



Council of the
European Union

045629/EU XXVII. GP
Eingelangt am 22/12/20

Brussels, 22 December 2020
(OR. en)

14185/20

FREMP 151
JAI 1139
COHOM 121
COCON 32
VISA 141
FRONT 350
ANTIDISCRIM 130
COPEN 392
SOC 828
AG 72

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 December 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 731 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS UNDER ARTICLE 25 TFEU On progress towards effective EU citizenship 2016-2020

Delegations will find attached document COM(2020) 731 final.

Encl.: COM(2020) 731 final

Brussels, 15.12.2020
COM(2020) 731 final

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

**UNDER ARTICLE 25 TFEU
On progress towards effective EU citizenship 2016-2020**

1. INTRODUCTION

Article 25 of the Treaty on the Functioning of the European Union (TFEU) requires the Commission to report to the European Parliament, the Council and the Economic and Social Committee every 3 years on how the provisions (in Part Two of the Treaty) on non-discrimination and citizenship of the EU are applied¹. This ninth report presented pursuant to Article 25 TFEU covers the period from 1 July 2016 to 30 June 2020.

This report reviews the provisions in Part II TFEU regarding: i) EU citizenship, ii) non-discrimination; iii) free movement and residence in the territory of the Member States; iv) the right to vote and stand as a candidate at municipal and European Parliament elections in the Member State of residence; v) the right to consular protection; vi) the right to petition the European Parliament; and vii) the right to take complaints to the Ombudsman. This report accompanies the EU citizenship report – ‘Empowering citizens and protecting their rights in challenging times’.

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

Article 18 TFEU² prohibits discrimination on grounds of nationality within the scope of application of the Treaties³.

During the period covered by this report, the Court of Justice of the European Union (the Court) issued four key judgments relating to the non-discrimination of EU citizens on grounds of nationality, in the area of extradition and sport.

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

The three Court rulings on non-discrimination on the basis of nationality and extradition to a third country of EU citizens residing in a Member State other than the Member State of nationality, were *Petruhhin*⁴, *Pisciotti*⁵, and *Raugevicius*⁶. In each of these cases, 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 (Article 18 TFEU).

Both *Petruhhin* and *Pisciotti* concerned the extradition of mobile EU citizens for criminal prosecution, while, *Raugevicius* related to the extradition of mobile EU citizens in order to enforce a criminal sentence handed down by a court in a non-EU country.

The Court’s main findings in these cases can be summarised as follows. First, the Court ruled that while rules on extradition fall within the Member State’s competence where no international agreement is in place between the EU and a third country, Member States must exercise their national rules on extradition with due regard to EU law in situations covered by EU law⁷. This is the

¹ The annual reports on the application of the Charter of Fundamental Rights of the European Union include updates on progress regarding Union citizenship rights.

² See also Article 21(2) of the Charter of Fundamental Rights.

³ This provision is without prejudice to special provisions in the Treaties.

⁴ Case C-182/15 *Aleksei Petruhhin v Latvijas Republikas Ģenerālprokuratūra*.

⁵ Case C-191/16 *Romano Pisciotti v Bundesrepublik Deutschland*.

⁶ Case C-247/17 *Denis Raugevicius*.

⁷ See Case C-182/15 *Petruhhin*, para. 26-27.

case, according to the Court, where an EU citizen has made use of their free movement rights (pursuant to Article 21 TFEU) and the national rules on extradition could lead to EU citizens being discriminated against on the basis of nationality (per Article 18 TFEU)⁸.

Second, the Court considered whether (inter)national rules of Member States precluding *only* the non-extradition of their own nationals would be incompatible with the non-discrimination principle enshrined in Article 18 TFEU. The Court notes that such extradition rules give rise to a difference in treatment depending on an EU citizen's nationality, and thus to a restriction of freedom of movement⁹. In line with the Court's case-law, such a restriction could only be justified 'where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions'¹⁰. While the Court recognises that the objective(s) of 'international criminal cooperation' and preventing the risk of impunity are legitimate,¹¹ these national provisions must also meet the proportionality requirement.

In this respect, the Court considered in *Petruhhin* that alternative measures less prejudicial to the exercise of fundamental freedoms must be considered by the Member State considering acquiescing to an extradition request¹². On the basis of the EU principle of sincere cooperation (Article 4(3) TEU) and secondary EU law in the area of criminal cooperation (more specifically, the European Arrest Warrant), the Court concluded the following. Before extraditing a mobile EU citizen, Member States must exchange information with the Member State of nationality, so as to afford the latter Member State the opportunity 'in so far as they have [extraterritorial] jurisdiction pursuant to national law' to prosecute the mobile EU citizen for criminal offences committed abroad¹³. In *Pisciotti*, the Court clarified, however, that if the Member State of nationality had been adequately informed, yet still decides not to prosecute its own national for extraterritorially committed criminal offences, EU law would not preclude their extradition by the 'host' Member State to a third country¹⁴.

Third, the tension between the objective of preventing the risk of impunity for criminal offences committed and restrictions of a fundamental freedom, and the corresponding need to examine alternative measures, also apply, according to the Court in *Raugevicius*, in respect of extradition (requests) in order to enforce a (foreign) criminal sentence¹⁵. While the *ne bis in idem* principle would preclude the Member State of nationality from launching prosecutions against the mobile EU citizen concerned, international instruments and (some) Member States' legislation provide alternative measures (e.g. serving criminal sentences imposed by foreign courts in the Member State of nationality)¹⁶. According to the Court, such alternative arrangements could therefore be

⁸ Case C-182/15 *Petruhhin*, para. 29-31; Case C-191/16 *Pisciotti*, para. 31-35, 37-42; Case C-247/17 *Raugevicius*, para. 27-28.

⁹ Case C-182/15 *Petruhhin*, para. 32-33; Case C-191/16 *Pisciotti*, para. 43-45; Case C-247/17 *Raugevicius*, para. 30.

¹⁰ Case C-182/15 *Petruhhin*, para. 34, 38; Case C-191/16 *Pisciotti*, para. 46; Case C-247/17 *Raugevicius*, para. 31.

¹¹ Cf. Case C-182/15 *Petruhhin*, para. 35-37.

¹² See Case C-182/15 *Petruhhin*, para. 38-41.

¹³ Case C-182/15 *Petruhhin*, para. 42-48.

¹⁴ See Case C-191/16 *Pisciotti*, para. 50-56.

¹⁵ See Case C-247/17 *Raugevicius*, para. 32-40.

¹⁶ Case C-247/17 *Raugevicius*, para. 36-38.

considered applicable to the mobile EU citizen concerned (notwithstanding restrictions on the basis of nationality)¹⁷.

2.2. Non-discrimination on the basis of nationality in amateur sport

The other important ruling of the Court within the period of this report, *TopFit*¹⁸, considered the issue of non-discrimination of (mobile) EU citizens on grounds of nationality in the area of amateur sport¹⁹.

Mr Biffi is an Italian national living in Germany, and he competes in amateur running races in the senior category. He is a member of TopFit, a sports association affiliated to the German Athletics Association (Deutscher Leichtathletikverband, DLV). In 2015, a change in the DLV's rules led to mobile EU citizens in Germany, such as Mr Biffi, being denied the opportunity to be selected to participate in national championships or only being allowed to participate in those championships 'outside classifications' or 'without classifications'. This prevented them from progressing to the final and being eligible to be awarded the title of national champion, despite meeting all other conditions for participating in athletics championships.

