



Towards a Statute on European Union Citizenship: A Manifesto

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Abstract

EU citizenship is almost thirty years old and there are many reasons for thinking in a more holistic and constructive way about it. This can be done through the adoption of an EU Citizenship Statute which brings together all EU citizenship rights and dimensions, links clearly EU citizenship rights with the European Pillar on Social Rights, and fundamental rights, that is, the EU Charter of Fundamental Rights, enriches its rights and includes responsibilities for EU citizens. This idea has been supported by the European Parliament and the citizen-led Conference on the Future of Europe. In this manifesto, we present this institutional proposal, examine its drivers and its obstacles and propose the text of its possible articles before lending our attention to the steps required for the statute's empirical implementation. The adoption of a statute would contribute to the creation of a rights-based and inclusive European community with an effective EU citizenship and enhanced living and working conditions.

Keywords

EU citizenship – rights – EU citizenship statute – Charter on fundamental rights – institutional change – nationality – constructivism – Conference on the Future of Europe

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1 Introduction

Institutions exist because they provide a framework for human life and social activity. They change when new ideas and a new vision emerge, new approaches to problems find generalised acceptance or when the divergence between their value and reality becomes clearly visible and costly. The most effective way of procuring institutional change is not from outside by either conflict or capture or rupture, but from within, that is, through the re-evaluation, re-weighting and reconstruction of an institution's logic, aims, operation and output. This process of potential endogenous re-structuring, re-evaluation and innovation was captured in Edward de Bono's book entitled *Lateral Thinking*.¹ His suggestion was a simple one: thinking differently (laterally) about a subject generates creative ideas and a different way of approaching, and solving, problems.

De Bono argued that frames of mind create patterns, that is, ways of handling and ranging information and ideas, which, then, become a sort of code. The change of those patterns in almost always asymmetric patterning systems prompts creativity and innovation.² De Bono's work would today be characterised as constructivist. Meaning and the intelligibility of the world take place through the development of mental frames which eventually become generalised and routinised, but are also changeable.³ Change happens because new meanings, new perspectives and new constructions by thinking 'laterally' take place. This process is intersubjective and has important socio-political implications.⁴ As von Glasersfeld had noted, once the operations by means of which we assemble the experiential world can be explored, the possibility of doing things differently and, perhaps, better presents itself.⁵ This potential exists in institutions and inspires agents to transformative socio-political action.⁶

1 de Bono, E. (1970). *Lateral Thinking*. Penguin, Harmondsworth.

2 de Bono, E. (1985). *Six Thinking Hats*. Viking, London, pp. 140 et seq.

3 Berger, P. and Luckmann, T. (1971 [1966]). *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. Penguin Books: London; Searle, J. (1995). *The Construction of Social Reality*. The Free Press, New York; Von Foerster, H. (1984). On Constructing a Reality, in: Watzlawick, P. (Ed.), *The Invented Reality*, W.W. Norton and Co, New York, pp. 41–61.

4 Von Foerster, 1984, pp. 41–61. See also Unger, M. R. (1987). *Politics: A Work in Constructive Social theory*. Cambridge University Press, Cambridge.

5 Von Glasersfeld, E. (1984). An Introduction to Radical Constructivism, in: Watzlawick, P. (Ed.), *The Invented Reality*, W.W. Norton and Co, New York, pp. 17–40 at p. 18.

6 Adler, E., 1997. Seizing the Middle Ground. *European Journal of International Relations*, 3(3), pp. 19–63; Kratochwil, F. (1989). *Rules, Norms and Decisions on the conditions of practical and legal reasoning in international relations*, Cambridge University Press, Cambridge; Onuf Greenwood, N. (1989). *World of Our Making: Rules and Rule in Social Theory and International Relations*, University of South Carolina Press, Columbia; Wendt, A. (1999). *Social*

Among EU institutions, EU citizenship has had transformative potential since its inception,⁷ and the time has come to realise fully this potential.

As EU citizenship is almost thirty years old,⁸ there are many reasons for rethinking its institutional design. This can be done through the adoption of an EU Citizenship Statute which links clearly EU citizenship rights with social citizenship dimensions, that is, the European Pillar on Social Rights,⁹ and fundamental rights, that is, the EU Charter of Fundamental Rights,¹⁰ enriches its rights and includes responsibilities. The reasons as to why this should be done now are many; some are endogenous, that is, stem from the institution itself and the way it has operated. Others are more exogenous, that is, they are associated within the changing political landscape. It would suffice to mention a few

