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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2023) 931 final

Subject: 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

Delegations will find attached document COM(2023) 931 final.

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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**

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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” Communication¹ for 2020-2022.

Priority 2020-2022	Actions
Strengthening democratic participation, citizens' empowerment and fostering inclusion of citizens in the EU	
<i>Effective exercise of voting rights</i>	
<p>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.</p>	<ul style="list-style-type: none"> • 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 recast the Directives 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. (<i>for more information see Report pg. 27-28</i>)
<p>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.</p>	<ul style="list-style-type: none"> • In its Communication on protecting election integrity and promoting democratic participation, the Commission announced the establishment of a contact point on electoral rights. 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>) • The European Cooperation Network on Elections (ECNE) 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 '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

¹ [“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>electoral process', are being published as part of the Citizenship Package, in time before the next elections to the European Parliament in 2024. (for more information see Report pg. 6 and 32)</p> <ul style="list-style-type: none"> • In October 2023, the Commission organised a high-level event on elections, 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. (for more information see Report pg. 33)
<p>3. The Commission will fund projects on independent election observation, including monitoring by citizens.</p>	<ul style="list-style-type: none"> • The Citizens, Equality, Rights and Values (CERV) 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. • 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. • 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.
<i>Empowering citizens' participation in the democratic process</i>	
<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"> • 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 European Citizens' Panels becoming a 'regular feature of our democratic life'. Over the course of 2022 and 2023, three Citizens' Panels were organised. (for more information see Report pg. 34) • 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. (for more info see Report pg. 34)

<p>the Horizon Europe programme and in the European Green Deal transitions.</p>	<ul style="list-style-type: none"> • The Commission manages the European Citizens' Initiative, 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>) • The CERV work programmes for 2021-2022 and 2023-2024 both included calls that support European citizens' engagement and participation. 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. • In addition to the research and innovation projects currently underway under Horizon 2020 on participatory and deliberative democracy, there are new projects on the future of civic participation now launched under Horizon Europe. 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>) • Citizen engagement is also an important part of initiatives such as the EU Missions. • As part of the European Green Deal, the European Climate Pact 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
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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"> • 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. Erasmus+ and the European Solidarity Corps 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>
<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"> • Under the <i>Citizens' engagement and participation</i> strand of CERV, the 'Network of Towns' 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. • Different calls for proposals for town-twinning and networks of towns were launched between 2021 and

	<p>2023. The cumulative budget of these calls in 2021-2023 amounted to 26 million EUR.</p> <ul style="list-style-type: none"> • 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.
<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"> • In June 2023, the Commission published the report “Culture and Democracy – the evidence: how citizens’ participation in cultural activities enhances civic engagement, democracy and social cohesion”. 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. • 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 action “Culture and promoting democracy: towards cultural citizenship in Europe”. Peer-learning and a possible conference bringing together policymakers and relevant stakeholders in the cultural and educational sectors are expected in this context.

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"> 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 review of the 2009 Communication on guidance for better transposition and application of Directive 2004/38/EC 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>
<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"> The Commission continued to work on the citizens' rights part of the EU-UK Withdrawal Agreement. 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> The Commission regularly raises concerns regarding the UK's implementation of the part of the Withdrawal Agreement on citizens' rights. 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>
<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"> 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. 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>

<p>10. 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"> The Commission is in discussion with Member States on a number of questions that touch upon taxpayers' rights, 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.
<p>11. 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"> The revision of the Delegated Regulation on Multimodal Travel Information Services (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. 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.
<p>Promoting and protecting EU citizenship</p>	
<p><i>Protecting EU citizenship</i></p>	
<p>12. 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"> 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. In 2020, the Commission launched infringement procedures 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. (for more information see Report pg. 9)

<i>Promoting EU citizenship and EU values</i>	
<p>13. The Commission will propose new equality and anti-discrimination measures, as announced in the strategic documents.</p>	<ul style="list-style-type: none"> • 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. (<i>for more information see Report pg. 12-13</i>) • 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. (<i>for more information see Report pg. 13-14</i>) • 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. (<i>for more information see Report pg. 14</i>) • 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. (<i>for more information see Report pg. 14</i>) • 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"> • In 2023, the Commission also appointed a new Coordinator on combating anti-Muslim hatred. (<i>for more information see Report pg. 15</i>) • The Commission also continued to make progress on the Strategy on the Rights of Persons with Disabilities. 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>) • The Commission continued to implement the EU Strategy on the Rights of the Child and set up the EU Childrens’ Participation Platform. (<i>for more information see Report pg. 16-17</i>) • The Commission also made further progress on its first-ever LGBTIQ Equality Strategy 2020-2025. 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>) • In December 2020, the Commission adopted a strategy to strengthen the application of the Charter of Fundamental Rights in the EU. (<i>for more information see Report pg. 17-18</i>) • In December 2022, the Commission presented legislative proposals to strengthen the role of equality bodies. (<i>for more information see Report pg. 18</i>)
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	<ul style="list-style-type: none"> • The Commission celebrated EU Diversity Month and held the first ever European Capitals of Inclusion and Diversity Awards. (for more information see Report pg. 18)
14. The Commission will support young Europeans' sense of European identity through the ERASMUS+ programme, the European Solidarity Corps Programme and the Jean Monnet Actions.	<ul style="list-style-type: none"> • To promote EU citizenship education from an early stage, the Jean Monnet actions 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, Erasmus+ and the European Solidarity Corps continue to strengthen European identity and active citizenship among young people through relevant volunteering, educational and professional activities. (for more information see Report pg. 8)
15. 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.	<ul style="list-style-type: none"> • The Commission continuously underlined that any restrictive measures must respect EU law and fundamental rights. 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. • 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. • When it comes to the exercise of the right to move and reside freely within the EU, 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 EU Digital COVID Certificate, 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