The Court relied on four observations in responding to the preliminary reference. First, the Court, referring to its recent judgment in *Raugevicius*, noted that 'the situation of an EU citizen who has made use of this right to move freely comes within the scope of Article 18 TFEU', including in the area of amateur sport²⁰. Second, the fundamental freedom of movement of persons, as expressed in Article 21 TFEU, intended, among other things, to promote 'the gradual integration of the EU citizen concerned in the society of the host Member State', and participation in amateur sport is an important part of this inclusion process²¹. Third, in reference to prior EU case-law, the Court noted that rules of national (sports) associations are equally required to observe EU law, including the Treaties²². Fourth, the applicability of Articles 18 and 21 TFEU to rules of national sports associations implies, among other things, that rules of national sports associations, which may constitute a restriction of a fundamental freedom, are incompatible with EU law, unless they are 'justified by objective considerations which are proportionate to the legitimate objective pursued'²³.

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

3.1. Introduction

Article 19 TFEU stipulates that the EU may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation²⁴.

¹⁷ Case C-247/17 *Raugevicius*, para. 41-48.

¹⁸ CJEU 13 June 2019, Case C-22/18 *TopFit e.V. and Daniele Biffi v Deutscher Leichtathletikverband e.V.*, ECLI:EU:C:2019:497.

¹⁹ Discrimination based on nationality in professional sport falls under Article 45 TFEU.

²⁰ Case C-22/18 *TopFit*, para. 29-30.

²¹ Case C-22/18 *TopFit*, para. 31-34.

²² Case C-22/18 *TopFit*, para. 36-40.

²³ Case C-22/18 *TopFit*, para. 42-48.

²⁴ See also Article 21(1) of the Charter of Fundamental Rights.

In March 2019, the European Commission published the annual report on equality between women and men, concluding that even in the EU, where unequivocal gender equality is secured by law, equality between women and men is still not a tangible reality²⁵.

Following the publication of the list of actions to advance LGBTI equality in December 2015, which included activities envisaged by the Commission in different policy areas in 2016-2019²⁶, in February 2017 the Commission published the first annual report on the list of actions to advance LGBTI equality, covering 2016. The second and third report came out in 2018 and 2019 respectively, and in May 2020 the final report was published, covering the measures taken during 2019²⁷.

In November 2018, the Commission produced conclusion papers based on the discussions of the focus sessions on antigypsyism and afrophobia held by the EU High Level Group on combating racism, xenophobia and other forms of intolerance at its fourth meeting on 5 December 2017²⁸. It also produced a Guidance note on the practical application of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law²⁹.

In December 2018, the European Commission published an evaluation of the EU Framework for national Roma integration strategies up to 2020³⁰. The evaluation assessed the EU framework and how it mobilised other European policy, legal and funding instruments for Roma inclusion. The Commission also published a report in September 2019 focusing on national implementation of Roma inclusion measures³¹.

The Commission launched in May 2019 and is running until December 2020 the #EuvsDiscrimination campaign³² targeting workplace discrimination on the grounds of age, sex, disability, ethnic or racial origin, religion or belief, or sexual orientation, which is banned by the EU anti-discrimination legislation³³.

3.2. Case-law developments

As regards the freedom of religion, the Court's judgment of 22 January 2019 in *Cresco Investigation* (C-193 /17, EU:C:2019:43) should be noted. The Court found that national legislation, under which, first, Good Friday is a public holiday only for employees who are members of certain

²⁵ https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2019_en_1.pdf

²⁶ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/list-actions-advance-lgbti-equality_en#documents

²⁷ https://ec.europa.eu/info/sites/info/files/report_list_of_actions_2015-19.pdf

²⁸ Report on antigypsyism: https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55652; Report on afrophobia: https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55651

²⁹ https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55607

³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544112037077&uri=CELEX:52018DC0785>

³¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0406&from=FR>

³² <https://ec.europa.eu/social/main.jsp?catId=1437&langId=en>

³³ One strand of this campaign focuses especially on reasonable accommodation for persons with disabilities, in line with Council Directive 2000/78/EC <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32000L0078>. A guide of best practice on reasonable accommodation in the workplace has been published in September 2020 <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8341&furtherPubs=yes>

Christian churches, and second, only those employees are entitled, if required to work on that public holiday, to additional payment, constitutes direct discrimination on grounds of religion.

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

4.1. Introduction

Article 20 TFEU provides that any person who is a national of an EU Member State is also a citizen of the Union. Union citizenship is additional to and does not replace national citizenship. While it is for each Member State to lay down conditions for the acquisition and loss of nationality, with due regard to EU law³⁴, granting Member State citizenship also entails granting EU citizenship and the rights that go with it, which can be exercised throughout the EU. Therefore, the Commission considers that Member States should use their prerogatives of awarding citizenship in a spirit of sincere cooperation, as the Treaties require.

The European Commission undertook a number of actions in respect of the acquisition and loss of EU citizenship, more specifically on the issue of ‘investor citizenship’ schemes in the EU, granting citizenship rights to non-EU nationals in return for investment.

In January 2019, the Commission issued a report on ‘Investor Citizenship and Residence Schemes in the European Union’³⁵, analysing existing schemes for obtaining the nationality of and residence in EU Member States on grounds of investment, and highlighting a number of concerns and risks that such schemes present for the EU.

Following this report, the Commission set up a ‘Group of Member State Experts on Investor Citizenship and Residence Schemes’, to i) look at the specific risks arising from investor citizenship schemes; ii) develop a common set of security checks by the end of 2019; and iii) address the aspects of transparency and good governance regarding the implementation of both investor citizenship and residence schemes³⁶.

During the reporting period, the Commission dealt with 98 complaints, almost 1 400 letters/individual queries, 48 questions and 10 petitions from the European Parliament in the area of EU citizenship and rights attached thereto, mainly related to information on the implications of Brexit for EU citizenship rights.

4.2. Case-law developments

From 2016 to 2019, the Court handled 29 cases concerning EU citizenship, including cases on discrimination on grounds of nationality, loss of EU citizenship due to loss of nationality of a Member State or derived rights of residence for third-country family members of EU citizens³⁷.

In *Tjebbes and Others*³⁸, the Court confirmed the legitimacy, in general, of Member States’ aim to ensure that a genuine link between the State and its nationals exists. This legitimacy, however, does

³⁴ Case C-135/08 *Rottmann*.

³⁵ COM(2019) 12 final https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf

³⁶ See https://ec.europa.eu/info/investor-citizenship-schemes_en

³⁷ Court of Justice of the European Union (2020). Annual Report 2019: Judicial activity. Luxembourg, February 2020, page 161. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-05/qd-ap-20-001-en-n.pdf>

not absolve Member States from ensuring that (in individual cases) the *ex lege* loss of Member States' nationality has due regard to the principle of proportionality, where the loss of nationality would entail the loss of EU citizenship and the rights attached thereto³⁹.

Accordingly, the Court considered that the principle of proportionality requires Member States' legislation regulating loss of nationality to provide for the possibility of 'an individual examination of the consequences of that loss for [the person concerned and for that of the members of his or her family] from the point of view of EU law'⁴⁰. Furthermore, where, following such examination, the loss of EU citizenship (as a consequence of the automatic loss of a Member State's nationality) is found to be incompatible with EU law, it should be possible to recover nationality *ex tunc*⁴¹.

