



Edited by Carmen Descamps

To be or not to be **EU Citizenship**

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**FRIEDRICH NAUMANN
FOUNDATION** *For Freedom.*
European Dialogue

To be or not to be – EU Citizenship

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Preliminary remarks

The terms *EU citizenship*, *European citizenship*, *Union citizenship* as well as *EU citizens*, *European citizens* and *citizens of the Union* are used as synonyms in the present publication.

At the time of writing and finalisation of the manuscript, the United Kingdom was a member of the European Union.

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List of Abbreviations

CFR	Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
EC	European Community
ECI	European Citizens' Initiative
EP	European Parliament
EPRS	European Parliamentary Research Service
EU	European Union
MEP	Member of European Parliament
NEOS	Liberal Party Austria, "NEOS – das neue Österreich"
NGO	Non-governmental Organisation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
USSR	Union of Soviet Socialist Republics

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Friedrich Naumann Foundation for Freedom

The Friedrich Naumann Foundation for Freedom is a political foundation in the Federal Republic of Germany, founded in 1958 and devoted to the promotion of liberal principles and to political education. The goal of the foundation is to advance the principles of freedom and dignity for all people in all areas of society, both in Germany and abroad.

The Friedrich Naumann Foundation is active in over 60 countries around the world, spanning Europe, Africa, Asia, North and Central America. Within these project countries, our regional offices work to support human rights, rule of law, and democracy. In order to achieve these aims, the foundation seeks to foster both international and transatlantic dialogue through conferences, study tours, and publications, among other means. In addition, the foundation supports local, regional, and national initiatives which advance the rights of minorities, the democratic control of security forces, and the strengthening of international human rights coalitions.

European Liberal Forum

The European Liberal Forum (ELF) is the official political foundation of the European Liberal Party, the ALDE Party. Together with 46 member organisations, we work all over Europe to bring new ideas into the political debate, to provide a platform for discussion, and to empower citizens to make their voices heard.

ELF was founded in 2007 to strengthen the liberal and democrat movement in Europe. Our work is guided by liberal ideals and a belief in the principle of freedom. We stand for a future-oriented Europe that offers opportunities for every citizen.

ELF is engaged on all political levels, from the local to the European. We bring together a diverse network of national foundations, think tanks and other experts. At the same time, we are also close to, but independent from, the ALDE Party and other liberal actors in Europe. In this role, our forum serves as a space for an open and informed exchange of views between a wide range of different actors.

Authors and Contributors

Authors



Carmen Descamps is European Affairs Manager at the Friedrich Naumann Foundation for Freedom. She analyses political developments in the EU, publishes policy analyses and liaises with the Foundation's network of national and European stakeholders. She is also responsible for the Foundation's research and activities related to France. Prior to that, Carmen worked for the Institute for European Politics and the German Federal Foreign Office and has been active in the field of political education. Carmen has a background in Franco-German relations, European Studies and Political Science from Sciences Po Paris and Freie Universität Berlin.



Gerrit Spriet studied Law, European Law and Political Science at the universities of Ghent and Stockholm. He has been involved with the European Union for many years, both politically and in the academic world. Currently Gerrit works for the Studiecentrum Albert Maertens (Open vld) where, next to EU Law and Politics, he is engaged in research on a broad set of topics ranging from Political Psychology to Animal Welfare. He is also attached to the Vrije Universiteit Brussel (VUB).



Francesca Strumia is a Senior Lecturer at the University of Sheffield School of Law, and a Visiting Research Fellow at the Collegio Carlo Alberto in Turin. She is a qualified lawyer in Italy and the US. Prior to joining the University of Sheffield,

she practised Law in London and Milan, and taught Law at the University of Turin. She received her SJD from Harvard Law School in 2009. Francesca's research focuses on EU Law and on international and comparative Migration Law, with a particular focus on the law on free movement and the theory of supranational citizenship. She has published several articles and two books in these areas.



Irina von Wiese is a Liberal Democrat Member in the Renew Europe group of the European Parliament and Vice-Chair of the Human Rights Subcommittee. She also sits on the Committees for Foreign Affairs, Petitions and Civil Liberties, Justice and Home Affairs; as well as several internal delegations for the European Parliament. Irina is particularly concerned about human rights and refugees and is member of the Board of the European Endowment for Democracy. A dual British and German citizen, Irina has lived and worked in London since 1996 and joined the Liberal Democrats in 1999.

And a valuable contribution from...



Claudia Gamon is an Austrian Member of the European Parliament for NEOS, the party's spokesperson for all things European and sits with the Renew Europe group in the European Parliament. Previously, she represented NEOS as a member of the Austrian Parliament. In her work, she focuses mainly on the topics of Digitalisation, Science, Research, Energy and technological progress. Claudia studied International Business Administration and International Management at the Vienna University of Economics and the Université catholique de Louvain.

Executive Summary

European citizenship was introduced into the European legal order with the Maastricht Treaty in 1992. Complementing national citizenship, it grants a variety of rights to 512 million Europeans. These comprise freedom of movement, political participation, consular protection, involvement in EU policy making and a right to complaint and petition. However, it is apparent that the full potential of EU citizenship provisions remains untapped. In 2018, while seven out of ten Europeans felt that they were European citizens, only a slight majority knew about their citizenship rights.

In order to propose concrete recommendations to address this challenge, Chapter 1 analyses the various rights linked to EU citizenship, enshrined in the Treaty on the Functioning of the European Union (Art. 18-25) and the Charter of Fundamental Rights of the European Union (Title V). Chapter 2 retraces the legal development and expansion of the citizenship provisions in the last years; arguing that the European Court of Justice started a revolution a decade ago in shaping and deepening the citizenship doctrine.

Regarding EU citizens' rights, the publication illustrates the case studies of the European elections 2019 and the challenges surrounding Brexit in enabling citizens of the Union to invoke their rights and to make full use of them. The analysis reveals that the whole range of EU citizenship rights is not sufficiently known among citizens; that Europe lacks a harmonised and user-friendly approach in rules and procedures for citizens' political and electoral rights; and that European citizens would face a loss if they are not able to rely on citizenship rights in case of insufficient national protection.

In order to alleviate the listed weaknesses and to render citizenship rights beneficial and usable for all Europeans, the publication recommends that:

- EU citizenship rights need to be promoted as fundamental rights for every European on all policy levels and across borders.
- European citizenship should be framed in a more inclusive and broader rights-based approach to strengthen the idea of a European community and shared European identities.
- Automatic voter registration in the electoral register for local and European elections should take place at the main place of residence to increase political participation.
- National authorities should systematically inform registered European citizens about specific requirements and other relevant conditions to be known before voting.
- In between election cycles, Europeans shall be encouraged to make use of their citizens' rights.
- Active citizenship needs to be promoted in various policy areas and on different policy levels.

Foreword

Irina von Wiese MEP, Liberal Democrats

In an age of identity politics, the question of citizenship is not just one of legal entitlement – it is a question of shared values. For me as a Liberal Democrat, openness, tolerance and freedom lie at the heart of these values. No other political entity embodies them more than the European Union.

Growing up in divided, war-scarred Germany, I saw the EU above all as a guarantor of peace. The individual rights enshrined in its statutes promised both freedom and security, the key to a unified continent my grandparents could only have dreamed of. To be European meant to be part of the first generation of continuous peace.

It was not until my university years that I realised how much more EU citizenship offered to me: the ability to study in The Hague, gain work experience in Helsinki and import cheap wine from France. As an adult, I took for granted the ability to move to the United Kingdom, benefit from the EU-wide recognition of my professional qualification and work in London, the city I now represent in the European Parliament. My daughter has three nationalities and my Twitter profile correctly states that I am Russian by heritage, German by birth, British by choice and European by conviction. To have multi-layered identities has never struck me as odd or contradictory.

Francesca Strumia, in her chapter on Brexit (3.3), describes the rights conferred by EU law as ‘part of the legal heritage’ of EU citizens – something individuals have not only become accustomed to, but have incorporated in their lives, like the right to move freely around their town. Deprivation of this legal heritage,

therefore, is not unlike the withdrawal of other rights which is usually linked to individual, rather than collective, punishment.

For British nationals, this is not an academic question. On the eve of Brexit, I receive hundreds of emails from constituents who worry about losing their EU citizenship. Most fear the loss of free movement, of the right to settle, work and retire in any of the EU member states. Some also – and rightly – fear the loss of political and electoral rights, protective social and human rights, and the right to equality and non-discrimination across Europe. But many also talk about their emotional bond with Europe and the values shared with their European neighbours. They feel that Brexit leaves them bereft not only of rights, but of an identity.

The concept of a European Associate Citizenship for nationals of a former Member State (see Chapter 1, ‘Promoting Citizenship after Brexit’) is back on the table, supported by UK Liberal Democrats and many liberal members of the European Parliament. It remains to be seen if and how this idea can overcome political and legal hurdles to help British nationals retain at least some of their legal heritage.

Ultimately, it is individuals, not governments, who enjoy rights and forge identities. In a world order where liberal values are increasingly under threat, the European Union offers a vision of freedom – including the freedom to leave. It is to be hoped that one day, individuals, not governments, will be able to exercise the freedom to opt in, or out, of supranational citizenship – not undermining, but complementing other identities.



Introduction

“To be or not to be, that is the question”

William Shakespeare, Hamlet, Act 3, Scene 1

From a European point of view, one of the most relevant citizens' rights was the right to vote and to stand as a candidate in any EU country during the elections to the European Parliament. Approximately 427 million citizens from all over the European Union were invited to elect their European representatives from 23-26 May 2019. In doing so, they actively took part in the democratic life of the European Union. Among them were also EU citizens who voted in their country of residence rather than their native country, and EU citizens being eligible for vote on national lists in countries other than their own.

Whilst not the only concrete example of the application of citizenship rights, but arguably the most timely, European elections once again underline the relevance of such rights for citizens of the Union. Europeans are entitled to a number of rights, which go far beyond election cycles. The crucial question is, however, whether the opportunities of EU citizenship in other areas are only relevant to EU citizens who leave their country of origin. Or are they also important to the static population and therefore to all Europeans alike. This publication and its contributors argue for an inclusive understanding of European citizenship, applying to all Europeans regardless of their mobility status.

While the existence of EU citizenship is undisputed, we must ask ourselves: Do we really know what European citizenship is and do we make the best use of our rights? While in 2018 seven out of ten Europeans felt that they were citizens of the European Union¹, only a slight majority knew about their citizenship rights

¹ European Commission, “Report on European Citizenship”, Standard Eurobarometer 89 - Spring 2018, p. 30, consulted online: <https://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/Survey/getSurveyDetail/surveyKy/2180>.

and one third would even have liked to know more. The knowledge is there, but not necessarily the competencies for its application. Referring back to the introductory example, this years' European elections – with a turnout of 50.66%, the highest in 25 years – are a beacon of hope in that regard.

“To be or not to be – EU Citizenship” aims to shed light on the rights of EU citizenship and to fill the gap between knowledge and application. It presents a number of concrete issues and perspectives around EU citizenship, which are of interest for liberal and non-liberal readers alike. Lying at the heart of the European project, EU citizenship is far more than European identity and does not merely limit itself to free movement either. It is a legal status, enshrined in the European Treaties. EU citizenship has evolved over time and confers a set of civil, social, political and economic (fundamental) rights upon citizens of the EU. The concept of active citizenship is moreover a call to action to citizens of the EU to get involved and take on responsibilities.

This publication aims to introduce these rights and opportunities, present some practical examples of application and give recommendations on how to make even better use of our rights and advance active citizenship. At a time when the liberal international order and, with it, European politics, politicians and political parties are increasingly questioned or even under threat, an active European citizenry is more necessary than ever. Active citizens as members of a political community are vital for all levels of a functioning democracy.