	<p>with different Council Recommendations on a coordinated approach to the restriction of free movement, 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. (for more information see Report pg. 23-25)</p> <ul style="list-style-type: none"> When it comes to the issue of free and fair elections and a fair democratic debate, 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.
<p>Protecting EU citizens in Europe and abroad, including in times of crisis/emergency</p> <p><i>Solidarity in action for citizens in the EU</i></p>	
	<p>16. 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"> The EU's COVID-19 vaccine strategy 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. The EU contributed to international solidarity 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. Together with its Member States, the EU is building a strong European Health Union to better protect the health of EU citizens, prevent and prepare for future pandemics and improve Europe's overall health systems. The new Cross-border Health Threats Regulation, 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. The European Health Data Space 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

	<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"> • In 2022, the EU increased the authority of an existing health agency. The European Medicines Agency 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 European Centre for Disease Prevention and Control has also received more authority to support the EU and its Member States in the prevention and control of communicable disease threats. • Adopted in 2021, Europe's Beating Cancer Plan signals the EU's renewed commitment to cancer prevention and providing equal access to cancer diagnosis and treatment.
<p>17. 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"> • In response to the recession triggered by the COVID-19 pandemic, in 2020 the Commission presented the 'Youth Employment Support (YES): a bridge to jobs for the next generation' package. • The reinforced Youth Guarantee 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. • 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.

<p style="text-align: center;"><i>Solidarity in action for citizens outside the EU</i></p>	
<p>18. 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"> As part of the Citizenship Package, the Commission is adopting a proposal to amend the Consular Protection Directive 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>)

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 2023². 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);
- 18³ 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 Directive⁴;
- 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,

² 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.

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

⁴ 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.*⁵ and *Generalstaatsanwaltschaft Berlin v BY*⁶. 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 TFEU⁷. Then, the Court, referred to its previous case-law⁸ 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 State⁹. 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 it¹⁰. 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.¹¹

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

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

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

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

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

¹⁰ 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.

¹¹ 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*¹² 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* judgment¹³, 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.¹⁴

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.¹⁵ 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.¹⁶

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*¹⁷. 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 2201/2003¹⁸ ("Brussels IIa Regulation") and the national

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

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

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

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

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

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

¹⁸ 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.¹⁹ 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.²⁰ 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”.²¹

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.*²², 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 undermined²³. Indeed, the judgment of the Court explicitly states that Article 1 of the “Equality Framework Directive”²⁴) refers to ‘religion’ and ‘belief’ together, as does the wording of various provisions of primary EU law, namely Article 19 TFEU, according to which

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

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

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

²² 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.

²³ [See press release](#).

²⁴ 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’.²⁵

In a similar judgment in the joined *WABE eV and MH Müller Handels GmbH v MJ*²⁶, 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.²⁷ 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.²⁸

3.2. Non-discrimination on the basis of age

In case *A v HK Danmark and HK/Privat*²⁹ 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 discriminative on the basis of age³⁰. 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 Directive³¹. 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

²⁵ 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

²⁶ 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.

²⁷ 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.

²⁸ 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.

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

³⁰ 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.

³¹ 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.³²

3.3. Non-discrimination on the basis of sexual orientation

In *J.K. v TP S.A*³³ the Court of Justice has ruled that sexual orientation cannot be a reason to refuse or conclude a contract with a self-employed worker³⁴. 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 activity³⁵. 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.³⁶

3.4. Non-discrimination on the basis of sex

In *CJ v Tesorería General de la Seguridad Social (TGSS)*³⁷ 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 security³⁸, 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.

³² 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.

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

³⁴ See also [press release](#).

³⁵ 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.

³⁶ 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.

³⁷ 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.

³⁸ 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*³⁹, *Shindler and Others v Council*⁴⁰ and *David Price v Council*⁴¹ 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 decision⁴².

Another case on the loss of EU citizenship is *JY v Wiener Landesregierung*⁴³. 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 Court⁴⁴ confirmed that the principle of proportionality has not been satisfied where such a withdrawal decision is based on administrative

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

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

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

⁴² 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.

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

⁴⁴ 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 penalty⁴⁵.

In the case *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*⁴⁶, 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 nationality⁴⁷. 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*⁴⁸ 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.⁴⁹ In these circumstances, the specific situation of WY does not fall within the scope of Article 20 TFEU or Article 21 TFEU⁵⁰.

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

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

⁴⁶ 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.

⁴⁷ 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.