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

5.1. Introduction

Under Articles 20(2)(a) and 21 TFEU, Union citizens are entitled to move and reside freely in the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and measures adopted to give them effect⁴².

A majority of citizens support this right⁴³ and view it as one of the main benefits of EU membership.⁴⁴ In addition, more than half of EU citizens say they have benefited from there being fewer or no border controls when travelling abroad⁴⁵. Most Europeans say that the free movement of people, goods and services within the European Union is the most positive outcome of the EU⁴⁶. In a survey conducted in spring 2020, 83% of EU citizens agreed that free movement of EU citizens within the EU brought overall benefits to their country's economy⁴⁷.

In 2018, more than 16 million EU citizens were living or working in an EU country other than their country of citizenship. A far larger number of EU citizens made temporary visits to other EU countries for holidays, visits to friends and family and for business.

Mobile EU citizens and their family members can find information on their right to reside in another Member States on the Your Europe portal⁴⁸; Your Europe also provides access to country-specific information, fulfilling its role as the EU's 'single digital gateway'⁴⁹.

³⁸ Case C-221/17 *Tjebbes and Others*

³⁹ C-221/17 *Tjebbes and Others*, para. 40.

⁴⁰ C-221/17 *Tjebbes and Others*, para. 41.

⁴¹ C-221/17 *Tjebbes and Others*, para. 42.

⁴² See in particular, Directive 2004/38/EC on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77 (hereinafter also referred to as the "Free Movement Directive")

⁴³ 81% of respondents of the Special Eurobarometer 486, 2019

⁴⁴ 60% of respondents of the Standard Eurobarometer 91, spring 2019.

⁴⁵ 56% of respondents of the Standard Eurobarometer 91, spring 2019.

⁴⁶ 60% of respondents of the Special Eurobarometer 486, 2019

⁴⁷ Flash Eurobarometer 485, spring 2020.

⁴⁸ <https://europa.eu/youreurope/citizens/residence/>

In the reporting period, the Commission dealt with 950 complaints from citizens, 6 128 questions and 140 petitions from the European Parliament as regards exercising the right to free movement. Many concerned the right of entry and residence of non-EU family members of EU citizens (conditions for issuing visas and residence cards, additional formalities) and the conditions under which EU citizens can exercise their right to free movement.

Mobile EU citizens who are negatively affected by incorrect application of EU law by public authorities can get help from SOLVIT⁵⁰, which was established to react quickly and find solutions at national level. From 2016 to 2018, SOLVIT handled around 1 930 cases on the free movement of persons⁵¹.

Citizens can also ask questions on their personal EU rights to the Your Europe Advice service⁵² which provides free of charge tailor-made legal advice. Your Europe Advice is managed by the Commission and operates through its external contractor European Citizens Action Service (ECAS). Between 2016 and 2020 Your Europe Advice received more than 42.000 enquiries on the subjects of entry procedures and residence rights and more than 2.300 enquiries on political and judicial rights.

EU citizens can furthermore address the Commission's Europe Direct Centre (EDCC)⁵³, which provides general information on the EU and advice on EU citizens' rights. Between 2016 and 2019, the EDCC received a total of 5 251 enquiries on the free movement of persons.

Moreover, mobile EU workers may request the assistance of the national bodies established in accordance with Directive 2014/54⁵⁴.

With the aim to contribute to free movement of persons with disabilities, the Commission implemented a pilot project on the EU Disability Card in 2016-2018⁵⁵.

The Commission has developed an e-learning tool on the right to free movement, which is intended for local administrations in order to deepen their knowledge of Directive 2004/38 (the Free Movement Directive) and the rights stemming of it. The e-learning tool is available in 23 languages and comprises a self-evaluation assessment test, and an online course for beginners and for advanced users.

5.2. Case-law developments

⁴⁹ Regulation (EU) 2018/1724 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services

⁵⁰ SOLVIT is a service provided by national administrations throughout the EU and the EEA. National SOLVIT centres take on board citizens' complaints and cooperate via an online database to help them solve their problems out of court and free of charge.

⁵¹ https://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm.

⁵² <https://europa.eu/youreurope/advice/>

⁵³ https://europa.eu/european-union/contact_en.

⁵⁴ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

⁵⁵ It put in place voluntary mutual recognition of disability status and furthered persons with disabilities access to culture, sports and leisure in eight project countries: Belgium, Cyprus, Estonia, Finland, Italy, Malta, Romania, Slovenia.

5.2.1. CJEU case-law developments on free movement rights and (derived) residence rights

The Court has delivered multiple judgments in relation to Article 21 TFEU (including its implementation through the Free Movement Directive), as well as residence rights derived from EU citizenship based on of Article 20 TFEU⁵⁶.

The first set of cases concerns the question which EU citizens and family members can rely on Directive 2004/38 for residence rights.

In *Lounes*⁵⁷, the Court held that an EU citizen who has made use of their free movement rights to reside in another EU Member State and who has since obtained the nationality of the host Member State, while retaining the nationality of the Member State of origin, may, while no longer being a beneficiary under Directive 2004/38, continue to rely on the rights derived from Article 21 TFEU⁵⁸. Residence rights for family members of the said (dual national) EU citizen may also be derived directly from Article 21 TFEU, under conditions which must not be stricter than those provided for by Directive 2004/38⁵⁹. The Court clarified that the right of free movement includes the right to lead a normal family life⁶⁰.

In *Gusa*⁶¹, the Court held that the right to retain the status of ‘worker or self-employed person’ after ceasing economic activities in the cases stipulated in Article 7(3) of Directive 2004/38 (more specifically, point (b) thereof, for ‘duly recorded involuntary unemployment after having been employed for more than one year and [having] registered as a job-seeker’) applies equally to mobile EU citizens who were self-employed prior to involuntarily ceasing economic activities⁶².

In *Coman*⁶³, the Court interpreted the concept of ‘spouse’ of an EU citizen in Article 2(2)(a) of Directive 2004/38⁶⁴ and held that it is an autonomous EU law definition, independent of Member State laws. The Court ruled that where a returning EU citizen had (previously) exercised free movement rights to take up genuine residence in another EU Member State and has, in the host Member State, created or strengthened a family life with a same-sex (third-country) national through marriage lawfully concluded in the host Member State, EU law precludes national legislation refusing to grant derived entry and residence rights to the same-sex spouse of the returning EU citizen based on the non-recognition of same-sex marriage in the (home) Member State concerned⁶⁵. The Member State concerned must consider such person as spouse for the

⁵⁶ This section will not address the judgments of the CJEU based primarily on the status of ‘Union worker’ pursuant to Article 45 et seq. TFEU.

⁵⁷ CJEU 14 November 2017, Case C-165/16 *Toufik Lounes v Secretary of State for the Home Department*, ECLI:EU:C:2017:862.

⁵⁸ C-165/16 *Lounes*, para. 45-58. It should be noted that the Court has specifically emphasised that Directive 2004/38, however, ceases to apply to mobile EU citizens who have since obtained the nationality of the host Member State; see C-165/16 *Lounes*, para. 31-44.

⁵⁹ C-165/16 *Lounes*, para. 59-61.

⁶⁰ C-165/16 *Lounes*, para. 52.

⁶¹ CJEU 20 December 2017, Case C-442/16 *Florian Gusa v Minister for Social Protection and Others*, ECLI:EU:C:2017:1004.

⁶² C-442/16 *Gusa*, para. 35-45.