In the aftermath of the First World War, the German Liberal Friedrich Naumann created a new approach to democratic development with the establishment in 1918 of his school of citizenship (“Staatsbürgerschule”) in Berlin. He believed that for a fledgling democratic system to succeed, we need citizens who understand the procedures, believe in democratic rules and become personally involved. Driven by the emerging contrast between the emperor's subjects and the new self-assured and active democratic citizens at that time, today Naumann, among others, is still a source of inspiration for civic education.

More than 100 years later, the topic is far from being less relevant. The present publication is the end of a one-year journey on the topic of EU citizenship, aiming at highlighting the multi-faceted concept of citizenship and its rights for a non-le-

gal audience. While the 2019 European elections were one undisputed highlight of that journey, Brexit was another major, if less pleasant event involving citizenship questions. Expected in 2019, it has not yet taken place at the time of writing. These examples highlight that we can predict the future only to a certain extent, but we can at least prepare ourselves by deepening our knowledge and acquiring the competencies to make the best use of citizenship rights.

While the first chapter provides a general overview of the concept of citizenship, and the second presents its legal-historical evolution towards a quasi-constitutional status, the third chapter focuses on two case studies of European citizenship. On the one hand, the focus is on the voting rights of mobile EU citizens in the 2019 European elections and includes a testimonial from Claudia Gamon, Austrian Liberal Member of the European Parliament who actively campaigned for extended voting rights for EU citizens. On the other hand, the focus is on the imminent loss of citizenship rights for mobile and static British citizens after Brexit. A number of policy recommendations to accompany citizenship-oriented action in the future round off the publication.

Enjoy the read!

Carmen Descamps

European Affairs Manager

Friedrich Naumann Foundation for Freedom

Brussels

The background of the entire page is a dense, stylized illustration of a large crowd of people. The figures are rendered in a flat, graphic style, with most wearing blue clothing and some wearing yellow. They are arranged in a way that suggests a large gathering or a diverse population.

Chapter 1

The European Added Value of Union Citizenship

Carmen Descamps

European citizenship currently has far more to offer than a merely economic notion and it is more than market-oriented citizenship. As laid down in the second chapter of this publication, it has steadily evolved over the course of European integration. European citizenship comprises political, legal and cultural notions and is both manifold and complex. It offers European citizens a set of fundamental rights and privileges, which are additional to their national citizenship:

“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.”

Article 20, Treaty on the Functioning of the European Union

Provisions on European citizenship are more than just a residual category, which would mainly consist of a bundle of rights to cover situations where national legislation does not apply. As shown in this publication, EU citizenship also raises questions of (European) identity and a common belonging, making it relevant to all European citizens. This chapter gives an overview of central rights conferred by EU citizenship and links them to current debates. It shall be noted that the major difference between national citizenship and Union citizenship is that the latter does not entail any real duties for its citizens, despite a corresponding wording in the Treaties under Article 20(2) TFEU.²

In academic literature, citizenship is often referred to as *membership* of a certain political community (nation state) and as *relational status*. An individual is part of a political community and is defined through that belonging, as well as through his/her relationship to other individuals or entities. Such relations manifest themselves in a multidirectional manner: On the one hand, on a horizontal level among the members of a political community (citizens); on the other hand, on a vertical level through the linkage with individuals and institutions conceived to foster collective action, for example the European institutions.³

² European Parliament, “The citizens of the Union and their rights”, consulted online: www.europarl.europa.eu/ftu/pdf/en/FTU_4.1.1.pdf. The “duty-free” nature of EU citizenship lead to a demand for further development of duties linked to the citizenship provisions, for example as “soft duties”. See also: Maurizio Ferrera, “EU Citizenship Needs a Stronger Social Dimension and Soft Duties”, in *Debating European Citizenship*, ed. Rainer Bauböck (Cham: Springer, 2019), 181–98; and Dimitri Kochenov, “EU Citizenship without Duties”, *European Law Journal* 20, 482–98.

³ Agustín José Menéndez and Espen D. H. Olsen, *The Concept and the Conception of Citizenship. Ideas and Realities in Contrast* (London: Palgrave Macmillan, 2019), 21.

A Feeling of Common Belonging

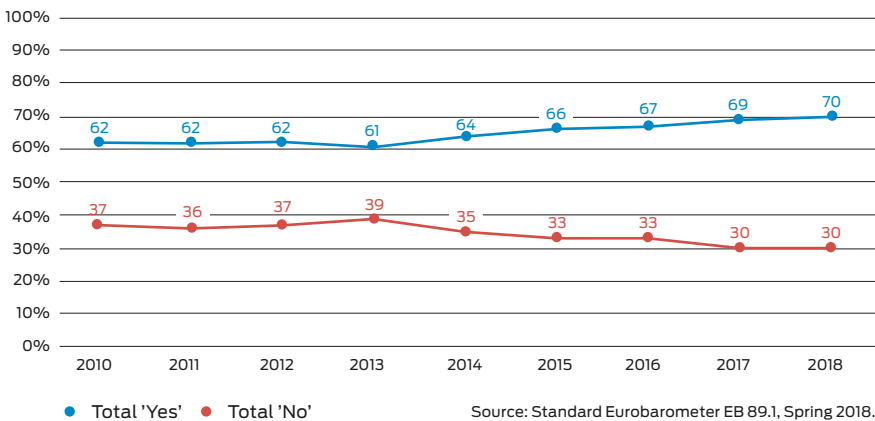
The sociocultural aspect of European citizenship is important to examine at first, as it constitutes the glue that keeps Europeans and the EU together as an economic and political project. In the year 2018, the EU counted 512 million citizens. In that light, the quest of a shared European identity inevitably starts with the question of *who* we are and what links us. Finns and Greeks as well as Portuguese and Romanian citizens, EU citizens living on islands as well as those from the European mainland.

In the French tradition and even more so for Jürgen Habermas, fostering a sense of common belonging is the core of identity.⁴ It emerges either by committing to common (European) values and rights or through active political participation. In that line, a European *demos*, understood as a truly European population conceived as a political community, is created from within the European political space.

Statistically, identification with the EU has never been that high. According to the latest Eurobarometer polls on citizenship, seven out of ten Europeans feel that they are European citizens.⁵

Figure 1: Self-identification with the EU.

Do you feel that you are an EU citizen?



⁴ Jürgen Habermas, "Citizenship and National Identity", in *The condition of citizenship*, ed. Bart van Steenberg (London: SAGE Publications Ltd, 1964), 20-35.

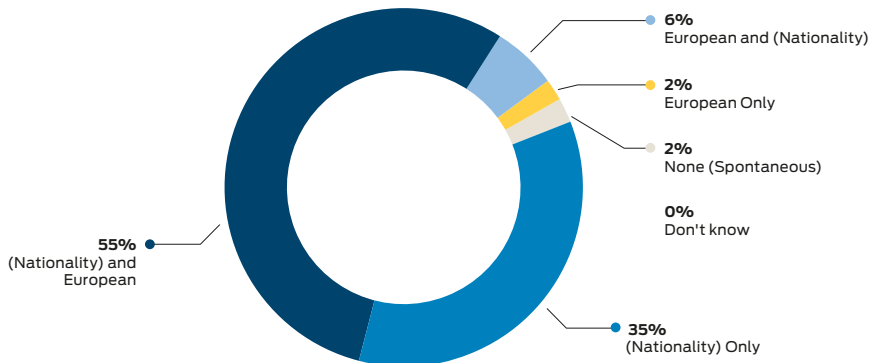
⁵ European Commission, "Report on European Citizenship", 2018, p.30.

Over recent years, global challenges in and outside the EU have caused a higher degree of politicisation and awareness of European affairs among EU citizens. At the same time, with Eurosceptic and anti-European voices rising as well as a general public demand for more transparency of EU action gaining ground, EU institutions and national political institutions have made an effort to rethink their communication and outreach strategies towards a more citizen-centred approach.

However, and as no great surprise, Europeans first of all define themselves as nationals of an EU member state. Following the concept of multiple identities nowadays widely privileged over the concept of exclusive identities, identity can be multi-layered and different identities are not necessarily mutually exclusive.

Figure 2: Identification with the EU and its member states.

Do you see yourself as...?



Source: Standard Eurobarometer EB 89.1, Spring 2018.

What EU Citizenship Offers

EU citizenship is not only of interest to citizens residing outside their countries of origin. Citizenship provisions apply to every citizen of the Union. In the following, those rights are summarised and presented in different groups: freedom of movement, political and electoral rights, protective rights, right to information and the right to equality and non-discrimination.

It is true that EU citizenship offers a multitude of fundamental rights for people known as “mobile citizens”, such as the right to vote and stand for European

elections outside their country of origin.⁶ The rationale behind citizenship provisions being specifically suited to cross-border situations is that once mobile citizens cannot invoke national legislation, they can rely on an additional level of protection provided by EU citizenship.

Unlike other impact assessments of the European added value of a European policy or an achievement in the course of European integration⁷, it would be quite complicated to measure the added value of European citizenship for EU citizens in economic terms. Still, its value is far more than purely symbolic, and is also normative.

Figure 3: EU citizenship at a glance.⁸

EU Citizenship at a Glance				
(based on the Treaty on the Functioning of the European Union)				
Article 20	Article 21	Article 22	Article 23	Article 24
establishment of EU citizenship for every national of an EU member state	right to move and reside freely within the EU	right to vote and be eligible at European and municipal elections	right to subsidiary diplomatic protection outside the EU	right to initiate and support a European Citizens' Initiative (with Art. 11 TEU)
additional to national citizenship	> <u>cross-border element</u>			right to petition to European institutions
right to move and reside freely within the EU				right to apply to the European Ombudsman
> <u>no cross-border element</u> (see Chapter 2)				right to information and to address the EU institutions in your own language
Articles 18 & 19 - principle of non-discrimination: equality and non-discrimination on the grounds of nationality, gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation				

Source: own list.

6 See Chapter 2 for a more detailed differentiation between cross-border and non cross-border citizenship cases.

7 The European Parliament's in-house European Parliamentary Research Service (EPRS) dedicates a whole Unit to European Added Value Assessments and Evaluations of the Cost of Non-Europe in a variety of European policy areas. Its aim is to analyse policy areas where common action at EU level is absent, but could bring about greater efficiency and the public good for European citizens. Further information can be found at <https://eprthinktank.eu/author/eprseava/>.

8 It shall be noted that some of the citizens' rights listed are restricted to EU citizens only, while some other rights can also be enjoyed by every judicial and natural person residing legally in the EU.

Freedom of Movement

Articles 20 and 21 TFEU are at the heart of EU citizenship provisions. Article 20 TFEU establishes citizenship and comes in addition to the citizenship of an EU member state. It also grants EU citizens the right to move and reside freely on European territory. EU citizenship provisions join the core provisions on freedom of movement, being freedom of workers (Art. 45-48 TFEU), freedom of services (Art. 49-55 TFEU) and freedom of capital (Art. 56-62 TFEU).

Following the steady evolution of the Case Law by the Court of Justice of the European Union, EU citizenship can also provide legal protection in purely national situations, as the following chapter will show. In order not to interfere too much with national politics, application is restricted and limited to certain criteria only. If a situation involves any cross-border element, only Article 21 TFEU applies. Not surprisingly, European citizenship is often associated with free movement based on these two Treaty provisions.

Although this chapter does not focus on questions of free movement, it is worthwhile to highlight briefly the slight shift of competencies of the citizenship portfolio attributed to European Commissioners. The portfolio was introduced for the first time with the second Barroso Commission in 2010. Firstly regrouped with the portfolios on Justice, Fundamental Rights and Citizenship (Barroso II Commission), citizenship matters were later dealt with by the Commissioner for Migration, Home Affairs and Citizenship (Juncker Commission). In the incumbent Von der Leyen Commission, the Commissioner and Vice-President for Values and Transparency, Věra Jourová, is in charge of citizenship matters under the umbrella of European Identity.⁹ The association of the citizenship portfolio with more normative characteristics of what it means to be European (i.e. rights, identity) is to be welcomed, instead of the former framing under free movement provisions. However, the omission of any explicit mention of citizenship in the Commissioner's title has been criticised by citizenship activists.¹⁰

⁹ Ursula von der Leyen's mission letter to Věra Jourová, at that time Vice-President-designate for Values and Transparency, reads as follows: *"You should coordinate all efforts and initiatives that promote European identity. You should make use of the Rights, Equalities and Citizenship Programme to increase awareness about European citizenship and the rights it confers."* Full letter available online: https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-vera-jourova-2019_en.pdf.

