, *OJ 2004 L 261*, p. 24.

<sup>130</sup> Judgment of the Court (Grand Chamber) of 21 June 2022, *Ligue des droits humains*, C-817/19, EU:C:2022:491, para. 227-228.

that regard, the Court held that EU law precludes national legislation which, in the absence of a genuine and present or foreseeable terrorist threat with which the Member State concerned is confronted, establishes a system for the transfer, by air carriers and tour operators, as well as for the processing, by the competent authorities, of the PNR data of all intra-EU flights and transport operations carried out by other means within the EU, departing from, going to or transiting through that Member State, for the purposes of combating terrorist offences and serious crime<sup>131</sup>.

In such a situation, the application of the system established by the PNR Directive must be limited to the transfer and processing of the PNR data of flights and/or transport operations relating, inter alia, to certain routes or travel patterns or to certain airports, stations or seaports for which there are indications that are such as to justify that application. It is for the Member State concerned to select the intra-EU flights and/or the transport operations carried out by other means within the EU for which there are such indications and to review regularly that application in accordance with changes in the circumstances that justified their selection, for the purposes of ensuring that the application of that system to those flights and/or those transport operations continues to be limited to what is strictly necessary<sup>132</sup>.

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

During the period covered by this Report, the Court issued 2 key judgements relating to the European Citizens' Initiative.

In *Romania v Commission*<sup>133</sup>, the Court addresses explicitly, for the first time, the question whether a Commission decision to register a European citizens' initiative is a challengeable act. It also clarified the characteristics of the review exercised by the Commission for the purpose of adopting such a decision and, on the other hand, the nature of the Court's review of the legality of that decision. On 18 June 2013, the request for the registration of European's citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' was submitted to the European Commission. By decision of 25 July 2013<sup>134</sup>, the Commission refused the request for registration of the initiative at issue on the ground that it fell manifestly outside the framework of its powers to submit a proposal for an EU legal act for the purposes of implementing the Treaties. The action for annulment brought against that decision was dismissed by the General Court<sup>135</sup>. On appeal, the Court of Justice set aside the judgment of the General

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<sup>131</sup> Judgment of the Court (Grand Chamber) of 21 June 2022, *Ligue des droits humains*, C-817/19, EU:C:2022:491, para. 270-291.

<sup>132</sup> Judgment of the Court (Grand Chamber) of 21 June 2022, *Ligue des droits humains*, C-817/19, EU:C:2022:491, para. 270-291.

<sup>133</sup> Judgment of the General Court (Tenth Chamber) of 10 November 2021, *Romania v European Commission*, ([T-495/19](#), under appeal, EU:T:2021:781).

<sup>134</sup> Commission Decision C(2013) 4975 final of 25 July 2013 refusing to register the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures'.

<sup>135</sup> Judgment of 10 May 2016, *Izsák and Dabis v Commission* (T-529/13, EU:T:2016:282).

Court and annulled the decision of 25 July 2013<sup>136</sup>. On 30 April 2019, the Commission adopted a new decision by which it registered the initiative at issue<sup>137</sup>. Romania brought an action for annulment of that decision. The Court dismissed Romania's action. The case is now under appeal (C-54/22).

In *Minority SafePack v. European Commission*<sup>138</sup>, European citizens' initiative organisers brought an action for annulment against Commission's Communication C(2021)171 before the General Court. The communication was adopted in response to the successful European citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe'. In its judgment of 9 November 2022, the General Court held that the Commission complied with its obligation to state reasons when considering that no additional legal act was necessary to achieve the objectives pursued by the initiative, given the initiatives already undertaken by the EU institutions in the areas covered by the initiative and the Commission's monitoring of their implementation. On 21 January 2023, the organisers lodged an appeal against this judgment with the Court of Justice (case C-26/23 P).

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<sup>136</sup> Judgment of 7 March 2019, *Izsák and Dabis v Commission* (C-420/16 P, EU:C:2019:177).

<sup>137</sup> Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' (*OJ 2019 L 122*, p. 55; 'the contested decision').

<sup>138</sup> Judgment of the General Court (Eighth Chamber) of 9 November 2022, *Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission*, [T-158/21](#), under appeal, EU:T:2022:696.