⁶³ CJEU 5 June 2018, Case C-673/16 *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others*, ECLI:EU:C:2018:385.

⁶⁴ C-673/16 *Coman*, para. 33-36.

⁶⁵ C-673/16 *Coman*, para. 38-40, 52-55.

purposes of enabling them to exercise the rights they enjoy under EU law. At the same time, this does not require that Member State to provide, in its national law, for the institution of marriage between persons of the same sex⁶⁶.

In *Altiner and Ravn*⁶⁷, the Court held that EU law does not preclude national legislation that does not grant a derived right of residence to a family member of a returning EU citizen when that family member has not entered the territory of the Member State of origin of the EU citizen as a ‘natural consequence’ of the return to that Member State by the EU citizen in question⁶⁸. This is on condition that such national legislation requires, in the context of an overall assessment, to take into account other relevant factors, which could show that, despite the time which elapsed between the EU citizen’s return to that Member State and the entry of the family member who is a third-country national, the family life created and strengthened in the host Member State has not ended⁶⁹.

*Tarola*⁷⁰ concerned the case of an EU citizen who had exercised his right to free movement by being employed in the host Member State for a period of 2 weeks, under a contract other than a fixed-term employment contract, before becoming involuntarily unemployed. The Court interpreted Articles 7(1)(a) and (3)(c) of Directive 2004/38/EC and considered that a citizen in such a situation retains the status of worker (and hence the right to reside in the host Member State) for a period of no less than 6 months, if the individual concerned did actually have the status of worker prior to involuntary unemployment and had registered as a jobseeker with the relevant employment office⁷¹. Furthermore, the Court noted that any entitlement under national law to social security benefits or social assistance may be conditional upon a specified period of employment, to the extent that, under the principle of equal treatment, the same condition is applied to nationals of the Member State concerned⁷².

*Bajratari*⁷³ relates to the interpretation of Article 7(1)(b) of Directive 2004/38/EC – residence on the basis of sufficient resources and comprehensive sickness insurance. The case concerned a third-country national parent of a minor EU citizen who sought to rely on his derived right of residence in the host Member State as the primary carer of his underage child, an EU citizen residing on the basis of Article 7(1)(b). The Court held that a minor EU citizen has sufficient resources not to become an unreasonable burden on the social assistance system of the host Member State during residence where those resources stem from income obtained from the unlawful employment of his third-country national parent who does not hold a residence and work permit⁷⁴. The Court also held that the conditions for restricting the minor EU citizen’s right of residence on grounds of public policy were not met⁷⁵.

⁶⁶ C-673/16 *Coman*, para. 45.

⁶⁷ CJEU 27 June 2018, Case C-230/17 *Erdem Deha Altiner and Isabel Hanna Ravn v Udlændingestyrelsen*, ECLI:EU:C:2018:497.

⁶⁸ C-230/17 *Altiner and Ravn*, para. 30-34.

⁶⁹ C-230/17 *Altiner and Ravn*, para. 35.

⁷⁰ CJEU 11 April 2019, Case C-483/17 *Neculai Tarola v Minister for Social Protection*, ECLI:EU:C:2019:309.

⁷¹ C-483/17 *Tarola*, para. 45-52.

⁷² C-483/17 *Tarola*, para. 55-57.

⁷³ CJEU 2 October 2019, Case C-93/18 *Bajratari*, ECLI:EU:C:2019:809

⁷⁴ C-93/18 *Bajratari*, para 53

⁷⁵ C-93/18 *Bajratari*, para 52

A second set of CJEU rulings concerns restriction of residence rights and expulsions under Directive 2004/38.

In *E v Subdelegación del Gobierno en Álava*⁷⁶, the Court reiterated that expulsion decisions pursuant to Directive 2004/38 must be based exclusively on the personal conduct of the individual (EU citizen) concerned. The fact the individual concerned was imprisoned at the time the expulsion decision was adopted, without the prospect of being released in the near future, does not ‘exclude that his conduct represents [...] a present and genuine threat for a fundamental interests of the society of the host Member State’⁷⁷ for the purpose of adopting such decision.

In *Petrea*⁷⁸, the Court determined, among other things, that a Member State may withdraw a registration certificate wrongly issued to an EU citizen who had been expelled and re-entered while still being the subject of an exclusion order (as provided for by Directive 2004/38)⁷⁹. The EU citizen concerned is entitled, pursuant to Article 32 of Directive 2004/38, to submit an application to lift the said exclusion order; however, such a citizen do not have a right to reside (under Directive 2004/38) while their application is being considered⁸⁰.

In *B and Vomero*⁸¹, the Court clarified a number of issues in respect of the provisions of Directive 2004/38 concerning enhanced protection against expulsion under Article 28(3)(a) of the Directive and its prerequisites especially in the context of imprisonment. The Court ruled that an EU citizen must have a right of permanent residence to be eligible for enhanced protection against expulsion⁸². In addition, the Court clarified that the accumulated period of (uninterrupted) prior residence required for enhanced protection against expulsion must be calculated by counting back from the date on which the initial expulsion decision was taken⁸³. The question of whether the period of residence required for enhanced protection was discontinued by a period of detention prior to the expulsion decision must be determined by an overall assessment of whether, notwithstanding that detention, the integrative links between the EU citizen and the host Member State have not been severed⁸⁴. Relevant factors in this overall assessment include ‘the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention’⁸⁵.

⁷⁶ CJEU 13 July 2017, Case C-193/16 *E v Subdelegación del Gobierno en Álava*, ECLI:EU:C:2017:542.

⁷⁷ C-193/16 *E v Subdelegación del Gobierno en Álava*, para. 19-26.

⁷⁸ CJEU 14 September 2017, Case C-184/16 *Ovidiu-Mihăiță Petrea v Ypourgos Esoterikon kai Dioikitikis Anasygrotisis*, ECLI:EU:C:2017:684. Parts of the judgment of the CJEU in *Petrea* will be considered in section 5.2.3 of this overview.

⁷⁹ C-184/16 *Petrea*, para. 30-42.

⁸⁰ C-184/16 *Petrea*, para. 43-48.

⁸¹ CJEU 17 April 2018, Joined Cases C-316/16 and C-424/16 *B v Land Baden-Württemberg and Secretary of State for the Home Department v Franco Vomero*, ECLI:EU:C:2018:256.

⁸² Joined Cases C-316/16 and C-424/16 *B and Vomero*, para. 44-55.

⁸³ Joined Cases C-316/16 and C-424/16 *B and Vomero*, para. 64-65, 85-94.

⁸⁴ Joined Cases C-316/16 and C-424/16 *B and Vomero*, para. 66-82.

⁸⁵ Joined Cases C-316/16 and C-424/16 *B and Vomero*, para. 83.

In **K and HF**⁸⁶, the Court held that the fact that (a family member of) an EU citizen had previously been refused asylum on the basis of Article 1F of the Geneva Convention cannot *automatically* lead to the conclusion that their mere presence represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society as required by (Article 27 of) Directive 2004/38⁸⁷. The need to restrict the freedom of movement and residence of an EU citizen, or a family member of an EU citizen, must be assessed on a case-by-case basis⁸⁸ and on the basis of free movement rules. The competent national authorities must further consider whether i) the adoption of such public policy or public security measures complies with the principle of proportionality, taking into account the rights of EU citizens and their family members, and ii) other measures less prejudicial to the freedom of movement were possible⁸⁹.