¹⁰ In line with proposals for transnational lists, EU experts and citizens' rights activists suggested the creation of an EU citizens' Commissioner to fill the vacancy left by the UK which did not suggest any candidate in the light of Brexit. More information on the proposal: www.theparliamentmagazine.eu/articles/news/eu-urged-create-%E2%80%99citizens%E2%80%99-commissioner%E2%80%99-von-der-leyen-prepares-unveil-team.

Political and Electoral Rights

European elections

EU citizenship not only encompasses free movement, but also grants political and electoral rights. To enable participation of European citizens in the political life of the European Union at local and European level, Article 22 TFEU grants the right to vote and to be eligible at European and municipal elections.¹¹ Mobile EU citizens can therefore shape politics actively as candidates or by exercising their voting rights at their place of residence. For European elections, citizens have to choose between voting in their country of origin or their country of residence.

During the European elections in May 2019, some national parties used Article 22 TFEU as a backdoor alternative to introduce non-nationals on European voting lists. Some examples are the French list *Renaissance* with Sandro Gozi (Italy) and Chrysoula Zacharopoulou (Greece), as well as the list of Germany-based *DiEM25* with former Greek Finance Minister Yanis Varoufakis running as their lead candidate. Despite being turned down by the European Parliament in a first attempt, European Liberals actively promote such transnational lists, for instance the Austrian Member of European Parliament (MEP) Claudia Gamon.¹²

As shown during previous European elections, EU citizens are not always able to enjoy these rights due to a lack of awareness and / or information on special requirements and registration deadlines.¹³ In 2015, only two out of three Europeans knew about the possibility for non-national citizens to vote and stand as candidates in elections to the European Parliament.

European Citizens' Initiative

As its name undoubtedly suggests, citizenship is intended to empower citizens – not only with free movement, economic and political rights. The rights in Article 24 TFEU are part of the latter category and are intended to enhance active EU citizenship. They give a voice to citizens and their concerns. Initiating and signing a petition or a European Citizens' Initiative (ECI) fall under that

¹¹ See also Chapter 3.1.

¹² Interview with Claudia Gamon in Chapter 3.2.

¹³ See Chapter 3.1.

scope. Likewise, EU citizens can apply to the European Ombudsman to launch an investigation and petition to the European Parliament if they feel their rights have not been respected.

The European Citizens' Initiative was introduced with the Treaty of Lisbon and entered into force in 2012. ECIs aim to bring the EU closer to its citizens by bridging the gap between a bureaucratic, mostly Brussels-based EU and citizens throughout the EU who want to highlight an issue of pan-European concern and invite the EU to take action on it. Linking it to the initial discussion of concepts of citizenship, the ECI serves as a very good example for the vertical dimension of citizenship as a relational status.

To that end, citizens may invite the European Commission to propose a legal act within the scope of its competences through an ECI. However, the administrative hurdles to bring an issue before the Commission are quite high, for instance, requiring ECI organisers to have their ECI registered and to successfully collect one million signatures in at least seven EU member states within a year. Studies on the first ECI regulation therefore suggest that its main potential has to date remained untapped.¹⁴ A revision process started in 2017, leading to a new ECI regulation entering into force as of 2020.

On the extension of voting rights following Article 22 TFEU, two ECIs have been registered.¹⁵ One claimed an extended participation in national elections, another the general extension of voting rights for mobile EU citizens on all political levels, thus also including referenda, regional and any kind of national election. Ultimately, none of the listed ECIs was successful, but nevertheless they interpret the civic interest and active use of citizenship rights in recent years.

14 Carmen Gerstenmeyer/Julia Klein/Julian Plottka/Amelie Tittel, "Study on the European added value of the European Citizens' Initiative", in *The added value of the European Citizens' Initiative (ECI), and its revision*, ed. Christian Salm (Brussels: European Parliamentary Research Service, 2018). Available online: [www.europarl.europa.eu/RegData/etudes/STUD/2018/615666/EPRS_STU\(2018\)615666_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/615666/EPRS_STU(2018)615666_EN.pdf).

15 ECI "Let me vote", 2013; ECI "Full political rights for citizens on the move", 2018.

Protective Rights

EU citizenship provisions also grant rights in non-EU countries. While travelling for private or professional purposes, EU citizens might one day find themselves outside the geographical scope of their home authorities and thus without an embassy or a consulate able to provide immediate assistance and guidance. In the event of crises or individual emergencies (i.e. death, accident, illness, arrest, detention or violent crime), EU citizens can rely on the right to diplomatic protection (Art. 23 TFEU). What are known as “unrepresented EU-citizens” are entitled to seek assistance at any other embassy or consulate of an EU member state. The most common cases concern the loss or theft of passport and travel documents, for which EU member states introduced a common format for emergency travel documents already in 1996.¹⁶ To this day, unfortunately no worldwide list of countries for which this right is relevant has been established.

Information Rights in Treaty Languages

In addition to the freedom of information (Art. 15 TEU), citizenship provisions foresee that EU citizens can address the EU institutions in their language (any of the official EU languages) and receive an answer in the same language (Art. 24 TFEU). Furthermore, an evaluation of the citizenship provisions every three years to facilitate citizens’ access to their rights gives further information on the current state of citizenship rights. The next citizenship report by the European Commission is due in 2020 (Art. 25 TFEU).¹⁷

¹⁶ European Commission, “EU Citizenship Report 2017 – Strengthening Citizens’ rights in a Union of Democratic Change”, consulted online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/20170124_eu_citizenship_report_2017_en.pdf.

¹⁷ Ibid.

Promoting Citizenship After Brexit

Among the parliamentary proposals on how to prevent UK nationals from losing European citizenship rights, the Liberal Luxembourgish MEP Charles Goerens failed to start a small revolution in 2016 with an amendment introducing the concept of “European Associate Citizenship” in a draft report by Guy Verhofstadt, Brexit chief negotiator on behalf of the European Parliament.

Goerens suggested inserting *“in the Treaties a European Associate Citizenship for those who feel and wish to be part of the European project but are nationals of a former Member State; offering these Associate Citizens the rights of freedom of movement and permission to reside on its territory, as well as being represented in the Parliament through a vote in the European elections on the European List.”*¹⁸

In other words, Goerens wanted to make it possible for all citizens of the United Kingdom to remain citizens of the European Union after Brexit, by introducing a new category of citizenship. Bearing too much legal uncertainty at that time, the proposal was finally not retained.

There have been three ECIs on maintaining EU citizenship rights in a more narrow sense.¹⁹ All were related to the potential loss of Union citizenship by British citizens after the Referendum in June 2016. By the UK leaving the EU, British citizens would be deprived of their European citizenship rights, the most substantial being free movement.²⁰ In an attempt to guarantee that European citizenship and its associated rights will not be lost after Brexit, ECI organisers emphasised the threat of an emerging new category of European rights’ holders in search of a status. One ECI proposal therefore suggested the separation of nationality and EU citizenship, arguing that Article 20 TFEU precludes national measures that deprive EU citizens of the genuine enjoyment of the rights conferred to them under their status as citizens of the Union.

¹⁸ European Parliament, “Draft report. Possible evolutions of and adjustments to the current institutional set-up of the European Union”, 2014/2248(INI), consulted online: www.europarl.europa.eu/doceo/document/AFCO-AM-592348_EN.pdf?redirect.

¹⁹ ECI “Retaining European Citizenship”, 2017; ECI “EU Citizenship for Europeans: United in Diversity in Spite of jus soli and jus sanguinis”, 2017; ECI “Permanent European Citizenship”, 2018.

²⁰ More on the loss of citizenship rights after Brexit in Chapter 3.3.

Equality and Non-Discrimination

European citizenship would be incomplete without an egalitarian, non-discriminatory approach to all citizens of the Union. The equal application of the above-mentioned citizenship provisions is only successful if European citizens are treated equally. Equality and non-discrimination are therefore enshrined in Articles 18 and 19 TFEU. They stipulate that European citizens shall be entitled to equal access to their rights, regardless of their nationality, gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In an ever more diverse EU with a high labour mobility within its territory, non-discrimination against nationals of other member states is of utmost importance.

Also from a liberal point of view, combatting discrimination on different grounds is more necessary than ever. Ensuring gender equality and non-discrimination for LGBTI people in various policy areas are part of the liberal DNA:

“We liberals defend the inalienable right to a life of self-determination, regardless of birth or belief, gender or sexual orientation. We want a Europe that is proud of its diversity and works for the benefit of its minorities. (...) We are committed to promoting gender equality and empowering women and girls, and to work for the same rights and opportunities across all sectors of society, including economic participation and decision-making, regardless of gender.”

ALDE Party electoral manifesto, 2018²¹

Further fields of application of Articles 18 and 19 TFEU are the combat against gender-based violence, the inclusion of minorities and connectivity for all EU citizens in the digital age, also ensuring accessibility to goods and services for people with disabilities and older people.

²¹ ALDE Party, “Freedom, Opportunity, Prosperity: the Liberal vision for the Future of Europe”, consulted online: www.aldeparty.eu/sites/alde/files/40-Resolutions/2019_freedom_opportunity_prosperity_the_liberal_vision_for_the_future_of_europe_o.pdf.

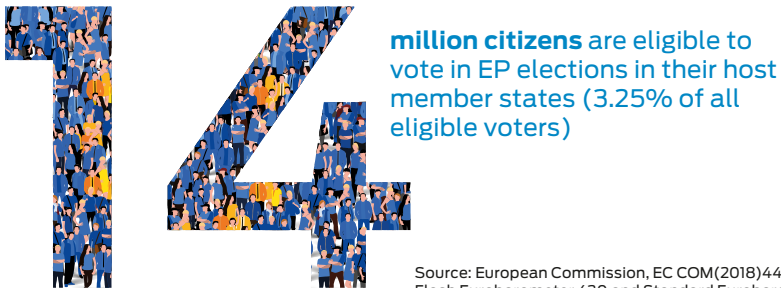
Conclusions

All in all, EU citizenship provides a variety of rights for individuals across the EU. Although not apparent at first sight and especially not to non-lawyers, EU citizenship provisions grant additional economic, political, civic and social rights.²² It has been shown that these European provisions are of clear added value compared to national law, both for mobile EU citizens and those residing in their country of origin.

The European added value of Union citizenship is therefore more than apparent in theory and in practice. Regarding the latter, improvements are still needed regarding the raising of awareness and the practical application of European citizens' rights in order to ensure that the greatest possible number of citizens are able to enjoy their rights. While the third chapter of this publication gives an insight into some practical cases taken from the European elections and Brexit, the fourth chapter provides some policy recommendations to bridge the gap between theory and practice.

22. The Commission's website on EU citizenship provides a good overview as well, in particular regarding active participation in the democratic life of the EU: https://europa.eu/european-union/about-eu/eu-citizenship_en.

Do you know that...



Source: European Commission, EC COM(2018)44, fact sheet Flash Eurobarometer 430 and Standard Eurobarometer 89.



Chapter 2

The (R)Evolution in European Citizenship

*From markets to quasi-constitutionalism -
a legal-historical analysis*

Gerrit Spriet*

* This contribution reworks and expands an article first published as an ELF policy brief entitled "Living a Constitutional Life" in October 2018. My gratitude goes to David Mair from the European Commission and Carmen Descamps from the Friedrich Naumann Foundation for helping me to produce this text.

Though many of us may not be aware of it, Europeans today possess not one, but two layers of citizenship. Since the 1992 Maastricht Treaty, Europeans are citizens not only of a member state but also of the European Union as a whole. But what does that mean? Is European citizenship a copy of national citizenship or is there more to it than meets the eye?