Theory of International Politics, Cambridge University Press, Cambridge; Hay, C. (2006). Constructivist Institutionalism, in: Rhodes, R. et al. (Eds.), *The Oxford Handbook of Political Institutions*, Oxford University Press, Oxford, pp. 56–74; Schmidt, V., 2008. Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science*, 11(1), pp. 303–26; Schmidt, V., 2010. Taking Ideas and Discourse Seriously: Explaining Change Through Discursive Institutionalism as the Fourth New Institutionalism. *European Political Science Review*, 2(1), pp. 1–25; Kostakopoulou, D., 1996. Towards a Theory of Constructive Citizenship in Europe. *The Journal of Political Philosophy*, 4(4), pp. 337–358; Kostakopoulou, D., 2005. Ideas, Norms and European Citizenship. *Modern Law Review*, 68(2), pp. 233–67; Kostakopoulou D. (2018). *Institutional Constructivism in Social Sciences and Law: Frames of Mind, Patterns of Change*. Cambridge University Press, Cambridge. For an excellent discussion of constructivism in international relations, see Zehfuss, M. (2001). Constructivism in international relations: Wendt, Onuf and Kratochwil, in: Karin M. Fierke and Knud Erik Jorgensen (Eds.), *Constructing International Relations: The Next Generation*, M. E. Sharpe, New York, pp. 54–75. Wendt's sociological institutionalism alongside Checkel's and Katzenstein's identity-based constructivism became middle-ground constructivisms and were distinguished from rational choice constructivism and 'reflectivism' which was essentially radical postmodernism or discourse analysis. Hay's ideational or discursive institutionalism sought to overcome the stasis in institutionalist perspectives, while Schmidt expanded on the role of ideas and discourse in her articulation of discursive institutionalism.

7 Kostakopoulou, D. (2001). *Citizenship, Identity and Immigration in the European Union: Between Past and Future*. Manchester University Press, Manchester; Kostakopoulou, D. (2008). *The Future Governance of Citizenship*, Cambridge University Press, Cambridge.

8 It was established by the Treaty on European Union which entered into force on 1 November 1993.

9 The European Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights in 2017 at the Gothenburg Summit. Its 20 Principles on equal opportunities and access to the labour market, fair working conditions and social protection and inclusion can be read at <https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/eu>.

10 Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted on 12 December 2007. It became legally binding following the entry into force of the Lisbon Treaty on 1 December 2009.

internal as well as external reasons, here, in no particular order. Firstly, it could be argued that the transformative potential of EU citizenship has not been realised yet since its social citizenship dimension remains weak, the list of its rights remains short and Member State nationality still determines its personal scope thereby resulting in the exclusion of 23.7 million long-term resident third country nationals.¹¹ Secondly, the Treaty on European Union has set out a compelling vision of a democratic and fundamental rights centred Union with clear and legally binding values (Article 2 TEU)¹² which need to be realised in citizenship policies and legal reforms. Thirdly, the debate on EU citizenship has centred on the constitutional nature of this status, rather than on its practical delivery and the latter must now be addressed in a more effective way.¹³ Fourthly, although the Treaties have led to an expanding body of legislation on free movement and residence, the coordination of social security rights and recognition of professional qualifications,¹⁴ and an expanding body of progressive case law by the Court of Justice of the European Union, in recent years the Court has become more cautious and reluctant to assert European rights over national prerogatives.¹⁵ Fifthly, it has been argued that EU citizenship is more than a framework for free movement rights and should be considered in all EU policies.¹⁶ In addition, Brexit undermined the relevance and importance of

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- 11 Kostakopoulou, D. (2001); Carrera, S. (2009). *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, Martinus Nijhoff Publishers, Leiden; Davies, G. and Rostek, K., 2005. The Impact of Union Citizenship on National Citizenship Policies. *European Integration online Papers (EIOp)*, 10, at p. 7; Shaw, J. (2019). EU citizenship: Still a Fundamental Status?, in: Bauböck, R. (Ed.), *Debating European Citizenship*, Springer, Cham, pp. 1–17 at p. 4.
- 12 The values of the EU are respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- 13 Cambien, N., Kochenov, D. and Muir, E. (Eds.) (2020). *European Citizenship under Stress: Social Justice, Brexit and Other Challenges*, Brill Nijhoff: Leiden; Tambini, D., 2001. Post-national citizenship. *Ethnic and Racial Studies*, 24(2), pp. 195–217 at p. 201.
- 14 Muir, E. (2020). EU Citizenship, Access to “Social Benefits” and Third-Country National Family Members: Reflecting on the Relationship between Primary and Secondary Rights in Times of Brexit, in: Cambien N., Kochenov, D. and Muir E. (Eds.), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges*, Brill Nijhoff: Leiden, pp. 170–198 at pp. 171–173.
- 15 Thym, D. (2018). *Questioning EU Citizenship*, Hart/Bloomsbury: Oxford; Barbulescu, R. and Favell, A., 2020. Commentary: A Citizenship without Social Rights? EU Freedom of Movement and Changing Access to Welfare Rights. *International Migration*, 58(1), pp. 151–165 at p. 159.
- 16 European Economic and Social Committee, 2013. *European Year of Citizens 2013*. Available at: <https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/european-year-citizens-2013#downloads>.