A third set of the Court's rulings within the reference period concerns free movement and residence rights derived under Article 20 and 21 TFEU.

In **Rendón Marín**⁹⁰, the Court ruled that EU law automatically precludes the refusal of a derived right of residence to a third-country national who has the sole care of a 'mobile' and a 'static' minor EU citizens solely on the basis of a prior criminal record⁹¹. This preclusion of automatic refusal of a derived right of residence for a third-country national parent who a minor EU citizen is dependent on, solely on the basis of the parent's criminal record, is similarly confirmed by the Court in **CS**⁹². However, in both **Rendón Marín** and **CS**, the Court recognises the possibility for Member States to restrict residence rights derived from Article 20 TFEU and 21 TFEU, to the extent that any such restriction is based on a case-by-case assessment and that any expulsion or restriction of the right of residence is founded on the 'existence of a genuine, present and sufficiently serious threat to the requirements of public policy or public security'⁹³.

In **Chavez-Vilchez and Others**⁹⁴, the Court was called to clarify the extent to which a right of residence derived from Article 20 TFEU (following the Court's line of rulings starting from *Ruiz Zambrano*⁹⁵) is dependent on the possibility of the EU citizen parent, who is not the primary carer of the 'static' minor EU citizen, to care for that child. The Court held that the competent authorities must determine, in light of *inter alia* Article 7 (protection of private and family life) and 24 (consideration of the best interest of the child) of the EU Charter of Fundamental Rights, which parent is the child's primary carer and whether there is a dependency relationship with the third-country national parent that would compel the child to leave, in practice, the EU territory upon

⁸⁶ CJEU 2 May 2018, Joined Cases C-331/16 and C-366/16 *K v Staatssecretaris van Veiligheid en Justitie and HF v Belgische Staat*, ECLI:EU:C:2018:296.

⁸⁷ Joined Cases C-331/16 and C-366/16 *K and HF*, para. 51.

⁸⁸ Joined Cases C-331/16 and C-366/16 *K and HF*, para. 39-49, 52-60.

⁸⁹ Joined Cases C-331/16 and C-366/16 *K and HF*, para. 61-64.

⁹⁰ CJEU 13 September 2016, Case C-165/14 *Alfredo Rendón Marín v Administración del Estado*, ECLI:EU:C:2016:675.

⁹¹ C-165/14 *Rendón Marín*, para. 63-67, 81-87.

⁹² CJEU 13 September 2016, Case C-304/14 *Secretary of State for the Home Department v CS*, ECLI:EU:C:2016:674, para. 41.

⁹³ For residence rights derived from Article 20 TFEU, see C-165/14 *Rendón Marín*, para. 83-86; C-304/14 *CS*, para. 36-42; for residence rights derived from Article 21 TFEU, see C-165/14 *Rendón Marín*, para. 55-62.

⁹⁴ CJEU 10 May 2017, Case C-133/15 *HC Chavez-Vilchez and Others v Raad van bestuur van de Sociale verzekeringsbank and Others*, ECLI:EU:C:2017:354.

⁹⁵ Case C-34/09

refusal of a right of residence to such parent⁹⁶. The Court held that for the purposes of such an assessment, the fact that the other parent, an EU citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor. However, this is not in itself a sufficient ground for concluding that there is not a dependency relationship between the third-country national parent and the child that would compel the child to leave the EU's territory if a right of residence was refused to that third-country national⁹⁷. The Court reiterated that relevant factors in the assessment by the competent authorities include *'the question of who has custody of the child and whether that child is legally, financially or emotionally dependent on the third-country national parent'*⁹⁸. The Court then added that, in assessing these factors, *'account must be taken, in the best interests of the child concerned, of all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for that child's equilibrium'*⁹⁹.

The *Subdelegación del Gobierno en Ciudad Real* case¹⁰⁰ concerned Article 20 TFEU. The Court held that Article 20 precludes a Member State from rejecting an application for family reunification submitted by the spouse, a third-country national, of an EU citizen who holds the nationality of that Member State, and who has never exercised the freedom of movement, on the sole ground that the EU citizen does not have, for themselves and their spouse, sufficient resources to prevent them from becoming a burden on the national social assistance system, without examination of whether there is a dependency relationship between that EU citizen and their spouse of such a kind that, if the latter were refused a derived right of residence, the EU citizen would be obliged to leave EU territory, thus being deprived of their rights conferred by their status. Accordingly, where the competent national authority receives an application from a third-country national to grant a right of residence for the purpose of family reunification with an EU citizen who is a national of the Member State concerned, that authority must assess, based on evidence, which the third-country national and the EU citizen concerned must provide and, if necessary, investigations carried out, whether there is a dependency relationship between those two individuals, such that a derived right of residence must, in principle, be granted to that national under Article 20 TFEU.

5.2.2. CJEU case-law development on entry and residence rights of 'other family members' of EU citizens

As regards the right of entry, in *Ryanair Designated Activity Company*¹⁰¹, the Court clarified that non-EU family members of EU citizens who hold a permanent residence card issued under Article 20 of Directive 2004/38/EC by one Member State are also exempted under Article 5(2) from the requirement to hold a visa in order to enter another Member State. The visa exemption also applies

⁹⁶ C-133/15 *Chavez-Vilchez and Others*, para. 70.

⁹⁷ C-133/15 *Chavez-Vilchez and Others*, para. 71.

⁹⁸ C-133/15 *Chavez-Vilchez and Others*, para. 68.

⁹⁹ C-133/15 *Chavez-Vilchez and Others*, para. 71.

¹⁰⁰ CJEU, 27 February 2020, Case C-836/18, *Subdelegación del Gobierno en Ciudad Real v RH*, ECLI:EU:C:2020:119

¹⁰¹ CJEU, 18 June 2020, Case C-754/18, *Ryanair Designated Activity Company v Országos Rendőr-főkapitányság* ECLI:EU:C:2020:478

where that card was issued by a Member State which is not part of the Schengen area. The ruling concludes that the holder of such a card has the right to enter the territory of a Member State visa-free upon presenting the card, without further verification of their status as a family member or any further justification being required.

In addition, within the reference period, the Court delivered two judgments that further clarify the application by analogy of Article 3(2) of Directive 2004/38 and its previous decision in *Rahman*¹⁰².

In *Banger*¹⁰³, the Court ruled that Article 21 TFEU requires Member States to facilitate the entry and residence of extended family members of its own returning nationals, under the conditions of Article 3(2) of Directive 2004/38 applied by analogy¹⁰⁴. The assessment of a residence application under Article 3(2) is equally subject to the requirements of conferring a certain advantage to such applications compared to those of third country nationals not having such family links, and of carrying out an extensive examination of the applicant's personal circumstances. Any negative decisions on such applications must be justified¹⁰⁵. Furthermore, the Court ruled that extended family members whose residence authorisation has been refused must have access to a redress procedure before a national court. The national court must be able '*to ascertain whether the refusal decision is based on a sufficiently solid factual basis and whether the procedural safeguard were complied with. Those safeguards include the obligation for the competent national authorities to undertake an extensive examination of the applicant's personal circumstances and to justify any denial of entry or residence*'¹⁰⁶.