This chapter seeks to shed more light on how the European Court of Justice has dealt with this issue. To do so, we follow the course of Court doctrine over the past couple of decades. It will become apparent that, about a decade ago, the Court unleashed nothing short of a revolution in relation to European citizenship. A revolution in what it means to be a citizen of the European Union.

Since that revolution, there has been much more to European citizenship than meets the eye. It has become the kind of thing that might just save the day in a moment of crisis faced by EU citizens²³, although that does not mean that the Court's bold revolution was applauded by all. Indeed, to this day, several member states remain deeply vigilant about what a deepened concept of European citizenship could mean.

A Market-Based Citizenship

During the formative decades of European integration, the concept of European citizenship was absent from the Union's legal universe. Before the Maastricht Treaty, European citizenship was only informally used as a concept to denote the totality of rights and duties citizens of EU member states enjoyed because of their state's membership of the Union. This is called the *acquis communautaire*, Union-speak for the totality of rights and duties that have been "acquired" by European integration. Until the Maastricht Treaty, then, Europeans were legally speaking only citizens of their own member state, albeit enriched with rights derived from the European *acquis* by reason of the accession of their country to the European Economic Community, later renamed the European Community (EC).

23 A good example is the 2010 *Ruiz Zambrano* case, mentioned later in this article.

The kind of citizenship referred to by this informal concept was also rather different from national citizenship as we know it today. It was no constitutional-type citizenship conferring general and inalienable fundamental rights upon those who enjoy it. Mirroring the limits of what is called *conferral of competencies*²⁴, European citizenship was no more than a kind of market-based citizenship with a rather narrow scope.

Until the Maastricht Treaty, the EC dealt mainly with economic policy. European integration was about making war impossible by tying European nations together in a strong web of economic exchange, aiming at a more peaceful cohabitation under Europe's economically sheltering skies.

To this end, and to ward off the far-left doctrines of the USSR, the Founding Fathers decided not only to create a Customs Union, but also to liberalise the four basic factors of their economies: goods, services, people and capital. Thus were born the famed "four freedoms" and with it, the internal market.

As European construction was geared to cross-border economic objectives, with some exceptions the Court deemed European Law only applicable to these cross-border situations, and not to what came to be known as "wholly internal situations".²⁵ The result was that only those participating in the achievement of the ever closer union of states and peoples in the European Community could enjoy the benefits of European Law. This restricted the application of European Law to 1) economic activities 2) of a cross-border nature. Hence, in the days of the Court's market-based reasoning, by and large European Law did not apply to situations lacking these characteristics. This led to the infamous anomaly of *reverse discrimination*, meaning that, while a member state is not allowed to discriminate against other EU nationals, it is allowed to discriminate against its own citizens compared to other European citizens.²⁶

In a market-based legal environment, the informal concept of European citi-

24 Unlike the sovereignty of its member states - traditionally considered natural, full and almost unlimited - the European Union *received* the sovereignty it possesses when the member states decided to confer certain competencies from the national to the European level. European sovereignty is therefore limited to those competencies it received in the treaties that make up the Union.

25 See for example C-175/78, *Saunders*, ECLI:EU:C:1979:88; C-64/96 and 65/96, *Uecker and Jacquet*, ECLI:EU:C:1997:285 or C-97/98, *Jägerskiöld*, ECLI:EU:C:1999:515.

26 A good example is the *Aubertin* case, ECLI:EU:C:1995:39. French hairdressers in France were treated less favourably than hairdressers from other EU countries in France, since French hairdressers had to possess a specific diploma, while hairdressers from other member states only had to prove that they had lawfully practised hairdressing in their member state of origin, even if this did not require a specific diploma.

zanship was thus limited to people engaged in cross-border economic activities within the internal market, whether as providers or beneficiaries of goods and services, as capital investors or as workers or independents crossing an internal market border for business objectives. European Law was not applicable to wider categories of people and their activities.²⁷

Introducing Citizenship Into the European Legal Order

When the 1992 Maastricht Treaty finally introduced European citizenship²⁸ into the European legal order, at first glance it was not a very big deal. It enlarged free movement rights to economically inactive citizens and added a limited number of political rights to the economic *acquis*. It was by no means the intention of the new Treaty to transform the Court's market-based approach into a wider, constitutional kind of citizenship. It was still understood that, in order to establish a link with the EU, there had to be a cross-border element.

This was also how the Luxembourg Court understood the incorporation of citizenship in the new Treaty. In the 1997 *Uecker and Jacquet*²⁹ case, for instance, the Court still repeated its traditional "market plus" approach – now including also economically inactive citizens – by stating that the introduction of European citizenship into the European legal order did not change the material scope of EU Law.³⁰

Throughout the 1990s, the Court *did* gradually erode the inherent limitations imposed by a market-based citizenship concept. However, eschewing a true Copernican revolution, it did so by nibbling at the margins of its traditional doctrines. For instance, on a case-by-case basis, the Court would gradually enlarge the cross-border concept in an attempt to bring more cases within the ambit of European Law.³¹ However, all this piecemeal nibbling led scholars and legal prac-

²⁷ However, it must be added that, mainly starting in the 1980s, the Court stretched these categories slightly, also to include, for instance, students. Though connected to cross-border economic activities, European Law also came to gradually include the families of those crossing a border for economic reasons.

²⁸ Currently, European citizenship is laid down in Art. 9-12 TEU and Art. 18-25 TFEU.

²⁹ ECLI:EU:C:1997:62.

³⁰ Lenaerts, K., "Civis Europaeus sum: from the cross-border link to the status of citizen of the EU", *Online Journal on Free Movement of Workers within the European Union*, 2011.

³¹ See for example C-370/90, *Singh*, ECLI:EU:C:1992:296 or C-214/94, *Boukhalfa v Bundesrepublik Deutschland*, ECLI:EU:C:1996:174.

tioners alike to complain about the growing incoherence of European Law.

Given the above, the extension of cross-border freedoms to economically inactive citizens was generally perceived to be no more than a kind of “fifth freedom”. Without fundamentally altering the scope of EU Law, a wholly novel category of citizens acquired the right to cross Europe’s internal borders freely, albeit within the traditional limits of Court doctrine and the limits imposed by secondary European Law.

Up to that point, therefore, EU citizenship remained a rather instrumental concept, linked by and large to the completion of the internal market.

Towards a New Concept of European Citizenship

However, somewhere around the turn of the millennium, voices inside and outside the Court started looking anew at the nature of European citizenship as a legal concept.³²

Market-based citizenship was felt to be unduly constrictive. People found it increasingly difficult to accommodate its anomalies in a Union that had mutated from an economic club with a narrow integration agenda to an emerging supra-national democracy with its own directly elected Parliament and competencies extending far beyond the economic sphere.

In such a context, the Court’s habit of nibbling at the margins of established doctrine came to be seen as problematic. Instead, legal practitioners inside and outside the Court started reading Articles 20³³ and 21 TFEU – the legal bases of European citizenship – not through the traditional lens of the *acquis*, but as carrying the potential for constitutional revolution.

The first time that something of this seeps through in Court doctrine is in the 1999 *Grzelczyk*³⁴ case, where the Court makes the bold statement that “Euro-

32 According to Jo Shaw, the work of the Court’s Advocates General played an important part in this. See: Shaw, J., “Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism”, *University of Edinburgh School of Law Working Paper No. 2010/14*.

33 Mirrored by Art. 9 TEU.

34 ECLI:EU:C:2001:458.

pean citizenship is destined to be the fundamental status of the nationals of the member states".³⁵ Though it would still take some years for the Court to clarify what it had in mind, it is clear that such a statement is hard to reconcile with a limited and market-oriented citizenship concept.

We had to wait for the 2008 *Rottmann* case³⁶ for the Court to move for the first time beyond a purely market-based approach. *Rottmann* was an Austrian national who had moved to Germany and taken German nationality fraudulently, so as to make it more difficult for Austria to prosecute him. When the German authorities found out about this, they wanted to strip him of his German nationality. However, as *Rottmann* had lost Austrian citizenship upon becoming German, this would render him stateless. To prevent this from happening, *Rottmann* invoked European citizenship.

In its judgement, the Court indicated that, although member states are exclusively competent to grant or withdraw national citizenship, that does not mean EU Law is irrelevant. After all, nationality policy influences the rights granted to citizens under European Law. National authorities therefore have to take the effects on EU citizenship into account whenever they contemplate withdrawing national citizenship. All such decisions should be proportionate to their effects on European citizenship. The point here is that nationality policy, a traditional stronghold of national sovereignty, falls firmly outside the EU's competence. Until the *Rottmann* case, that is. *Rottmann* opened the gate to an EU citizenship concept more akin to national citizenship, a concept relevant not only for cross-border economic exchange, but for more constitutional subjects like nationality and rights of residence.

Rottmann may have opened the gate, but it was in *Ruiz Zambrano*³⁷, a 2010 Belgian case, that the Court finally turned the page on market-based citizenship.

Belgium turned down the initial request of the Zambranos for refugee status, but it did not immediately send the couple back to Columbia due to the ongoing civil war there. Awaiting their return home, the Zambranos were given Residence Permits, though Mr Zambrano was not granted a Work Permit. During their subsequent stay in Belgium, the Zambranos had two children, who became Belgian

³⁵ *Ibid.*, para 31.

³⁶ ECLI:EU:C:2010:104.

³⁷ ECLI:EU:C:2011:124.

citizens in accordance with Belgian Law at that time. Moreover, despite lacking a permit, Mr Zambrano worked in Belgium. He even paid some taxes. After the birth of their children, the family applied for long-term residence rights for both parents and, based on Mr Zambrano having worked in the country, unemployment benefits for him. When the Belgian authorities turned down these requests, the Zambranos invoked European Law, applying for residence and working rights based on the European citizenship of their young children.

The remarkable thing about this case was that the children had, in fact, never left Belgian soil. Neither had their parents. Unlike the case of Mr Rottmann, who had moved to Germany, there was no cross-border link to connect the case with European Law. Under the old doctrine of European citizenship, it was thus a textbook example of a “wholly internal situation” falling outside the scope of European Law. However, if the Zambranos were to leave Belgian and thus EU territory, their children would be forced to follow them. The question thus arose whether the Zambrano parents could derive rights from the European citizenship of their children, in a situation falling far short of the traditional cross-border doctrine. To do so would make of European citizenship something way beyond a mere tool for enhancing the integration of EU economies. It would turn European citizenship into a concept very much akin to national, constitutional citizenship.

To the surprise of many, in *Ruiz Zambrano* the Court finally abandoned the traditional cross-border approach. It ruled that to be at all able to make use of cross-border rights and even if they have not yet crossed any internal borders, European citizens must possess a deeper, more fundamental right to reside on European territory. In other words, as European citizens, the Zambrano children had a right to reside in the European Union, no matter whether they had crossed any borders or not. And to allow the children to exercise this right, the Belgian authorities had to grant their parents derived rights to residence and work.

With *Ruiz Zambrano* the Court turned the enigmatic statement of the 1999 *Grzelczyk* case into established legal doctrine, steering from a market-based approach towards the constitutional dimension traditionally conferred upon citizenship in a national setting. As a result, European citizenship today more aptly mirrors the constitutional democracy that has become the European Union.

Refining the Doctrine

Minding the Member States

As *Ruiz Zambrano* opened up vast vistas for policy change, the Court's recalibration of what it means to be a European citizen provoked vivid debate amongst policy makers, legal practitioners and academics.

After all, taken together with the incorporation of the Charter of Fundamental Rights (CFR) into European Law, the Court's paradigm shift on European citizenship could warrant vast novel intrusions in policy fields traditionally considered the sole province of the member states. Next to breaking into nationality and immigration policy, an upscaled European citizenship could enlarge social rights for EU and third-country migrants and herald all kinds of additional policy changes.