EU citizenship by transforming overnight millions of European citizens into third country nationals, on the one hand, and EU citizens living in the UK into EU citizens living in a third country, on the other.¹⁷ Furthermore, two years under the grip of the Covid-19 pandemic have affected significantly the living and working conditions of Europe's citizens and residents, both young and old, and have highlighted the importance of strengthening Europe's social face as well as the inviolability of fundamental rights and freedoms. Pronounced as a fundamental status, EU citizenship becomes undermined when borders and barriers to free movement are erected unilaterally by Member States even if this might be conceived of a temporary measure on public health grounds. Moreover, global energy and food crises, rising interest rates and the looming recession are likely to push more people below poverty lines threatening human lives and the state of democracy and rule of law since negative environmental conditions tend to increase the appeal of extreme right-wing parties and disgruntled national populism. The war in Ukraine, on the other hand, and the displacement, both in Europe and in Ukraine, of nearly 10 million people, of which one fourth are children,¹⁸ necessitate a discussion about the (appropriate) boundaries of EU citizenship and a longer term vision about the future of this population beyond the provision of temporary protection¹⁹ which, by its nature, lapses after three years.²⁰ Finally, although Article 25 TFEU, that is, EU citizenship's evolutionary clause, reflects the Treaty drafters' belief in the value of forward looking thinking and an evolving institutional design, this opportunity has not been activated yet. EU has formally remained a static status.²¹

17 Maas, W., 2021. European Citizenship in the Ongoing Brexit Process. *International Studies*, 58(2), pp. 168–183.

18 IOM, 21 March 2022. According to the European Union Agency for Asylum, over 2,3 million persons fleeing Ukraine has registered for protection in the EU as of 28 April 2022; Fundamental Rights Agency of the EU, *The War in Ukraine-Fundamental Rights Implications within the EU*, Bulletin 1, May 2022 (Luxembourg: Publications Office of the European Union).

19 Directive 2001/55/EU OJ L 212/12 [2001] 7.8.2001.

20 The so called Europe agreements had granted free movement rights to the citizens of Central and Eastern European states before their accession to the EU, providing a model which could be replicated in the future.

21 Article 25 TFEU requires the Commission to submit every three years a report on activities related to European Union citizenship, and on this basis to propose any addition to the citizenship rights in TFEU. So far, the Commission has duly produced the reports but has not taken up this possibility of combining a retrospective account of activity with a legislative proposal for the future. The most recent 2020 Citizenship Report included an indication that the Commission might do so in the area of consular protection of EU citizens in third countries after the experience of repatriation of more than half a million EU citizens following the outbreak of the COVID 19 pandemic (European Commission, 2020. *EU*

A statute on Union citizenship – a manifestation of institutional constructivist thinking and of a more holistic and cross cutting approach, would address the weaknesses identified above. In this manifesto, we make a genuine institutional proposal encompassing normative considerations, the Treaties' provisions and the shared values of the EU, portable rights, protection from discrimination of all forms, greater democratic participation, digital and family reunification rights and more legal reforms.²²

We commence with a brief account of the origins of the idea for an EU citizenship statute, the drivers and its obstacles. We then briefly examine the European Commission's Citizenship Report 2020²³ and the European Parliament's recent institutional recommendation about the statute's adoption before elaborating on the statute's aims and contribution to the creation of a rights-based and inclusive European community. We propose the text of the statute's possible articles before lending our attention to the steps required for the statute's empirical implementation and include some concluding remarks. These are underpinned by the belief that the present of the future is nothing more than grounded expectation and rightful claims-making on the part of EU citizens themselves to enhance standards of living.

2 Statute's Origins, EU Processes and Drivers

The idea of an EU citizenship statute is linked with the establishment of the European Citizenship foundation (ECIT) in 2015 by a group of civil society activists. ECIT was anchored on the belief that, notwithstanding the institutional incompleteness of EU citizenship, its deeper political as well as cultural roots continue to exert considerable appeal especially among Europe's younger population²⁴ and thus it should be developed further. Since its first annual

Citizenship Report 2020 – Empowering citizens and protecting their rights, at p. 43. Available at: https://ec.europa.eu/info/files/eu-citizenship-report-2020-empowering-citizens-and-protecting-their-rights_en.) The reason for the reluctance to activate Article 25 is that any proposal requires the assent of the European Parliament – the latter does not have any co-legislative power, whilst in the Council there has to be unanimity and in some countries follow-up ratification processes.

22 ECIT, a foundation set up in 2015 to promote EU citizenship and the originator of a set of guidelines on European citizenship, has been working on, and campaigning for, it with success by developing synergies with a cross-party group of MEPs from different committees to raise the profile of European citizenship.