In *SM*¹⁰⁷, the Court first clarified (similarly to what it did for the concept of 'spouse' in *Coman*) that the concept of 'direct descendant' in Article 2(2)(c) of Directive 2004/38 is an autonomous EU law definition, independent of Member State laws¹⁰⁸. Furthermore, it found that such concept should be interpreted broadly and covers 'any parent-child relationship, whether biological or legal' (thus including biological and adopted children). By contrast, it does not cover children placed under a legal guardianship which does not create a parent-child relationship between the child and the guardian (including children placed under the Algerian *kafala* system)¹⁰⁹. The Court specifically notes that such children fall within the scope of Article 3(2) of Directive 2004/38¹¹⁰. When implementing their obligation under Article 3(2) to facilitate entry and residence of the 'other family members'¹¹¹ Member States must exercise their discretion 'in the light of and in line with' the provisions of the EU Charter of Fundamental Rights, including the right to (respect for) family life (Article 7) and the best interests of the child (Article 24)¹¹². They are furthermore obliged to

¹⁰² CJEU 5 September 2012, Case C-83/11 *Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others*, ECLI:EU:C:2012:519.

¹⁰³ CJEU 12 July 2018, Case C-89/17 *Secretary of State for the Home Department v Rozanne Banger*, ECLI:EU:C:2018:570.

¹⁰⁴ C-89/17 *Banger*, para. 27-34.

¹⁰⁵ C-89/17 *Banger*, para. 36-41.

¹⁰⁶ C-89/17 *Banger*, para. 42-52.

¹⁰⁷ CJEU 26 March 2019, Case C-129/18 *SM v Entry Clearance Officer, UK Visa Section*, ECLI:EU:C:2019:248.

¹⁰⁸ C-129/18 *SM*, para. 50-51.

¹⁰⁹ C-129/18 *SM*, para. 52-56.

¹¹⁰ C-129/18 *SM*, para. 57-59.

¹¹¹ C-129/18 *SM*, paras. 60-63, 68.

¹¹² C-129/18 *SM*, para. 64-67.

*‘make a balanced and reasonable assessment of all the current and relevant circumstances of the case, taking account of all the interests in play and, in particular, of the best interests of the child concerned’*¹¹³. This assessment includes considering i) the age of the child when the legal guardianship was established and whether the child has lived with their guardian since then, ii) the closeness of the personal relationship, iii) the degree to which the child is dependent on the guardian, as well as iv) possible tangible and personal risks that the child concerned will be the victim of abuse, exploitation or trafficking. If the assessment leads to the conclusion that the child and the guardian are called to lead a genuine family life and that the former is dependent on the latter, the fundamental right to respect for family life and the best interests of the child demand, in principle, a host Member State to grant the child concerned the right to enter and reside as an ‘other family member’¹¹⁴.

5.2.3. CJEU case-law development on procedural aspects of free movement and residence rights

Within the reference period, the Court also issued three judgments relevant to the procedural rights and standards applicable under the Free Movement Directive.

In *Petrea*, the Court was (also) called to consider a number of questions relating to procedural aspects of Directive 2004/38. The case concerned an EU citizen who had re-entered the territory of a Member State despite being subject to an exclusion order issued by that country. The Court held in *Petrea* that Member States are entitled to provide for the expulsion of such a mobile EU citizen by way of a national procedure transposing Directive 2008/115 (for the return of third-country nationals), provided that transposition measures of Directive 2004/38 which are more favourable to EU citizens are applied¹¹⁵. Furthermore, the Court held that Member States can lay down that individuals may not rely on the unlawfulness of an exclusion order made against them in order to contest a subsequent return order, in so far as the person concerned has effectively had ‘the possibility to contest the [exclusion order] in good time in light of the provisions of Directive 2004/38’¹¹⁶. The Court also held that, while Article 30 of Directive 2004/38 requires Member States to notify a decision adopted under Article 27 (i.e. an expulsion order) to the person concerned ‘in such a way that they are able to comprehend its content and the implications’, this notification does not oblige the Member States to notify the decision in a language that the person understands or is reasonably presumed to understand, although the person did not bring an application to that effect¹¹⁷.

In *Chenchooliah*¹¹⁸, the Court held that Article 15 of Directive 2004/38/EC applies to the expulsion of a third-country national who is the spouse of an EU citizen and who has ceased to have a right of residence in a Member State pursuant to Directive 2004/38/EC due to the departure of the EU

¹¹³ C-129/18 *SM*, para. 68.

¹¹⁴ C-129/18 *SM*, para. 69-72.

¹¹⁵ C-184/16 *Petrea*, para. 50-56.

¹¹⁶ C-184/16 *Petrea*, para. 57-65.

¹¹⁷ C-184/16 *Petrea*, para. 66-71.

¹¹⁸ CJEU 10 September 2019, Case C-94/18 *Nalini Chenchooliah v Minister for Justice and Equality*, ECLI:EU:C:2019:693

citizen from that Member State¹¹⁹. The Court considered that while the spouse no longer benefits from a right of residence in the host State pursuant to Directive 2004/38/EC due to the EU citizen's departure, the expulsion is governed by Directive 2004/38/EC¹²⁰. This means that the host Member State cannot, under any circumstance, impose a ban on entry in the context of such an expulsion and that the relevant procedural safeguards laid down in Articles 30 and 31 of the Directive 2004/38/EC apply in such a case¹²¹.

In *Diallo*¹²², the Court clarified that Article 10(1) of Directive 2004/38 not only requires Member States to adopt and notify the decision on the application for a residence card by a family member of a mobile EU citizen within 6 months, but also obliges Member States to adopt a decision refusing the issuance of the residence card under the Directive (and to notify the person concerned) within the same six-month period¹²³. The Court further clarified that EU law, specifically Directive 2004/38, would preclude Member States from providing, under national law, that the expiry of the six-month period automatically entails the issuance of the residence card without finding, beforehand, that the person concerned actually meets the conditions for residing in the host Member State in accordance with EU law¹²⁴. Furthermore, the Court held that, following a judicial annulment decision refusing to issue a residence card, the competent national authorities must adopt a decision concerning the application for the residence card within a reasonable period of time, which cannot, in any case, exceed the period referred to in Article 10(1) of Directive 2004/38. In the light of the principle of effectiveness and of 'the objective of rapid processing of applications inherent to Directive 2004/38', and considering that the third country national remains in a situation of legal uncertainty until a residence card is issued, the Court explicitly rejected the idea that, following a judicial annulment of a decision refusing to issue a residence card, the competent authorities are given a full new six-month period to adopt a new decision¹²⁵.

5.2.4. CJEU case-law developments on rights connected with the exercise of free movement and residence rights

Within the reference period, the Court has further issued a judgment relating to issues with the potential effect of hindering the free movement of EU citizens, as enshrined in Article 21 TFEU.

In *Freitag*¹²⁶, the Court was asked to consider whether Article 21 TFEU, in light of the Court's prior judicial rulings – from *Grunkin and Paul* to *Bogendorff von Wolffersdorff*, precludes a refusal to recognise, based on a national legal provision (in this case, German law), a change of name of a (German/Romanian) dual national effectuated in that EU citizen's other Member State of nationality (i.e. Romania), where the EU citizen concerned was not habitually resident in the other Member State at the time the name was changed. In essence, the Court ruled that Article 21 TFEU precludes a Member State's authorities from refusing to recognise the name of one of its nationals that was legally acquired in another Member State, of which that individual is also a national. This

¹¹⁹ C-94/18 *Chenchooliah*, para 73-79.

¹²⁰ C-94/18 *Chenchooliah*, para 73-79.