While this inspired legal practitioners to test the limits of the new doctrine against a plethora of situations, akin but often not wholly identical to that of the *Zambranos*, it obviously horrified the member states.

Consequently, in subsequent citizenship cases, the Court had to walk a thin red line between the vast potential of quasi-constitutional European citizenship and member states wary of further EU intrusion into national budgets and competences. Thus, to avoid a backlash over the division of competences and respect for national sovereignty, the Court went on to simultaneously fine-tune and temper the revolutionary character of *Rottmann* and *Ruiz Zambrano*.

Rights of Residence

In *McCarthy*³⁸, Ms McCarthy invoked the *Zambrano* doctrine to prevent her illegally residing Jamaican spouse from being deported from the UK, claiming that as an EU citizen she had the right to a family life on EU territory. Her spouse should thus be granted a derived right of residence. Eager not to overly impinge on member state migration policy, the Court distinguished between Ms McCarthy's situation and that of the *Zambranos*. After all, the *Zambrano* children were minors dependent on their parents. If Belgium were to expel their parents, the children would be forced to follow them. This was not the case for Ms McCar-

³⁸ ECLI:EU:C:2011:277.

thy.³⁹ Her husband's expulsion did not force her to leave the European Union, so *Ruiz Zambrano* did not apply.

Equally, in *Dereci*⁴⁰, Austrian mothers invoked the *Ruiz Zambrano* doctrine to try to force Austria into granting the Serbian fathers of their children residence and working rights. They too hoped that the *Zambrano* doctrine could be extended to cover EU rights to family unification and the right to a family life. However, as in *McCarthy*, the Court stuck to a more narrow reading of *Ruiz Zambrano*, judging that, since the children had their Austrian mothers to care for them, neither they nor their mothers were under any threat of being expelled from the European Union.

What distinguished these cases from *Ruiz Zambrano* was that *McCarthy* was an adult and the primary carers of the children in *Dereci* were EU citizens firmly rooted in their member state. In other words, the EU citizens themselves were under no immediate threat of being deported, and, given the sensitivity of migration policy for the member states, the Court was not ready to extend the *Zambrano* doctrine to a wider set of family rights.⁴¹

But what if the primary carer of an EU minor is a third-country national under threat of expulsion? In *Chavez-Vilchez*⁴² the Court was asked to consider just that.

Despite their being the primary and even sole caretakers of the children, the Dutch authorities wanted to expel the third-country mothers of eight EU minors. Refusing to take into account emotional and other ties binding the minors to their mothers, they considered that the children could be transferred into the primary care of their Dutch fathers instead. The authorities also refused to enquire whether transferring the children to their Dutch fathers was realistic from the point of view of the fathers. As in *Ruiz Zambrano*, the Court gave primacy to the best interests of the children. The authorities could not automatically rely on

39 The Court has further refined its *McCarthy* case law in the *Lounes* case, ECLI:EU:C:2017:862.

In this case, the Court draws an important additional distinction between the situations of the Ms McCarthy and Ormazabal. Lounes was the name of the third-country husband of Ms Ormazabal, a Spanish national who, subsequent to several years of residence in the UK, acquired British nationality. Contrary to the *McCarthy* case, the Court considered that European Law *does* apply to the case of Ms Ormazabal, even though, like Ms McCarthy, Ormazabal was a British national at the time the British authorities issued an expulsion order to her illegally residing husband. What prevented the case from remaining a "wholly internal situation" was that Ms Ormazabal had acquired British nationality as a result of making use of her free movement rights as an EU citizen, which was not the case for Ms McCarthy, who was born a UK national and had lived in the UK her whole life.

40 ECLI:EU:C:2011:734.

41 The Court also stressed this point in the *Ymeraga* case, ECLI:EU:C:2013:291.

42 ECLI:EU:C:2017:354.

the possibility of transferring the children into the care of their Dutch fathers. On a case-by-case basis, the authorities had to take all the specific circumstances into account. They not only had to check whether the father was willing and able to take care of the child, but when deciding the fate of the third-country mother, they had to take the totality of the child's emotional and other interests into account. In *K.A.*⁴³, the Court considered that the situation of third-country carers who give birth to EU citizens only after being refused rights of residence and, indeed, after being expelled from the country, is not very different from the situation faced by the *Zambranos*. Considering that third-country carers derive their right to residence from the European citizenship of their children, the Court once again gave primacy to the interests of the children. However, in relation to adult family members, the Court repeated its *McCarthy* and *Dereci* decisions: only in exceptional circumstances are adults so dependent on family members that member states should reconsider their decision to expel them.

And if the third-country carer of an EU minor has committed a criminal offence? Do the interests of EU children prevail over the right of member states to expel third-country criminals?

In *Rendón Marín*⁴⁴, Spain automatically refused a Residence Permit for a Columbian national taking care of his Spanish son, because he had been convicted for a relatively minor criminal offence. The Court rejected the automatism of this refusal. Based on the proportionality principle, member states have to consider each case individually, weighing the gravity of the crime against the right to a family life⁴⁵ and the child's best interest⁴⁶. Expulsion is only allowed if the carer presents a genuine, present and sufficiently serious threat to public policy or public security.

This was probably the case with *CS*.⁴⁷ Here the Court considered that the protection granted to EU minors is not absolute. In exceptional cases, a member state may withdraw the derived right of residence from a third-country national who has committed a crime of a certain gravity and continues to present a genu-

43 ECLI:EU:C:2018:308.

44 ECLI:EU:C:2016:675.

45 Art. 7 CFR.

46 Art. 24(2) CFR.

47 ECLI:EU:C:2016:674. The Court did not disclose the actual nature of the criminal offence.

ine, present and sufficiently serious threat to public policy or public security. In such a case, public policy and public security trump the interests of the child, who will be forced to leave EU territory together with his or her carer.

In the above cases, the Court explored how to calibrate the implications of its novel conception of European citizenship. Applying the *Ruiz Zambrano* doctrine to a wide array of slightly different facts, it expounded under what conditions member states must grant derived residence rights to third-country nationals who are related to EU citizens by marriage or by blood. It is the contention of this article that in doing so the Court not only refined its doctrine, it also sought to keep a balance with the traditional prerogatives of the member states.

Nationality Policy

But what about the right of member states to withdraw the nationality of EU citizens? The reader will remember that in *Rottmann* (2008), the Court enjoined member states to keep European citizenship in mind when ruling on the nationality of one of their citizens. To that end, the Court ruled that they should at all times respect the proportionality principle.

Though revolutionary at the time, it took more than ten years for the Court to come back to this issue. *Tjebbes*⁴⁸ and others held dual nationalities but had been Dutch nationals for all of their lives. Yet, in accordance with Dutch Law, they automatically lost Dutch citizenship because, having lived abroad for more than a decade, they had failed to administratively renew this nationality in time.

The national Judge considering their appeal asked the Court how to apply the proportionality principle in such a case. More specifically, the Judge wanted to know whether the proportionality principle can be implicit in the general checks and balances of national law, as the Netherlands claimed, or whether it demands an individual assessment on a case-by-case basis. Despite agreeing with the general sense of Dutch Law, the Court firmly rejected the view that the proportionality principle can be respected by regulations withdrawing citizenship automatically and without an individual assessment on a case-by-case basis. It also specified the criteria for such an assessment.

⁴⁸ ECLI:EU:C:2019:189.

Conclusions

Spanning the last couple of decades, this contribution has briefly touched upon some of the Court's landmark decisions on European citizenship. Although we focused on (derived) rights of residence and member state nationality policy, the Court has extended the effects of EU citizenship to a wide set of policy fields such as extradition of EU nationals to third countries (e.g. *Petruhhin*⁴⁹ and *Rau-gevicius*⁵⁰) and eligibility to social rights (e.g. *Chavez-Vilchez*).

To be clear, the gap between European and national citizenship remains considerable to this day. After all, as a concept of EU Law, European citizenship remains circumscribed by the doctrine of conferred powers and the derived sovereignty of the Union. Because of this, it would be more apt to call today's EU citizenship quasi-constitutional.

Given these limitations, with *Rottmann* and *Ruiz Zambrano*, the Court boldly transformed a market-based European citizenship of a rather limited and instrumental scope into a quasi-constitutional concept akin to national citizenship. This novel conception aptly mirrors the transformed nature of the Union from an economic club into a fully-fledged democratic polity.

As a result of the Court's new doctrine, Article 20 TFEU acquired a new meaning within European Law. While in the past it was considered to be of a rather declaratory nature, today it has become, indeed, the basis of that fundamental status first mentioned by the Court in *Grzelczyk*.

Thus, when EU citizens come under threat of being deported from EU territory, they can invoke Article 20 TFEU, even if there is no cross-border element to the case. Once there is a cross-border element, Article 21 TFEU tends to take over.

At the same time, to date the Court's novel conception of European citizenship has failed to deliver beyond the right of EU minors to reside on EU territory. Although this is to be deplored, one can have some sympathy for the difficulties facing the Court. After all, it is not so easy, beyond the clear mandate of the Treaties, to interfere with the financial stability and traditional competencies of

49 ECLI:EU:C:2016:630.

50 ECLI:EU:C:2018:898.

member states. The Court's judicial politics are thus shaped by the very nature of EU multi-layered governance.

McCarthy, Dereci, Chavez-Vilchez and other recent Court decisions are therefore not merely testament to a Court seeking to apply its revolutionary new concept of European citizenship to a widening range of novel situations, but they bear witness to a Court manoeuvring ever so carefully through the quagmire of member states jealously guarding their traditional prerogatives.

Nevertheless, we should wholeheartedly applaud the Court's new doctrine on European citizenship. A strong Court boldly driving an aptly nuanced constitutional agenda is a blessing, compared to a more limited and market-based cross-border approach. After all, a stable and active European Union, well anchored by concepts such as European citizenship, implies increased human rights and a well-functioning system of multi-layered governance.

In the long run, membership of such a vibrant and uniquely quasi-constitutional European Union offers the best outlook for enduring development, peace and prosperity for all.



Chapter 3

European Citizenship in Practice

Carmen Descamps

Claudia Gamon

Francesca Strumia

Chapter 3.1

EU Citizenship and European Elections – A Sleeping Beauty?

Carmen Descamps

Italian, Maltese, Swede, Belgian, French, Bulgarian – no matter which nationality of one of the 28 EU member states a person holds, every EU national also enjoys EU citizenship and the numerous freedoms, rights and opportunities this entails.

However, only one in two Europeans is fully aware of the status as a citizen of the EU and one in three is unsure about what it actually means.⁵¹ This is surprising and alarming at the same time, as the concept of EU citizenship in itself is not new. Introduced with the Treaty of Maastricht in 1992, it has been steadily developed and constitutionalised by the European Court of Justice.⁵²

“And why should there not be a European group which could give a sense of enlarged patriotism and common citizenship to the distracted peoples of this turbulent and mighty continent and why should it not take its rightful place with other great groupings in shaping the destinies of men?”

Winston Churchill, “Let Europe Arise”, Zurich, 1946⁵³

Union Citizenship with Additional Benefits

Union citizenship complements national citizenship without replacing it. It confers major rights to Europeans, for example, the freedom to live, study and work in another EU country. Freedom of movement can be considered the backbone of EU citizenship. However, there is more to it, for example when it comes to political participation and shaping the democratic life of the European Union.

⁵¹ See Chapter 1.

⁵² See Chapter 2 for a more detailed analysis.

⁵³ Winston Churchill, “Let Europe Arise”, speech delivered at the University of Zurich on 19 September 1946, consulted online: <https://rm.coe.int/16806981f3>.

In the context of the 2019 European elections, it is worth shedding some light on EU citizens voting abroad. Following Article 22(2) TFEU, being a European citizen also means enjoying political rights, especially voting rights. Every EU citizen, including those residing outside of their home country, is entitled to vote for his or her European representatives. However, despite major communication efforts by several EU institutions, activists and political actors, this right is still not exercised as fully as it could be.