23 EU Citizenship Report 2020, n. 21 above.

24 The Commission publishes with the tri-annual citizenship reports Eurobarometer surveys which show that over time there has been an increase to in the extent to which people

conference in late August 2016, which was attended by nearly 100 younger activists and civil society representatives in addition to academics and policy makers, ECIT sought to establish a set of guidelines for the development of EU citizenship which have now become transformed into concrete provisions. The first guidelines included the strengthening of EU citizenship's civil and political rights as well as EU citizenship education. Brexit was an important political moment. ECIT refused to accept that the UK's withdrawal from the European Union should lead to the shrinking or devaluation of EU citizenship. On the contrary, it argued that Euro-sceptic and populist nationalist voices could only be counterbalanced by expanding EU citizenship rights, fostering more unity, promoting solidarity among states and peoples and enhancing educational exchanges for pupils and students. In that environment, an EU citizenship statute became crystallised as a worthwhile proposal; one which increase the centrality of EU citizenship in the evolving European integration project.

A few years later, the idea of an EU citizenship statute was embraced by the European Parliament. On 29 January 2019 the European Parliament's report on the implementation of the Treaty provisions related to EU citizenship²⁵ brought the issue of institutional reform on the agenda by recommending changes to advance the potential of EU citizenship and to close gaps in the protection of EU citizens. Some of those gaps have been the result of the incorrect transposition of Directive 2004/38 (the so-called 'Citizenship Directive') in some Member States.²⁶ The EP's report also highlighted a lack of awareness of EU rights and suggested a mature reflection on key issues for the future evolution of EU citizenship rights.

Issues featuring prominently in the report were: the abolition of the disenfranchisement of expatriates in elections to national parliaments because of their residence in other EU Member States; the extension of EU citizen's voting rights to national parliamentary elections in the Member State of residence; the introduction of e-democracy tools; the adoption of the horizontal EU anti-discrimination directive which had been delayed by the Council; measures to increase the political participation of young people and people with disabilities; and the enhancement of the effectiveness of the EU

recognise that they are European as well as citizens of their own country, above all among the younger generation. There are differences between countries and within them, especially on socio-economic grounds, but the overall average is now reaching over 90%; European Commission 2020. *Flash Eurobarometer 485 European Union Citizenship and Democracy*, at pp. 17–19. Available at: <https://europa.eu/eurobarometer/surveys/detail/2260>.

25 European Parliament, 2019. *Report on the Implementation of the Treaty provisions related to EU Citizenship*. A8-0041/2019 EP Report of 29 January 2019, PE631.784v02-00.

26 OJ L158/77 [2004], 30.4.2004.

Charter on fundamental rights. As the EP's report noted, 'the successful exercise of EU Citizenship rights presupposes that Member States uphold all rights and freedoms enshrined in the Charter of Fundamental Rights',²⁷ and 'non-discrimination is a cornerstone of European citizenship, in addition to being a general principle of EU law and a fundamental value under Article 2 TEU'.²⁸ Building on this idea, the EP called upon the Commission to take specific steps to bring together the European Pillar of Social Rights and EU citizenship. The EP's motion for a European Parliament Resolution²⁹ suggested the consolidation of citizen-specific rights and freedoms under an EU Statute of Citizenship which would also include the EUCFR's provisions by activating the procedure laid down in Article 25 TFEU.

The Commission's 2020 EU Citizenship Report emerged out of the landscape of Covid-19 with its restrictions on free movement, challenges to democracy and the rule of law and the increased vulnerability of the population. In this respect, it was more pragmatic and bold than its previous ones in that it set out priorities and actions (18 actions) to empower and protect EU citizens.³⁰ As an institutional entrepreneur, the Commission focused on four priority areas without making any reference to a possible statute, namely: a) democratic participation, citizen empowerment and inclusion in the EU; b) the facilitation of free movement and residence rights and the simplification of daily life; c) the protection and promotion of EU citizenship by asserting that EU citizenship 'is not for sale', thereby addressing Member States' investment citizenship schemes, and monitoring the impact of Covid-19 restrictions; and d) protecting EU citizens in Europe and abroad, particularly in times of crisis/emergency. The protection of EU citizens' civil rights (free movement and residence) was aligned with political rights and the updating of the rules on voting rights for mobile EU citizens as well as to social rights through the building of a European health Union.³¹ Furthermore, the internal face of EU citizenship was intimately connected to its external face, that is, the protection

27 European Parliament, 2019. *Report on the Implementation of the Treaty provisions related to EU Citizenship*, p. 23.

28 *Ibid.*, pp. 23 and 31, respectively.

29 2018/2111(IN1), para 53, p. 20.

30 EU Citizenship Report 2020, pp. 4–5. The Report noted that 9 out of 10 European citizens were familiar with the term 'citizen of the Union' and that support for free movement was at their highest in 12 years on page 4.