¹²¹ C-94/18 *Chenchooliah*, para 80-88.

¹²² CJEU 27 June 2018, Case C-246/17 *Ibrahim Diallo v État belge*, ECLI:EU:C:2018:499.

¹²³ C-246/17 *Diallo*, para. 33-42.

¹²⁴ C-246/17 *Diallo*, para. 45-56.

¹²⁵ C-246/17 *Diallo*, para. 58-69.

¹²⁶ CJEU 8 June 2017, Case C-541/15 *Mircea Florian Freitag*, ECLI:EU:C:2017:432.

is because a restriction on recognising a change of name would be ‘likely to hinder the exercise of the right [...] to move and reside freely in the territories of the Member States’, as there is a real risk that the dual EU citizen concerned would be obliged to dispel doubts as to his identity and the authenticity of the documents submitted, or the veracity of their content¹²⁷.

5.2.5. Access to benefits and/or social assistance by residents in EU countries that are staying in another Member State

In case *A*.¹²⁸, the Court recalled that a Member State’s competence to organise their education systems must be exercised in compliance with Article 21 TFEU and the rules on awarding funds for higher education must not create an unjustified restriction on free movement¹²⁹. The Court pointed out that national rules which place certain nationals at a disadvantage simply because they have exercised their free movement constitutes a restriction of the freedom conferred by Article 21(1) TFEU¹³⁰. Therefore, it concluded that Articles 20 and 21 TFEU preclude the home municipality of a Member State resident who is severely disabled from refusing to grant that person a benefit, such as the personal assistance concerned in the main proceedings, on the grounds that the person is staying in another Member State in order to pursue higher education studies there¹³¹.

5.3. Commission action

5.3.1. Facilitating the exercise of free movement

In the area of free movement of (mobile) EU citizens, the European Commission has recently taken a number of steps to ensure Member States fully comply with EU law, including through infringement proceedings in cases of incompatibility of national legislation with EU law.

The European Commission also adopted measures in other areas of EU law with potential effects for the free movement of mobile EU citizens. For example, in February 2019, the European Commission adopted a Recommendation in order to make it easier for EU citizens to gain (cross-border) access to their own health data.

5.3.2. Strengthening the security of identity cards and residence documents

The Free Movement Directive (2004/38/EC) sets out the conditions for exercising the right of free movement and residence (both temporary and permanent) in the EU for EU citizens and their family members. This Directive provides that, in conjunction with a valid identity card or passport, EU citizens and their family members may enter and live in another Member State and apply for the appropriate residence documentation. However, the Directive does not regulate the format and standards for identity cards to be used for entering or leaving EU Member States. Similarly, it does not provide for specific standards for residence documents issued to EU citizens and their non-EU

¹²⁷ C-541/15 *Freitag*, para. 35-39.

¹²⁸ CJEU 25 July 2018, Case C- 679/16, A, ECLI:EU:C:2018:601

¹²⁹ C-679/16 *A*, para. 58-59.

¹³⁰ C-679/16 *A*, para. 60

¹³¹ C-679/16 *A*, para. 79

family members, apart from the title to be given to the latter ones, i.e. ‘Residence card of a family member of a Union citizen’ (see Article 10(1) of Directive 2004/38).

The EU offers its citizens an area of freedom, security and justice without internal borders, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border management, asylum, immigration and the prevention and combating of crime and terrorism.

Many of the EU's security measures rely upon secure travel and identity documents – such as the systematic checks established by the Schengen Border Code in the Schengen Information System¹³².

In recent years, EU standards have been introduced for several identity and travel documents used in Europe.

The 2016 action plan on document security addressed the risk from fraudulent identity cards and residence documents¹³³, and the 2017 citizenship report committed to analysing policy options to improve the security of identity cards and residence documents. The Commission conducted an impact assessment which considered a number of options for identity cards and residence documents compared with the status quo, including soft law measures, minimum common requirements and wider harmonisation. The status quo was considered unsatisfactory and wider harmonisation was not considered proportionate.

These are some of the reasons why, in April 2018, the Commission proposed, as part of its action towards a genuine and effective Security Union¹³⁴, improvements to the security features of EU citizens' identity cards and non-EU family members' residence cards.

In June 2019, the European Parliament and the Council adopted Regulation 2019/1157 on strengthening the security of EU citizens' identity cards of and of residence documents issued to EU citizens and their family members exercising their right of free movement¹³⁵. The Regulation introduced minimum common security standards making identity cards and residence documents more secure and reliable. The Regulation will be applied from August 2021.

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

6.1. Introduction

¹³² Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders

¹³³ COM(2016) 790 final.

¹³⁴ https://ec.europa.eu/commission/news/security-union-2017-jun-29_en

¹³⁵ Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, *OJL 188, 12.7.2019, p. 67–78*

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

The Commission replied to 43 complaints, 57 letters/individual queries, 74 questions and 21 petitions from the European Parliament on these issues, primarily relating to the loss of right to vote or participate in a referendum.

Following the 2019 elections to the European Parliament, the Commission received a large number of complaints concerning the possibility for mobile EU citizens to effectively exercise their voting rights in the UK¹³⁶, as well as from Romanian citizens concerning the difficulties they encountered in voting at Romanian consulates abroad¹³⁷.

6.2. Case-law developments

In its ruling on *Junqueras Vies* of 19 December 2019¹³⁸, following a request for a preliminary ruling from the Spanish Supreme Court (Tribunal Supremo), the Court decided that Article 9 of Protocol (No 7) on the privileges and immunities of the European Union must be interpreted as meaning that:

- a person who was officially declared elected to the European Parliament while subject to a measure of provisional detention in the context of proceedings related to serious criminal offences, but who was not authorised to comply with certain requirements under national law following such a declaration and to travel to the European Parliament in order to take part in its first session, must be regarded as enjoying immunity under the second paragraph of that article;
- this immunity entails that the measure of provisional detention imposed on the person concerned must be lifted so that person can travel to the European Parliament and complete the necessary formalities there. That being said, if the competent national court considers that that measure should be maintained after the person concerned acquires the status of Member of the European Parliament, it must as soon as possible request the European Parliament to waive that immunity, on the basis of the third paragraph of Article 9 of that protocol.

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

In its 2017 EU citizenship report¹³⁹, the Commission called on the Member States to promote participation in democratic life by better informing citizens of their electoral rights and removing barriers to their participation. This was supported in the Conclusions issued by the Council on 11 May 2017¹⁴⁰.

¹³⁶ https://ec.europa.eu/info/files/letter-concerning-voter-registration-system-mobile-eu-citizens-united-kingdom_en

¹³⁷ https://ec.europa.eu/info/files/letter-concerning-difficulties-encountered-voting-romanian-consulate_en

¹³⁸ C-502/19

¹³⁹ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/20170124_eu_citizenship_report_2017_en.pdf

¹⁴⁰ <https://www.consilium.europa.eu/media/22130/st09008en17.pdf>

The Commission published its last report on the implementation of EU law in local and municipal elections and ways to promote electoral rights in February 2018¹⁴¹. Since EU citizens are increasingly moving to and residing in other Member States, the main concerns emanating from the report were the low turnout of mobile citizens and the need for better data collection.

In September 2018, the Commission issued a package of measures to support free and fair European elections, including i) a Communication¹⁴²; ii) a Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of the European Parliament elections; iii) a Guidance document¹⁴³ on applying EU data protection law in the electoral context; and iv) a legislative proposal¹⁴⁴ to provide sanctions for the deliberate misuse of personal data by European political parties and foundations to influence the outcome of the elections.