Turnout in European Elections Since 1979

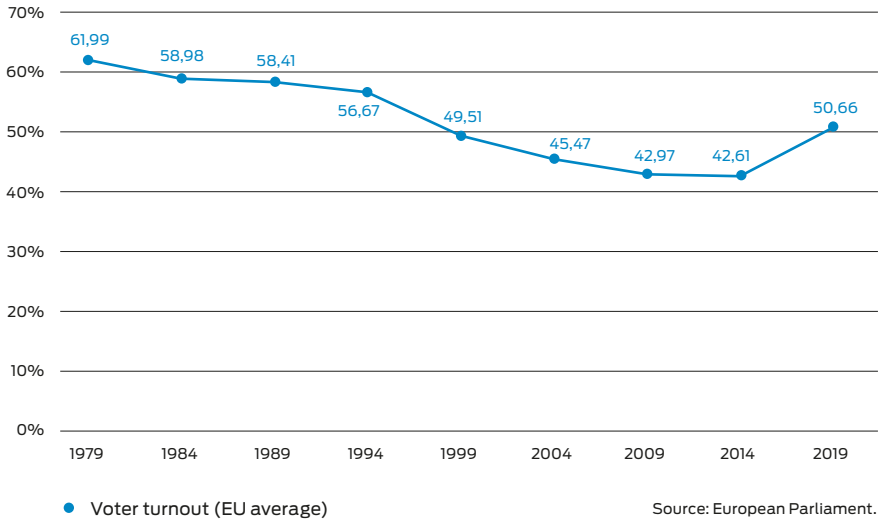
Before the European elections in May 2019, it all seemed as if voter turnout had been constantly decreasing since the first direct election to the European Parliament in 1979.⁵⁴ However, from a post-election perspective, the reading of the latest results is a little different. In 2014, European citizens put an end to the negative spiral of low participation in elections to the European Parliament with a turnout of 42.61 per cent, enabling a stabilisation of voter participation from a pan-European perspective. On national level, however, such a positive evolution did not prevent turnouts below 20 per cent in Slovakia (13.05 per cent) and Czech Republic (18.20 per cent). The general problem of a persistently low turnout is that the European institutional model is based on representative democracy, embodied by democratically elected Members of the European Parliament.

In 2019, the overall figures considerably increased to over 50 per cent, the highest in 25 years. Studies showed that the high turnout was mainly driven by young people. In particular citizens under 25 years as well as 25-39 year-olds showed higher participation than in previous elections.⁵⁵

Reasons for a low turnout are manifold and influenced by many factors. Among the non-voters are those who do not *want* to vote, as well as some people who practically *cannot* vote (as will be shown below), or who are simply not fully aware of their rights and the national procedures. This limits the exercise of the political rights enshrined in Article 22 TFEU as well as Article 10 TEU.

⁵⁴ For further information on the results of the European elections and turnout since the European elections in 1979, see Figure 4 and European Parliament, “2019 European election results”, www.europarl.europa.eu/election-results-2019/en/turnout/.

⁵⁵ European Parliament, “The 2019 post-electoral survey – have European elections entered a new dimension?”, consulted online: www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/post-election-survey-2019-complete-results/report/en-post-election-survey-2019-report.pdf.

Figure 4: Turnout in European elections since 1979.

Non-Citizen Residents vs. Non-Resident Citizens

Many of those who do not or cannot vote are actually mobile EU citizens, meaning those citizens residing in an EU member state other than their home country. In total, 4 per cent of EU citizens of working age live in another EU member state. However, only 8 per cent of those non-citizen residents actually vote in EP elections in that country. This is quite a low number. The reason is that mobile EU citizens are particularly affected by a lack of information and clarity about their (voting) rights while living abroad. How to register and where to register are among the most frequent questions. Unfortunately, there are no harmonised procedures and requirements among the 28 member states.

Another reason for the low turnout is different conditions of eligibility for mobile citizens to vote in their home country (non-resident citizens = citizens abroad). While most EU member states offer the opportunity to vote via embassies or consulates, Czech, Irish, Maltese and Slovak nationals living abroad are practically disenfranchised. They can only vote from home and have

no voting option from abroad, meaning they cannot vote in an embassy, by post, online or via a proxy.⁵⁶ While Italian, Greek and Bulgarian nationals can vote at their embassies within the EU, this option is not offered to them outside the EU. Consequently, these mobile EU citizens cannot vote either. The alternative solution is to vote in the EU country where they are currently residing, according to Article 22(2) TFEU. However, the lack of awareness and access to information deprives them of the chance to make use of their citizen rights.

With its 2019 communication campaign “This time I’m voting”⁵⁷, following up on the conclusions drawn in the 2017 EU Citizenship Report, both the European Parliament and the European Commission aimed to close the information gap and to increase the participation of mobile and non-mobile EU citizens in the political life of the EU. Enhanced communication by EU institutions is one answer to the problems, but it remains to be seen to what extent such a top-down initiative proves to be successful. The general increase in turnout is to be seen as a positive indicator, in spite of a lack of detailed data for non-citizen residents.

Finally, the current developments linked to European elections and Union citizenship also hold political parties, non-governmental organisations and think tanks active in political and citizenship education accountable. They can all assist in the better usage of the potential of EU citizenship and thus awake the sleeping beauty.

⁵⁶ A detailed overview of national legislation on the European elections for voters and candidates across the EU can be found here: European Parliament, “2019 European elections: National rules”, consulted online: [www.europarl.europa.eu/RegData/etudes/ATAG/2018/623556/EPRS_ATA\(2018\)623556_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/623556/EPRS_ATA(2018)623556_EN.pdf).

⁵⁷ “This time I’m voting” was a large-scale pan-European communication campaign by different EU institutions in the run-up to the 2019 European elections. Its main aim was to convince Europeans across the EU of the need to vote and to help create a large community of voters. Special attention was also paid to mobile EU citizens. After the European elections in May 2019, the initial website “www.thisimeinvoting.eu” was transformed into a pan-European platform for dialogue.



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Chapter 3.2

Leveraging EU Citizenship

Interview with Claudia Gamon,
Member of the European Parliament for NEOS

Claudia Gamon has been a Member of the European Parliament for the Austrian NEOS since July 2019. The Vorarlberg native was elected to the European Parliament for the first time as NEOS Spitzenkandidat, after having already been a member of the Austrian Parliament (Nationalrat) from 2015-2019. During the 2019 European election campaign, she distributed pink passports of the United States of Europe for NEOS.

For NEOS, the topic of European citizenship is not unknown territory. In the 2019 European election campaign, you prominently promoted a “genuine EU citizenship” and the topic was also present during the Austrian parliamentary elections in September 2019. What is particularly important to NEOS in terms of EU citizenship?

Claudia Gamon: We as NEOS see EU citizenship as a further development of European fundamental freedoms. Our aim is not only to create a stronger sense of togetherness with European citizenship and to formally insert it in a passport. It is also important for us to establish a further fundamental freedom with the democratic freedom to vote everywhere. European citizenship should not only have symbolic reasons to be able to say, for example, “I am a citizen of the European Union” or “I have a European passport”. Additional rights should also be derived from this identity. For us, having the right to vote is key. This is closely linked to the fact that, for us, the EU will transform itself from a confederation of states into a federal state at some point. So it goes without saying that there should be European citizenship.

“We call for [...] the right to vote at all levels for EU citizens in the member state in which they are main registered, no matter which member state they come from. Austria is taking the lead and opening up the right to vote for citizens of other EU member states.”

Excerpt from the ‘Opportunity plan – committed Europe’ (09/2017) by NEOS

In this context, how is the concept of the “genuine” European citizenship as used by NEOS to be understood?

CG: We have added the word “genuine” citizenship, because of course there are always legal experts who would certainly point out that European citizenship already exists – in the EU Treaties and more specifically in our passports, for example, by referring to the EU and its symbols. But “genuine” European citizenship emphasises that additional European rights can be derived from it.

From national citizenship to European citizenship – what is the European added value of European citizenship for NEOS? Is it not sufficient to be an Austrian, a Belgian or an Estonian and simply have the nationality of a member state?

CG: No, that is not sufficient; not in the 21st century and it will certainly not be enough for the United States of Europe. This idea of a federal state must be filled with life. Purely national identities do not do justice to European diversity. For instance, I myself also have the identity of a Vorarlberg citizen. There are many nation states in Europe that are organised in a very federal manner internally and where everyone also has a strong local or regional identity. Multiple identities are therefore only natural. This makes it all the more important to fill this European identity with life and to endow it with rights. This right, which is important for us, is to choose the democratic freedom to vote where one lives.

This right to vote in national and local elections should be linked to one's place of residence. We believe that this right to vote could be implemented quickly, and that it does not even require a genuine European citizenship of the United States of Europe. That would already be possible now, it would only have to be implemented by the nation states themselves. We suggest that you are always able to vote in your country of origin. If you move to another EU country and would like to take part in elections there, you may choose to vote there instead. Of course, you can then no longer exercise the right to vote in your country of origin at the same time.

The difference between the “genuine” citizenship of NEOS and the *status quo* is the extension of the right to vote on all levels. According to Article 22 TFEU, citizens of the Union can already vote in local or European elections in other EU countries.

CG: Exactly. We want to introduce this right for all elections, because we see a central problem here. In Vienna, for example, and in other major European cities, there are obviously many people who are citizens of the Union, but who cannot vote at their place of residence. You may vote in local elections, but not at the regional or federal level. This creates an imbalance between the electorate and the non-voting population. The latter also shapes a city, a region and a country, pays taxes in the same way, gets involved and is part of the civil society. “No taxation without representation” is not a liberal principle for nothing. If, for instance, these Viennese electors wish to shape local, regional or national politics, they should be given the opportunity to do so by voting.

Do the NEOS expect a higher turnout from an extension of the right to vote?

CG: That’s not a motivation for us, I see it more as a question of principle. Should a higher turnout result as a coincidental consequence, it is of course all the better. I would find it absurd to call for an extension of the right to vote purely for political reasons. An electoral right should be derived from other things, such as the right to participate in society, because we are all Europeans. But it should not depend on a percentage that is important only to politicians.

NEOS promoted genuine European citizenship both in the 2019 European elections and in the Austrian parliamentary elections in 2017 and 2019. Was there a difference between the European and national election campaigns?

CG: No, we cannot hide our positions and everyone knows what we stand for anyway. At a press conference prior to the elections, we therefore made it clear once again that we would of course also like to see this for the national elections. We do not accept any cherry-picking of issues, depending on whether the election is suitable for the causes we defend or not.

It is, of course, also a question of attention management. There is less interest

in EU citizenship during a national election campaign than during a European one. It is therefore also a challenge for us to advocate European issues proactively in national election campaigns. In the end, each party decides for itself how to set its priorities.

Back to the roots – why and when did European citizenship find its way into NEOS?

CG: I cannot say that for sure. The United States of Europe have always been part of the party DNA since our founding in 2012 and European citizenship is its natural consequence. During the 2019 European election campaign, for instance, we put this into practice and issued passports for the United States of Europe. Instead of a flyer, we gave pink passports to the people. We also organised public events with a passport office in the street and took photos of the passers-by to stick them into their European passports. Even now, as Member of the European Parliament, I have a European passport cover for national passports. These actions have been very well received, because many people have realised and also expressed that they would like to have something like this and value it as an important symbol. For some, it even aroused unexpected emotions.

Lack of understanding or approval – what was the general response of local citizens and other Austrian parties to the demand for a genuine European citizenship during the election campaigns?

CG: It depends. Of course, there are also citizens who do not think much of European citizenship, but that is quite normal in a political contest. Neither did we expect this to be the majority opinion.

The response from the other parties was mixed. As expected, the FPÖ [*right-wing populist, part of “Identity and Democracy” group in the European Parliament*] was against it, but it triggered certain sympathies among other parties. But of course they are more cautious when it comes to concrete demands. Among them were questions as to whether and how an electoral right can be derived from it and whether we are really dealing with European citizenship, or if we integrate European motives for symbolic, national reasons.