31 See ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/European-health-union_en.

of EU citizens abroad in situations of emergency or crisis given that 600,000 EU citizens had to be repatriated to the EU between February and May 2020.³²

‘Empowering citizens and protecting their rights’³³ has been a priority for the Commission since 13,3 million EU citizens have exercised their free movement and residence rights and continue to face a host of challenges and obstacles in the Member States. The correct implementation of the citizens’ rights part of the Withdrawal Agreement signed with the United Kingdom was also pronounced to be a ‘top priority’.³⁴ Under the thematic area ‘Protecting and Promoting EU citizenship’, the Report explicitly acknowledged the interconnection between EU citizenship and fundamental rights: ‘EU citizenship is underpinned by common values, encompassing the respect for democracy, rule of law, equality and fundamental rights’.³⁵ This is a very important acknowledgment and a guidepost for citizenship’s evolution. The common values referred to above are none other than the values enshrined in Article 2 TFEU.³⁶ The realisation of those values was aligned with the Commission’s intentions to address ‘golden passports’, the creation of a rule of law culture, the support of citizenship education and Erasmus+, the forthcoming action plan for social economy as well as ongoing work in the fields of equality and non-discrimination.³⁷ With respect to the protection of EU citizens abroad, the Commission pledged the review of the consular protection directive³⁸ as well as the possibility of using Article 25(2) TFEU in order to expand the citizenship right to consular protection under Article 23 TFEU (Action 18).

In response to the Commission’s report, the European Parliament on the basis of a report by the Petitions Committee voted overwhelmingly on 10 March 2022 in favour of a statute on European citizenship as the first demand in its resolution³⁹ with a view to unlocking the creative development of European citizenship. The statute has also been earmarked as an item on the prospective IGC’s agenda.

32 EU Citizenship Report 2020, p. 40.

33 Compare, here, Kostakopoulou, D., 2021. Justice, Individual Empowerment and the Principle of Non-Regression in the EU. *European Law Review*, 46, pp. 92–104.

34 EU Citizenship Report 2020, p. 25.

35 Ibid, p. 33.

36 Ibid, p. 38.

37 In addition, a recovery programme of EUR 750 billion as well as targeted reinforcements to the 2021–2027 EU budget have been designed to address the impact of the pandemic, while a new EU health programme – EU4Health (ibid, p. 38) is envisaged to lay the foundations for a European Health Union.

38 Council Directive 2015/637, OJ L 106 [2015] 24.4.2015.

39 European Parliament, 2022. *European Parliament resolution of 10 March 2022 on the EU Citizenship Report 2020: empowering citizens and protecting their rights. 2021/2099(IN1)*.

3 Aims and Three Levels of Ambition for the EU Citizenship Statute

A European Union citizenship statute would have three main aims, as follows.

3.1 *To Bring Together the Scattered Elements of European Citizenship as It Exists across EU Treaties and Policies Thereby Increasing Clarity and Popular Awareness of the Status of EU Citizen*

The statute will bring together the provisions on EU citizenship, free movement and residence for workers, establishment and the recognition of professional qualification and services as well as the provisions of TEU on democratic participation and the citizens' initiative. Such a coordinated and cross-cutting approach would make all EU citizenship rights accessible to citizens and would also end the fragmentation of the administration of EU citizenship by different departments of the Commission. At present, the Justice department in the Commission is responsible for free movement and residence of EU citizens and their family members, the rights to vote and stand in local and European elections and consular protection as well as the tri-annual citizenship reports under Articles 20–25 TFEU (– having only four policy making staff) while other departments deal with the coordination of social security entitlements and recognition of professional qualifications to remove barriers to freedom of movement. The right of one million citizens to request the Commission to put forward a new legislative proposal⁴⁰ is the responsibility of another special department, which in turn has its own web platform and help desk for users, while youth and educational exchanges under Erasmus or cultural activities are under the DG on education. Such an administrative and policy making fragmentation has thus far affected civil society's input. Similarly, within the European Parliament there are no less than six committees dealing with different European rights and aspects of European citizenship. This makes it difficult for those relatively small units dealing with different citizenship dimensions to make their voice heard. Having a statute on European citizenship under the coordination and supervision of Commission Vice-president would remedy the above-mentioned weaknesses and would enhance the monitoring of the implementation of its provisions by the EU institutions and the Member States. It would also ensure more coordination and political support with a senior Commissioner in charge thereby paving the way for the design of a European citizen ID card and the development of teaching manuals and materials on European citizenship education.

⁴⁰ Article 11(4) TEU enshrines the European citizens' initiative.

The cross-cutting approach would also serve as an opportunity to examine the scope for European rights to be better supported by EU policies which do not require necessarily new legislative initiatives, let alone Treaty reform. For example, if free movement and residence is the first right of the European citizen, it could work better if it were supported by a solidarity fund and the EU cohesion policy. One could thus envisage a provision in the statute as follows:

Establishment of a free movement solidarity fund

A free movement solidarity fund should provide emergency support to vulnerable EU citizens and support regions in countries of origin with training and investment to avoid brain drain.