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

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

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

⁵¹ 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)⁵². 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)*⁵³ 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 registration⁵⁴. 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’⁵⁵. ‘During that period, the host Member State may require the jobseeker to provide evidence that he or she is

⁵² 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.

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

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

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

seeking employment⁵⁶. A period of 6 months from the date of registration ‘does not appear, in principle, to be insufficient’⁵⁷. ‘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 citizen⁵⁸.

In *Staatssecretaris van Justitie en Veiligheid*⁵⁹ 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 7⁶⁰. 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 territory⁶¹.

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 territory⁶². 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 legal⁶³. 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

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

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

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

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

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

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

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

⁶³ 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’⁶⁴.

In its judgment *V.M.A. v Stolichna obshtina, rayon Pancharevo*⁶⁵, 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 State⁶⁶. 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 State⁶⁷. The parents, too, are each entitled to a document mentioning them as persons who can travel alone with that child⁶⁸. 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 card⁶⁹. 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 State⁷⁰. 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 law⁷¹. 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

⁶⁴ 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.

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ 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.

⁷¹ 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’⁷².

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 parents⁷³.

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

In *X v Belgian State*⁷⁵, 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 resources⁷⁶; 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 rights⁷⁷.

In addition, the Court took the opportunity of this case to reverse its position adopted in *NA*⁷⁸ 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

⁷² 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.

⁷³ 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.

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

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

⁷⁶ 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.

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

⁷⁸ Judgment of the Court (First Chamber) of 30 June 2016, *N.A. 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 State⁷⁹.

In case *A (Soins de santé publics)*⁸⁰, 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 State⁸¹.

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 finances⁸².

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

⁷⁹ 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.

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

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

⁸² 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 system⁸³. 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'⁸⁴.

*VI v The Commissioners for Her Majesty's Revenue & Customs*⁸⁵, 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 residence⁸⁶.

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 child⁸⁷.

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 Directive⁸⁸. 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

⁸³ 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).

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

⁸⁵ 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.

⁸⁶ 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.

⁸⁷ 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.

⁸⁸ 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)*⁸⁹ 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’⁹⁰. 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’⁹¹. 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’⁹². The duration of the shared domestic life is also an important factor⁹³. 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 household⁹⁴.

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

*S. v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit*⁹⁵ 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

⁸⁹ 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.

⁹⁰ 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.

⁹¹ 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.

⁹² 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.

⁹³ 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.

⁹⁴ 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.

⁹⁵ 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 needs⁹⁶.

Jobcenter Krefeld⁹⁷ 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 residence⁹⁸.

⁹⁶ 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.

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

⁹⁸ 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 State⁹⁹.

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.¹⁰⁰

*Case Department for Communities in Northern Ireland*¹⁰¹ 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

⁹⁹ 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.

¹⁰⁰ 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.

¹⁰¹ 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 directive¹⁰².

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 residence¹⁰³.

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 Rights¹⁰⁴.

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*¹⁰⁵ 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.

¹⁰² 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.

¹⁰³ 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.

¹⁰⁴ 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.

¹⁰⁵ 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 undermined¹⁰⁶. 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 citizens¹⁰⁷. 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.¹⁰⁸ 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 citizen¹⁰⁹.

In *E.K. v Staatssecretaris van Justitie en Veiligheid*¹¹⁰, 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 grounds¹¹¹. 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

¹⁰⁶ 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.

¹⁰⁷ 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.

¹⁰⁸ 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.

¹⁰⁹ 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.

¹¹⁰ 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.

¹¹¹ 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 period¹¹². 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 status¹¹³.

In *X v Staatssecretaris van Justitie en Veiligheid*¹¹⁴ 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 parent¹¹⁵.

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 child¹¹⁶. Finally, for the assessment of

¹¹² 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.

¹¹³ 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.

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

¹¹⁵ 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.

¹¹⁶ 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 circumstances¹¹⁷.

Lastly, the joined cases *Subdelegación del Gobierno en Toledo v XU and QP*¹¹⁸ 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 whole¹¹⁹.

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 national¹²⁰.

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-

¹¹⁷ 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.

¹¹⁸ 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.

¹¹⁹ 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.

¹²⁰ 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 territory¹²¹.

5.5. Other cases on free movement rights

WS v Bundesrepublik Deutschland¹²² 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 movement rights¹²³, 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**¹²⁴, 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

¹²¹ 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.

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

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

¹²⁴ 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.¹²⁵ 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.¹²⁶ 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*¹²⁷ 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 Directive¹²⁸ and the API Directive¹²⁹, 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 Directive¹³⁰.

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

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

¹²⁶ 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.

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

¹²⁸ 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*.

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

¹³⁰ 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 crime¹³¹.

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 necessary¹³².

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*¹³³, 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 2013¹³⁴, 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 Court¹³⁵. On appeal, the Court of Justice set aside the judgment of the General

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

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

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

¹³⁴ 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'.

¹³⁵ 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 2013¹³⁶. On 30 April 2019, the Commission adopted a new decision by which it registered the initiative at issue¹³⁷. 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*¹³⁸, 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).

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

¹³⁷ 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').

¹³⁸ 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.