You have been the MEP of NEOS in the European Parliament since May 2019. How do you stand up for European citizenship there?

CG: There is the well-known Spinelli Group⁵⁸ in the European Parliament, where European federalists usually meet. In general, there are certainly more and more supporters for the federal cause. Nevertheless, we must revive the whole idea. Perhaps the “Conference on the Future of Europe”⁵⁹ planned for 2020, an idea of the new Commission President, Ursula von der Leyen, is a good opportunity for a little more far-reaching thinking. Nevertheless, I am quite realistic that this Conference will not be able to move mountains.

Brexit and European citizenship – what happens next?

CG: If I could predict that, I should probably work in a hedge fund [laughing]. I have stopped making any predictions about Brexit.

The interview was conducted by Carmen Descamps on 20 November 2019. The views expressed do not necessarily reflect those of the European Parliament and/or the European Liberal Forum. The choice of the interviewee was motivated by Claudia Gamon’s activism in the field of citizenship rather than specific opinions on the issue.

⁵⁸ The Spinelli Group is an initiative launched in September 2010, led by the MEPs Guy Verhofstadt, Daniel Cohn-Bendit, Sylvie Goulard and Isabelle Durant, followed by Andrew Duff and Jo Leinen as co-Chairmen of the MEP-Spinelli Group. The Group wants to inject a federalist momentum into the political decisions and policies of the European Union. Currently, the group counts 110 supporting MEPs and 44 active members, composed of EU experts, NGO and think-tank representatives, as well as politicians and academics. See www.spinelligroup.eu for further information.

⁵⁹ With the announcement of a “Conference on the Future of Europe” in the political guidelines of the European Commission for 2019-2024, its President Ursula von der Leyen pledged to establish a structured reflection on Europe’s future development from 2020 on. The two-year initiative underlines the President’s ambition to give a new impulse to European construction. In an effort to close the gap between European institutions and the citizens of the Union, the conference shall bring together citizens, civil society and European institutions. See: Ursula von der Leyen / European Commission, “Political guidelines for the next European Commission 2019-2024”, consulted online: https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.



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5% SPIKE
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#didyouvote forth
THE NEW EUROPEAN

Brexit!
we are Family

Chapter 3.3

Brexit and the Static Citizens: The Forgotten Side of Citizenship Loss

Francesca Strumia

In terms of citizenship, national and supranational, Brexit entails a loss. Jo Shaw described it as even the most substantial loss of individual rights in Europe since the fall of Yugoslavia in the 1990s.⁶⁰ Some of the losses are intuitive, or were at least extensively highlighted in the public debate. After briefly restating these elements, this chapter focuses on the less noticed aspects of citizenship weakening that Brexit prompts.

Overall, the hindering of European citizens in their exercise of free movement has attracted most attention. On the one hand, EU nationals residing in the United Kingdom risk losing residence and rights. These include the right to work, to access benefits, to move in and out of the UK with security of status, to exercise a political voice and to freely conduct a family life. On the other hand, UK nationals who reside in another EU country are in danger of losing the very status of European citizenship, and with it the rich armory of rights set in the European Treaties and secondary legislation, and whose scope the European Court of Justice (CJEU) has stretched in several directions.⁶¹ Legal arguments, judicial reasoning in the context of Brexit-prompted national and international litigation, and citizen-protective arrangements in the context of the negotiations for Great Britain's EU withdrawal have focused on these two groups of citizens and their ordeal.⁶²

However, citizenship loss embraces a much broader class of citizens than the estimated 4.2 million that are concerned by the above-mentioned situations.

⁶⁰ Jo Shaw, "Citizenship and Free movement in a Changing EU: Navigating an Archipelago of Contradictions", in *Brexit and Beyond: Rethinking the Futures of Europe*, eds. Benjamin Martill and Uta Staiger (London: University College London Press, 2018), 158.

⁶¹ See Chapters 1 and 2.

⁶² See UK Government, "Policy Paper on Citizens' Rights in the Event of a No Deal Brexit", consulted online: www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexit; also see European Commission, "Residence Rights of UK Nationals in EU Member states", consulted online: https://ec.europa.eu/info/brexit/brexit-preparedness/citizens-rights_en.

Static European citizens or “stayers”, whether holding the nationality of the UK or of another member state, are no lesser losers. There are two parts to their citizenship loss.

Firstly, supranational citizenship is, in the words of Article 20 TFEU, an addition to nationality. It brings about a broadening of status and an extension of rights. It gives national citizens a stake in the community of member states. In this sense, Brexit is an impoverishment of the status of citizenship for every national of a member state, albeit an impoverishment of different intensity for UK nationals and other EU citizens respectively. For the former, it is an entire loss of status; for the latter it is a loss of a slice of status. In both cases, along with that loss of status goes the loss of potential rights: rights to live and work in the UK or in another EU member state. The generation of young UK nationals, for instance, who were not yet enfranchised at the time of the UK Referendum on EU Membership in 2016, will step out of the supranational citizenship status they were born with, without having ever actively exercised it, let alone had a political chance to defend it.

In a second sense, citizenship loss for the static depends on the connection between the nature of the EU as a legal order and the strength of supranational citizenship. With regard to the former, the CJEU has held in some of its important judgments that the (now) EU represents a “new legal order of international law”, which not only affects the member states but also their nationals.⁶³ As a result, EU Law is intended to confer upon individuals “rights which become part of their legal heritage”.⁶⁴ Supranational citizenship to some extent embodies this legal heritage⁶⁵, meaning that European citizens are able to invoke it. Withdrawal of a member state from the EU following Article 50 TEU, albeit being the exercise of a sovereign power provided for in the European Treaties, threatens that legal heritage and with it the coherence and reliability of supranational citizenship as a status. The threat is to all citizens of the Union, whether mobile or static.

⁶³ C-26/62, *Van Gend en Loos*, ECLI:EU:C:1963:1.

⁶⁴ *Ibid.*

⁶⁵ Despite the lack of a Court definition of the term “legal heritage” used in *Van Gend en Loos*, it can be understood as the European legal culture and consequently, the conferral of transnational rights to Union citizens. The narrative of European citizenship rights can be considered as a suitable example of such legal heritage.

This threat raises the challenge to reconcile, on the one hand, sovereign member states' power to recede from the supranational project, and, on the other hand, the solidity of the legal heritage entrusted to the notion of European citizenship. That challenge will survive the commotion and the acrimonies surrounding Brexit and most probably engage the ranks of academia as well as of civil society for a long time to come. In the meantime, the challenge brings us back to reflect on the intuition and aspiration at the origin of the project of Union citizenship. In the words of the 1985 Report of the Committee on a People's Europe, "Continuation of this venture rests on the assumption that future generations will also understand and appreciate one another across borders and will realise the benefits to be derived from closer cooperation and solidarity".⁶⁶

⁶⁶ Commission of the European Communities, "Report from the ad hoc Committee on a People's Europe", 1985, consulted online: <https://ec.europa.eu/dorie/fileDownload.do?sessionId=jg62PJXBBhnrmZGRLcpQX3zDz1vHwp9nozyR63mC2qCyyK1BG51C!-572674064?docId=186651&cardId=186651>.

A silhouette of a person's head and shoulders in profile, looking through binoculars. The person is holding the binoculars up to their eyes. The background is a bright, hazy sky with a strong light source, likely the sun, creating a lens flare effect. The overall color palette is dominated by warm tones of orange, yellow, and purple.

Chapter 4

Citizenship in the Future

A Toolbox for Enhancing European Citizenship

Carmen Descamps

Although a Eurobarometer survey from Spring 2016 suggests that “Europeans are more familiar than ever with their status as Union citizens”⁶⁷, a lot still remains to be done in the field of citizenship. Previous chapters illustrated that either the entire spectrum of EU citizenship rights is not sufficiently known or that these rights are underused. Aiming to rectify such untapped potential, this chapter provides selected recommendations on how to foster the active use of citizenship rights. Which barriers to the full exercise of EU citizenship exist nowadays and how can we overcome them?

Since a large-scale analysis of existing barriers in all areas of EU citizenship would exceed available resources and not serve the practical focus of this publication, the following policy recommendations are chosen in view of their relevance for liberal policy makers. After the constitution of the ninth European Parliament and its various committees in 2019 as well as in the run-up to the Conference on the Future of Europe, the window of opportunity is wide open.

Freedom of Movement

Freedom of Movement is a core civil right in liberal democracies. The EU is no exception in this regard, granting European citizens mobility and equal treatment across EU member states. Hence, with the rise of far-right and Eurosceptic parties, global challenges such as the refugee crisis, the terrorist threat and increased competition for work and social benefits, as well as political events such as Brexit, the idea of unrestricted mobility has been increasingly challenged in recent years. To be even more concrete, the temporary closing of member states’ borders in the context of the refugee crisis undermined liberal values and threatened the freedom of movement. Therefore, measures to strengthen this right are necessary.

67 European Commission, “Flash Eurobarometer on European Union Citizenship”, 2016.

Recommendation 1

Shifting away from a mobility-centred perception of EU citizenship, enjoyed by a limited number of (mostly mobile) EU citizens only, and moving towards highlighting the very nature of **EU citizenship rights as fundamental rights for every European**.⁶⁸ The protection and promotion of those fundamental rights on every policy level and across borders could result in common actions. It has been shown that Europeans have at their disposal a wide range of citizens' rights without having to move to another EU country.

Recommendation 2

Continuing to reframe European citizenship and its rights from an economic, market-based approach **towards a more inclusive and broader rights-based approach** would further **strengthen the idea of a European community and shared European identities**. Such an approach is also in line with the evolution of the EU in the course of European integration, shifting its focus of attention from a purely market-oriented to a citizen-oriented perspective. Such a new model of citizenship constitutes a new promising foundation, which is already in the making to some extent. It pays tribute to the multi-faceted nature of EU citizenship, being composed of civic, social, political and economic rights.

Electoral Rights and Political Participation

While the majority of Europeans are aware of their status as European citizens, critics point out the variety of requirements linked to the enjoyment of those political rights, which can create confusion and frustration. This is in particular valid for the diverging requirements across EU member states when participating in European elections from abroad, i.e. outside the country of origin.

⁶⁸ See Chapter 2 and Grzelczyk.

Recommendation 3

Enhancing political participation by European citizens, mobile and static, in European and local elections by **automatic (or quasi-automatic) voter registration** in the electoral register **for local and European elections at their main place of residence** (i.e. in the city where they are legally registered).

Mobile EU citizens should be required to register only once upon arrival, making re-registration before every election obsolete. In European elections, should they wish to vote for candidates of their own nationality, they are able to do so via their embassy. As registration at an embassy is not mandatory, the default voting option for European elections shall be on the local lists (“no taxation without representation”). Going a step further, a change towards *only* voting at the place of residence could be a promising experiment for a new impulse to European citizenship.

Recommendation 4

Informing systematically registered European citizens (locals and mobile persons) via the relevant authorities before elections **about the specific voting requirements and other relevant conditions** to be known before exercising their rights. In the medium-term, such information campaigns shall not be necessary thanks to EU-wide harmonised requirements and registration procedures set up in the meantime. This would be the most suitable solution to put the patchwork of national requirements to an end and thus overcome administrative hurdles and confusion for citizens.

For European elections, a central website with information material, such as “www.europeanelections.country.eu” (example) or re-direction via a local website could function as a one-stop shop, with all necessary information on European elections for the full exercise of citizenship rights. Likewise, European parties shall also include such information in their local election campaigns to appeal more to mobile EU citizens and to reach potential voters.

Active Citizenship

It is not sufficient simply to *inform* citizens about their rights and possibilities, but it is also crucial to equip them with the necessary competencies to *apply* them in practice and to take on responsibilities as active citizens. Active citizenship should result in the deepening of democratic involvement of European citizens on a constant basis.