Similarly, the existing right to diplomatic and consular protection could be placed in the broader framework of a European diaspora policy since it is estimated that 80 million Europeans live in the rest of the world. In addition, a more equal access to the benefits of European citizenship could be achieved by extending existing programmes for youth and educational exchanges, putting more emphasis on the rights of the child and creating an Erasmus for all secondary school pupils and students. A lesson stemming from the Covid-19 pandemic is that citizen action and social capital can be maintained, and can even be developed, by relying on digital communication. Harnessing the benefits of digital technologies, a digital e-ID making would make it easier for EU citizens to travel, move across the EU and to settle as well as to engage with the EU by signing a petition, a citizens' initiative or by voting in European Parliament elections. A statute provision could be:

A European citizens' card

A European citizens' card should be introduced. Such a card must meet data protection requirements for secure EU citizenship and should cover access to political participation, emergency health care and social security entitlements associated with permanent residence when travelling in the EU.

As a consequence, EU citizens would become more aware of the status of EU citizenship and the avenues for their political participation and the enforceability of their rights. Whilst opinion polls suggest that there is widespread and growing latent support for European citizenship, it tends to be taken for granted as it is connected to one's country's membership of the EU.⁴¹ In fact, it

41 Ferbrache, F., 2019. Acts of European citizenship: how Britons resident in France have been negotiating post-Brexit futures. *Geography*, 104(2), pp. 81–88.

was only when their country withdrew from the EU, many UK citizens felt that they were being stripped of a part of their personal identity and became aware of the rights they were losing.⁴²

In the light of the above discussion, relevant statute provisions could be:

The Right to be informed

EU citizens and any natural or legal person residing or established in a Member State should have the right to be informed about their EU-derived rights and EU's activities and, subject to established limitations, to have access to documents from the EU's institutions and agencies in one of the languages of the EU and to receive a response to their submitted complaint within a reasonable time which does not exceed 50 days.

Creation of a European public sphere

The European Union institutions should create an infrastructure for e-participation tools and face to face dialogue among citizens and civil society. Participatory processes, such as citizens' assemblies chosen by sortition should become a pillar of EU's policy-making to ensure citizens' input as well as to improve the quality and enforcement of legislation.⁴³

Lobbying processes should be transparent with the aid of an accurate and up to date register of users and their resources.

3.2 *Bringing Together What Exists Would Help the Identification of Gaps and Proposals for More Substantial Reforms*

Full political rights for EU citizens in their country of residence is the most important single reform which would give substance to European citizenship. EU citizens have the right to vote and stand in European and municipal elections where they live but they cannot vote in national elections that determine the government which will adopt laws and policies affecting their lives and the lives of their families. They are also precluded from taking part in nation-wide referenda even though many of them are on European issues.

⁴² Maas, 2021, n 17 above, pp. 172–173.

⁴³ The creation of a permanent interactive digital platform to channel proposals from civil society was also a proposed article of the draft statute of the RENEW EUROPE group of the European Parliament; RENEW EUROPE, 2022. *European Citizenship Statute – Policy Paper*, p. 12. Available at: <https://www.reneweuropengroup.eu/policies/2022-03-25/european-citizenship-statute>.

The legal basis would be Article 11 TEU. The proposed statute has section on citizen participation rights, citizens' freedoms, the right to good administration, digital citizenship rights and guarantees of citizenship rights.

Their disenfranchisement makes them second class citizens in the countries of their residence and reinforces perceptions of 'otherness' among the native population. In addition, while non-national EU citizens are represented in the European Parliament if they vote in their country of residence, they have no say in how they are represented by the government at the EU level. The statute on EU citizenship would further the debate on the extension of political rights associated with freedom of movement, stimulate further discussion on measures to reduce the gap between 13.7 million EU citizens living in another Member State and 23.7 third country nationals who are only able to vote in municipal elections in 14 of the 27 Member States and, generally speaking, would promote universal suffrage as a European value and a cornerstone of a truly democratic European polity.

The statute would also bring together the different ways citizens can raise a concern with the EU institutions, namely via complaints, requests for access to documents, consultations, petitions to the European Parliament, applications to the Ombudsperson and European citizens' initiatives, as well as the possibilities of a simultaneous combination of them. For example, a complaint to the Commission can be supported by a petition to the European Parliament. And while it is true that complaints procedures and appeals are often linked to complex decision-making processes that are more suited to organised interests and stakeholders than to ordinary citizens, it is, nevertheless, the case that the reform mentioned above would contribute to the creation of a more participatory European public sphere.

The statute should also make clear that opening the EU to greater citizen participation should go together with giving everyone the necessary knowledge and skills to do so. It is true that participation in the Erasmus programme is largely confined to students in higher education with the skills and resources to spend a semester in a university in another Member State or to undertake an internship. This limitation would need to be addressed because the benefits of participating in an Erasmus or exchange programme are greater for young people who would not otherwise have the opportunity to visit other European countries. This is why the statute should contain an Erasmus for all thereby creating a European citizenship entitlement. Accordingly, one could envisage statutory provisions such as:

EU citizenship education and an Erasmus for all

All European citizens and residents in the EU should receive age-appropriate education about European citizenship and should have the opportunity to participate in a European educational training or youth programme in another European country.

Political Rights

Permanent EU citizens should have the right to participate in national parliamentary elections in the Member State of residence.