In line with these measures, the Commission supported Member States by establishing and organising meetings of the European cooperation network on elections¹⁴⁵. This network brings together representatives of Member States' authorities with competence in electoral matters, and allows for concrete and practical exchanges on a range of topics relevant to ensuring free and fair elections, including data protection, cybersecurity, transparency, awareness raising, and inclusive and equal participation.

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

7.1. Introduction

Under Articles 20(2)(c) and 23 TFEU, in a non-EU country where their Member State of origin does not have representation, EU citizens have the right to be protected by the diplomatic and consular authorities of any other Member State on the same conditions as that state's nationals. 76% of EU citizens are aware of this right¹⁴⁶.

In the reporting period, the Commission replied to 10 complaints, 8 letters/individual queries and 8 questions from the European Parliament on this issue. These mostly related to the issuance of emergency travel documents to return home or the lack of or discriminatory consular protection.

7.2. Developments in the field of consular protection

¹⁴¹ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52018DC0044>

¹⁴² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561131040319&uri=CELEX:52018DC0637>

¹⁴³ https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-data-protection-law-electoral-guidance-638_en.pdf

¹⁴⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561130736830&uri=CELEX:52018PC0636>

¹⁴⁵ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en

¹⁴⁶ Flash Eurobarometer 485, spring 2020.

On 18 June 2019, the Council adopted a Directive establishing an EU Emergency Travel Document, updating the rules, format and security features of the document currently in use¹⁴⁷. It simplifies the formalities for unrepresented EU citizens in non-EU countries whose passport or travel document has been lost, stolen or destroyed, to ensure that they are provided with an emergency travel document by another Member State, to enable them to travel home. After the adoption of the necessary technical specifications, Member States have 2 years to transpose the Directive into national law.

In parallel, the Commission continues to include and negotiate consent clauses in bilateral agreements with non-EU countries to ensure that these countries agree that represented EU Member States give assistance to unrepresented EU citizens.

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

8.1. Introduction

Articles 20(2)(d) and 24(2), (3) and (4) TFEU refer to other rights entitling EU citizens to address the EU institutions, including the right to petition the European Parliament and the right to address the European Ombudsman. Every EU citizen is entitled to write to any of the institutions, bodies, offices or agencies in one of the EU's official languages¹⁴⁸ and receive an answer in the same language¹⁴⁹.

8.2. Right to petition the European Parliament

Under Article 24(2) TFEU, EU citizens have the right to petition the European Parliament, in any Treaty language, on EU matters that affect them and to receive a reply in the same language. In 2018, the European Parliament Committee on Petitions received 1 220 petitions, down from 1 271 in 2017 and 1 569 in 2016. However in 2019, this figure rose to 1 357, out of which 938 were declared admissible. In 2018, environment rose to become the main subject of petitions, which remained the case for 2019 as well.

Since 2014, a 'petitions web portal'¹⁵⁰ has been available to enable the user-friendly online submission of petitions. While in 2014 petitions were tabled by email in 80% of the cases and by letter in the remaining 20%, 73.9% of the petitions received in 2019 were submitted via the web portal¹⁵¹.

8.3. Right to address the European Ombudsman

¹⁴⁷ Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP, OJ L L 163, 20.6.2019, p. 1–12.

¹⁴⁸ See Article 55(1) TEU.

¹⁴⁹ This provision is implemented all EU institutions, bodies, offices or agencies, as relevant to their work.

¹⁵⁰ <https://petiport.secure.europarl.europa.eu/petitions/en/main>

¹⁵¹ https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/PETI/PR/2020/09-03/1197378EN.pdf

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

In the period 2017-2019, the Ombudsman's office registered over 6 000 complaints, around 2 500 of which fell within its mandate, and opened 1 395 inquiries. The majority of complaints concerned an alleged lack of transparency and accountability. Compliance with the Ombudsman's suggestions decreased from 85% in 2016 to 77% in 2018. The decrease has been relatively constant since 2014, when compliance had reached 90%. The Ombudsman's office helped over 50 000 citizens in the three-year period, by opening inquiries, answering requests for information or giving advice in its interactive online guide.

This core work in handling complaints was supplemented by strategic own-initiative inquiries, aimed at helping as many citizens as possible by examining issues which appear to be systemic, rather than one-off. During the reporting period, inquiries looked into the transparency of the Council legislative process (2017)¹⁵², among other things.

In 2016, the European Ombudsman adopted new internal rules governing how the Ombudsman deals with complaints and inquiries to make the office more efficient and effective.

In 2018, the European Ombudsman introduced a new fast-track procedure for complaints about public access to documents, which allows the Ombudsman to take a decision within 2 months of receiving the complaint¹⁵³.

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

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

Since 2011, 75 initiatives¹⁵⁴ have been launched on a variety of issues and an estimated nine million statements of support have been collected by the organisers across the European Union. Five initiatives have been successful in reaching the million signatures threshold, one of them during the reporting period.

The 'Ban glyphosate' Initiative¹⁵⁵ calls on Member States to ban glyphosate, to reform the pesticide approval procedure, and to set EU-wide mandatory reduction targets for pesticide use. In December 2017, the Commission adopted a Communication¹⁵⁶ explaining that it did not intend to submit a legislative proposal, because the scientific assessment of glyphosate by the European Food Safety Authority is favourable as regards human and animal health and the environment.

¹⁵² <https://www.ombudsman.europa.eu/en/special-report/en/94921>

¹⁵³ https://www.ombudsman.europa.eu/en/press-release/en/89910?utm_source=web_EO&utm_medium=scrollie_organic&utm_campaign=scrollie_25

¹⁵⁴ ECI register: <http://ec.europa.eu/citizens-initiative/public/welcome>

¹⁵⁵ https://europa.eu/citizens-initiative/initiatives/details/2017/000002_en

¹⁵⁶ C(2017) 8414 final

Following up on the review of how the Regulation has been applied since 31 March 2015¹⁵⁷, the Commission adopted a proposal for a new Regulation on the Citizens' Initiative on 13 September 2017¹⁵⁸. It was adopted on 17 April 2019¹⁵⁹ and has been applied since 1 January 2020. The revised Regulation brings wide-ranging simplification and improvements for citizens and organisers in all the successive steps of the ECI process so that the full potential of the ECI could be achieved by making it more accessible, less burdensome and easier to use for organisers and supporters.

The Commission carried out a second review of how the Regulation has been applied and, on 28 March 2018 it adopted another report¹⁶⁰, which concluded that the Commission has thoroughly assessed the remaining bottlenecks and addressed them in its proposal for a Regulation on 13 September 2017. The Commission is committed to continuing to monitor and discuss a range of ECI issues in close cooperation and coordination with the various stakeholders and institutions and to improving the instrument.

During the reporting period, the expert group on the European citizens' initiative has met seven times¹⁶¹. It is composed of representatives from the relevant national authorities and its role is to coordinate with EU countries on how the ECI is being implemented.

¹⁵⁷ COM(2015) 145 final

¹⁵⁸ COM(2017) 482

¹⁵⁹ Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, OJ L 130, 17.5.2019, p. 55–81.

¹⁶⁰ COM(2018) 157 final

¹⁶¹ https://europa.eu/citizens-initiative/expert-group-meetings_en