Recommendation 5

Activate Europeans to make use of their citizens' rights, also outside election cycles. Following a two-step approach, it can be achieved first through information and second through capacity building, for instance seminars and campaigns on the vast range of rights and responsibilities linked to EU citizenship. Involving political and civil society actors such as parties and local stakeholders is highly recommended. One way in which to achieve this can be integrating information on EU citizenship into parties' capacity building on Europe, i.e. training modules for prospective or incumbent local, national and European politicians. The EU is a cross-cutting issue in numerous policy areas for which EU citizenship rights are a tangible example of practical use for European citizens.

Recommendation 6

Promoting active citizenship in various policy areas and on different policy levels to strengthen national and local democracy. Political parties and Members of the European Parliament can act as ambassadors for citizenship, giving first hand examples of the parliamentary work and thus illustrating the variety of citizenship rights. These actions can be even more efficient when conducted in close cooperation with other stakeholders, especially civil society organisations.

Active citizenship can take place in various ways, for instance through party membership or membership of an association or interest group.

Outlook

The upcoming Conference on the Future of Europe is one way to give new impetus to European integration and to bring Europe closer to citizens. It is one of the tasks for Members of the European Parliament and members of other EU institutions to advocate for new means to strengthen citizenship rights. This should happen in an inclusive manner, on all levels and across all EU member states. While the new European Parliament and the new Commission have already determined the general course of action for the upcoming mandate, the details have to be brought to life in the upcoming months. Parties on a European level, such as the ALDE Party with its unique individual membership model, can act as multipliers in such a process.

Against that background, the present publication and its recommendations have aimed to provide useful background knowledge, some food for thought, and certainly some disruptive, innovative ideas as a starting point for reforms and change.

References

Chapter 1

The European Added Value of Union Citizenship

- ALDE Party.** “Freedom, opportunity, prosperity: the Liberal vision for the future of Europe”, ALDE Party electoral manifesto, 2018, accessed 4 December 2019, www.aldeparty.eu/sites/alde/files/40-Resolutions/2019_freedom_opportunity_prosperity_the_liberal_vision_for_the_future_of_europe_o.pdf.
- European Commission.** “Flash Eurobarometer 430 on European Union Citizenship”, 2016, accessed 4 December 2019, https://ec.europa.eu/info/sites/info/files/2016-summary-flash-eurobarometer-430-citizenship_en.pdf.
- European Commission.** “EU Citizenship Report 2017 – Strengthening Citizens’ rights in a Union of Democratic Change”, 2017, accessed 4 December 2019, doi:10.2838/51061, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/20170124_eu_citizenship_report_2017_en.pdf.
- European Commission.** “Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections”, EC COM(2018)44 final, accessed 4 December 2019, <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-44-F1-EN-MAIN-PART-1.PDF>.
- European Commission.** “Report on European Citizenship. Standard Eurobarometer 89 – Wave EB 89.1 (Spring 2018)”, 2018, accessed 4 December 2019, <https://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/Survey/getSurveyDetail/surveyKy/2180>.
- European Commission.** “EU Citizenship – your rights and how to use them”, accessed 4 December 2019, https://europa.eu/european-union/about-eu/eu-citizenship_en.
- European Parliament.** “Fact Sheets on the European Union: The citizens of the Union and their rights”, 2019, accessed 4 December 2019, www.europarl.europa.eu/ftu/pdf/en/FTU_4.1.1.pdf.

European Parliament. “Possible evolutions of and adjustments to the current institutional set-up of the European Union”, draft report by Guy Verhofstadt, Amendments 686-1039, 2014/2248(INI), accessed 4 December 2019, www.europarl.europa.eu/doceo/document/AFCO-AM-592348_EN.pdf?redirect.

Gerstenmeyer, Carmen, Julia Klein, Julian Plottka and Amelie Tittel. “Study on the European added value of the European Citizens’ Initiative”, In *The added value of the European Citizens’ Initiative (ECI), and its revision*, edited by Christian Salm. Brussels: European Parliamentary Research Service, 2018. Available online: doi:10.2861/716219, [www.europarl.europa.eu/RegData/etudes/STUD/2018/615666/EPRS_STU\(2018\)615666_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/615666/EPRS_STU(2018)615666_EN.pdf).

Habermas, Jürgen. “Citizenship and national identity”, In *The condition of citizenship*, edited by Bart van Steenbergen. London: SAGE Publications Ltd, 1964; 20-35.

Menéndez, Agustín José and Espen D.H. Olsen, eds. “The Concept and the Conception of Citizenship”, In *Challenging European Citizenship. Ideas and realities in Contrast*. London: Palgrave Macmillan, 2019; 17-43.

The Parliament. “EU urged to create ‘citizens’ commissioner’ as von der Leyen prepares to unveil team” accessed 10 September 2019, www.theparliamentmagazine.eu/articles/news/eu-urged-create-%E2%80%99citizens%E2%80%99-commissioner%E2%80%99-von-der-leyen-prepares-unveil-team.

Von der Leyen, Ursula. “Mission letter to Věra Jourová”, [former] Vice-President-designate for Values and Transparency, accessed 4 December 2019, https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-vera-jourova-2019_en.pdf.

Chapter 2

The (R)Evolution in European Citizenship

Jurisprudence

C-175/78, *Saunders*, ECLI:EU:C:1979:88

C-370/90, *Singh*, ECLI:EU:C:1992:296

C-29/94, *Aubertin and others*, ECLI:EU:C:1995:39

C-214/94, *Boukhalfa v Bundesrepublik Deutschland*, ECLI:EU:C:1996:174

C-64/96 and 65/96, *Land Nordrhein-Westfalen v Uecker and Jacquet*, ECLI:EU:C:1997:285

C-97/98, *Jägerskiöld*, ECLI:EU:C:1999:515

C-184/99, *Grzelczyk*, ECLI:EU:C:2001:458

C-135/08, *Rottmann*, ECLI:EU:C:2010:104

- C-34/09, *Ruiz Zambrano*, ECLI:EU:C:2011:124
 C-434/09, *McCarthy*, ECLI:EU:C:2011:277
 C-256/11, *Dereci and others*, ECLI:EU:C:2011:734
 C-87/12, *Ymeraga*, ECLI:EU:C:2013:291
 C-165/14, *Rendón Marín*, ECLI:EU:C:2016:675
 C-304/14, *CS*, ECLI:EU:C:2016:674
 C-133/15, *Chavez-Vilchez and others*, ECLI:EU:C:2017:354
 C-182/15, *Petruhhin*, ECLI:EU:C:2016:630
 C-82/16, *K.A. and others*, ECLI:EU:C:2018:308
 C-165/16, *Lounes*, ECLI:EU:C:2017:862
 C-221/17, *Tjebbes and others*, ECLI:EU:C:2019:189
 C-247/17, *Raugevicius*, ECLI:EU:C:2018:898

Literature

- Kochenov, D.**, “The right to have what rights? EU citizenship in need of clarification”, *European Law Journal* 2013, 502-16.
- Kochenov, D. & Plender, R.**, “EU citizenship: from an incipient form to an incipient substance? The discovery of the Treaty text”, *European Law Review* 2012, 369-95.
- Lenaerts, K.**, “Civis Europaeus sum: from the cross-border link to the status of citizen of the EU”, *Online Journal on Free Movement of Workers within the European Union* 2011, 6-18.
- Shaw, J.**, “Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism”, *University of Edinburgh School of Law Working Paper No. 2010/14*, <http://dx.doi.org/10.2139/ssrn.1585938>.
- Tryfonidou, A.**, “Reverse discrimination in purely internal situations: an incongruity in a Citizen’s Europe?”, *Legal issues of Economic Integration* 2008, 43-67.
- Tryfonidou, A.**, “Redefining the outer boundaries of EU law: the Zambrano, McCarthy and Dereci Trilogy”, *European Public Law* 2012, 496-526.
- Tryfonidou, A.**, “Purely internal situations and reverse discrimination in a Citizens’ Europe: time to ‘reverse’ reverse discrimination?”, In *Issues in Social Policy: A New Agenda*, edited by P. G. Xuereb. Valletta: Progress Press, 2009; 11-29.
- Van Elsuwege, P.**, “Shifting the boundaries? European Union Citizenship and the Scope of Application of EU law”, *Legal Issues of Economic Integration* 2011, 263-76.

Chapter 3.1

EU Citizenship and European Elections – A Sleeping Beauty?

Churchill, Winston. “Let Europe Arise”, speech delivered at the University of Zurich on 19 September 1946, accessed 4 December 2019 online via the Council of Europe, <https://rm.coe.int/16806981f3>.

European Parliament. “2019 European election results: Turnout”, accessed 4 December 2019, www.europarl.europa.eu/election-results-2019/en/turnout/.

European Parliament. “The 2019 post-electoral survey – have European elections entered a new dimension?”, Eurobarometer Survey 91.5, accessed 4 December 2019, www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/post-election-survey-2019-complete-results/report/en-post-election-survey-2019-report.pdf.

European Parliamentary Research Service. “2019 European elections: National rules”, accessed in May 2019, [www.europarl.europa.eu/RegData/etudes/ATAG/2018/623556/EPRS_ATA\(2018\)623556_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/623556/EPRS_ATA(2018)623556_EN.pdf).

European Union. “This time I am voting”, campaign website accessed in May 2019, www.thisimeimvoting.eu/.

Chapter 3.2

Leveraging EU Citizenship

NEOS. “Chancenplan engagiertes Europa”, 2017, accessed 4 December 2019, www.neos.eu/_Resources/Persistent/bda6c1c96398d758634854eb726dcd32d9f89953/20170919_Chancenplan-Engagiertes-Europa1.pdf.

Von der Leyen, Ursula / European Commission. “A Union that strives for more – My agenda for Europe”. Political guidelines for the next European Commission 2019 – 2024, accessed 4 December 2019, https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

Chapter 3.3

Brexit and the Static Citizens: The Forgotten Side of Citizenship Loss

Commission of the European Communities. “Report from the ad hoc Committee on a People’s Europe”, Offprint from the Bulletin of the EC 3-1985, accessed 4 December 2019, <https://ec.europa.eu/dorie/fileDownload.do;jsessionid=jg62PJXBBhnmZGRL-cpQX3zDz1vHwp9nozyR63mC2qCyvK1BG51C!-572674064?docId=186651&cardId=186651>.

European Commission. “Citizens’ rights - UK nationals’ residence rights in the EU27”, accessed 4 December 2019, https://ec.europa.eu/info/brexit/brexit-preparedness/citizens-rights_en.

Government of the United Kingdom. “Policy Paper on Citizens’ Rights in the Event of a No Deal Brexit”, accessed May 2019, www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexit.

Shaw, Jo. “Citizenship and Free movement in a Changing EU: Navigating an Archipelago of Contradictions”, In *Brexit and Beyond: Rethinking the Futures of Europe*, edited by Benjamin Martill and Uta Staiger. London: University College London Press, 2018; 156-64.

Jurisprudence

C-26/62, *Van Gend en Loos*, ECLI:EU:C:1963:1

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To be or not to be EU Citizenship

From a European point of view, one of the most relevant citizens' rights in 2019 was the right to vote and to stand as a candidate during the European Parliament elections. Whilst not the only example of the application of citizenship rights, European elections underline the relevance of such rights for citizens of the Union. The existence of EU citizenship might be undisputed, but we must ask ourselves: do we really know what European citizenship is and do we make the best use of our rights? In 2018, seven out of ten Europeans felt that they were citizens of the European Union, yet only a slight majority knew about their citizenship rights and one third would have liked to know more. The knowledge is there, but it needs to be shared and applied.

With contributions from experts from academia, think tanks and politics, this publication sheds light on the rights and opportunities of EU citizenship. It bridges the gap between knowledge and application by presenting a number of concrete issues and perspectives around EU citizenship. The publication also offers solutions to foster an active European citizenry, which is vital for the functioning of European democracy. "To be or not to be – EU citizenship" is of relevance for academics, activists, policy-makers and decision-makers alike.



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