The right to vote in European Parliament and municipal elections should be extended to long-term third country nationals who are resident in the EU Member States for five years or more.

Responsibilities of European citizens

European citizens benefit from rights and have responsibilities to:

- a) safeguard their rights and those of others while furthering a more inclusive and equal European citizenship;*
- b) to refrain from engaging in any form of discrimination on the prohibited grounds and attacks on the dignity of fellow human beings;*
- c) to comply with national constitutions and laws and uphold the shared values of the EU.*

The right to good administration

Everyone has a right to standards of accountability and transparency which inspire public trust and confidence.

Then the text of Article 41 EUCFR on the right to good administration could be inserted with an extension of it to all institutions and public authorities of the Member States. It would be very important to include the right of every person to be heard before a negative decision against them is taken, the right to obtain access to their file, to receive a reasoned decision as well as the right to compensation for damage caused by an institution in the exercise of its functions.⁴⁴

Social Rights

Active support for employment (European Pillar of Social Rights, Principle 4), Chapter II on fair working conditions, and Principles 13, 14 and 15 on unemployment benefits, minimum income and old age income and pensions of the European Pillar of Social Rights could also be included in the statute. There could also be a fruitful blending of the EUCFR's chapter on equality with the provisions of European Pillar of Social Rights.

⁴⁴ That was also a proposal by RENEW EUROPE 2022.

3.3 *To Make Acquisition of European Citizenship Possible on the Basis of Long-term Residence and Introduce New Rights to Increase Its Relevance*

An EU citizenship based on long-term residence (domicile) either in addition to MS nationality or exclusively has been a policy proposal since the early 1990s. It has been defended by European scholars, policy practitioners and civil society on several grounds.⁴⁵ Enhancing democratic legitimacy since there should be no taxation without representation is one of them. Correcting injustice and promoting equality of treatment is another. In the name of equality and non-discrimination, third country nationals are contributors to commonwealth and therefore should not be excluded from its benefits on the basis of their nationality in a Union which condemns discrimination on the ground of nationality. Other grounds in favour of such a legal reform include: promoting the smooth incorporation of non-nationals and more cooperation in diverse communities; ending the projection of the nationalist logic onto the European Union citizenship; an argument about coherence and limiting distortions in the smooth functioning of the internal market; making EU citizenship less exclusionary and more universal; addressing Europe's colonial past and its ambiguous relation with racial otherness, all have been convincing rationales for a domicile-based EU citizenship. Changing, therefore, EU's citizenship's entry point or condition can have important effects⁴⁶ – a true manifestation of lateral thinking – for residents, citizenship, Member States and the EU.

After all, this proposal was made when the EU's long-term residence third country national population was less than 10 million. It is now 23,7 million⁴⁷ thereby making questions of 'when' they will be given 'rights and duties comparable to those of EU nationals',⁴⁸ rather than questions of 'if', appropriate. It

45 See, for example, Kostakopoulou, D., 1996.; de Groot, G.-R. (2006). Towards a European Nationality Law, in: H. Schneider (Ed.), *Migration, Integration and Citizenship: Volume 1*, Forum Maastricht, Maastricht; Guild, E. (2004). *The Legal Elements of European Identity*, Kluwer Law: The Hague. See also the chapters by Rainer Hofmann, Alvaro Castro Oliveira, Ruth Rubio Marin, Jorg Monar, Marie-Jose Garot in M. La Torre (Ed.), (1998). *European Citizenship: An Institutional Challenge*, Kluwer: The Hague. Compare, Aradau, C., Huysmans, J. and Squire, V., 2010. Acts of European Citizenship: A Political Sociology of Mobility. *JCMS*, 48(4), pp. 945–965; Olsen, E. (2012). *Transnational Citizenship in the European Union: Past, Present and Future*, Continuum, London.

46 Kostakopoulou, D. (2020). *EU Citizenship Law and Policy: Beyond Brexit*, Edward Elgar, Cheltenham.

47 Eurostat statistics, March 2022; https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics.

48 This was recommended by the Tampere European Council Presidency Conclusions (15 and 16 October 2022); see paragraph 18.

is no longer possible for EU institutions to ignore the claims to free movement, political voice⁴⁹ and democratic participation of 23,7 million people who contribute to the growth and dynamism of European economics and societies and play a key role in the sustainability of economies, welfare systems, labour markets and demographic patterns.

The Russian invasion of Ukraine on 24 February 2022 added another reason for rethinking the edges of EU citizenship and for transforming them. The activation of the temporary protection directive has allowed nearly seven million displaced people to find sanctuary and to settle in the EU without visas, work permits and with similar rights to education, access to labour markets and public services, accommodation and health care as mobile EU citizens.⁵⁰ Once the war is over most will want to return, but what will be the status of those who choose to stay in the EU assuming that Ukraine will not be a Member State by that time? An EU citizenship based on residence would guarantee a smooth status transition and the continuation of their protection. Such an unexpected and unforeseen war in Europe is thus prompting an inquiry into the limits of the existing personal scope of EU citizenship and opens up the possibility for a more inclusive and outward looking institutional design. Fixed patterns can become linked patterns, communities are re-imagined and particularity can become relative universality as well as cooperative universality. For this reason, the first eight articles of the proposed statute will be setting the framework for a more inclusive EU citizenship while the ECIT annual conference in 2023 will examine the policy avenues for closing the gap between EU citizens and long-term resident TCNs and reaching out to citizens in the wider European neighbourhood and candidate countries.

Another challenge for the statute would be to make EU citizenship very relevant to those who stay at home and thus lack the cross-border connection in order to activate EU citizenship rights, including the right to family reunification with a non-EU spouse. Here, closer links of EU citizenship with fundamental rights, such as *inter alia* the rights to respect for private and family life, to data protection, consumer protection, access to health care and access

49 Their status is regulated by Directive 2003/109/EC (OJ L16 [2004] pp. 44–53) the amended version of which was tabled by the Commission last spring. The revision of the Directive had been proposed in the New Pact for Migration and Asylum which was presented by the European Commission on 23 September 2020.

50 The Temporary Protection Directive (Council Directive 2001/55/EC) was activated for the first time since its adoption in 2001 and applies to all MS with the exception of Denmark which applies its own national rules; Council Implementing Decision (EU) 2022/382 of 4 March 2022. On the transposition of the Directive, see FRA, *The War in Ukraine – Fundamental Rights Implications within the EU*, Bulletin 1, 1 March–27 April 2022.

to EU documents and to judicial and non-judicial remedies would be important. Equally important would be the invitation to revisit the original concept, and the associated policy ideas, in the Maastricht Treaty which established European Union citizenship and to add new environmental, health, digital and social rights. Proposed statute provisions are:

Protection of personal data

European citizens and residents have a fundamental right to the highest standard of protection of their personal data.

Such data must be processed fairly for specified purposes and on the basis of consent of the person concerned or some other legitimate basis laid down by law.

Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

Health care rights

The text could be similar to that of Article 35 EUCFR.

Consumer Protection

The text could be similar to that of Article 38 EUCFR.

Environmental Rights

All persons have a right to live in a healthy environment. Having a safe and sustainable environment is paramount, as all other rights are dependent on it. Both the EU and its Member States should:

a) Ensure the availability and equal access to clean and sustainable resources;

b) Prioritise environmental impact assessments in EU policy-making.

European Citizenship is based on shared values

European citizenship is based on a set of shared values which are included in Article 2 TEU, the Charter of Fundamental Rights, the Pillar of Social Rights, the Council of Europe's European Convention on Human Rights, the United Nations Universal Declaration of Human Rights and the associated international conventions.

Human Dignity and Respect for Private and Family Life

The content of Articles 1 and 7 EUCFR should be included in the statute. Writing in the 1990s, Kostakopoulou defended the insertion of a clause in the Treaty's EU citizenship provisions stating that 'all Union citizens

have an obligation to display solidarity with other Union citizens and nationals of third countries. This obligation entails respect for each person's dignity and the rejection of any form of social marginalisation'.⁵¹ More recently, relying on the inappropriate processes of 'Othering' of EU citizens living in the UK, she suggested the incorporation of Article 1 of the EUCFR on the protection of human dignity within Part Two TFEU, that is, within the Union citizenship provisions in order to give more substance to Union citizenship and to link Part II TFEU with Article 2 TEU which includes respect for human dignity as a foundational value of the European Union.⁵² A Union which aims 'to promote peace, the values and the well-being of its peoples'⁵³ and is based on the rule of law and constitutional values cannot allow its citizens and their family members to be subject to xenophobia, racism, abuse, disrespect, contempt and hatred.

A new additional provision could be:

Everyone should have the right to live in conditions that permit a life of dignity and well-being without facing abject poverty and homelessness.

EU Citizenship

Citizenship of the Union is hereby established. Every person holding the nationality of a Member State or being long-term resident in a Member State under the conditions of Dir 2003/109 shall be a citizen of the Union.

Loss of a Member State nationality would not automatically result in the forfeiture of Union citizenship, if the loss of EU citizenship is at stake or the Union citizen concerned is rendered stateless.

4 Pathways for Approval of the Statute and Legal Implementation

European citizenship was not explicitly on the agenda for the Conference for the Future of Europe (CoFoE), but, as research by ECIT shows, there is a strong correlation between the statute on EU citizenship proposal and the

⁵¹ Kostakopoulou, D., 1996, at pp. 356–58; (2021), at p. 124.

⁵² Kostakopoulou, D. (2020). When a Country is not a Home: The Numbered (EU Citizens) "Others" and the Quest for Human dignity under Brexit, in: M. Jesse (Eds.), *European Societies, Migration and the Law*, Cambridge University Press, Cambridge, pp. 267–281.

⁵³ Article 3(1) TEU.

recommendations stemming from the citizen-led process.⁵⁴ This is hardly surprising since the CoFoE was an exercise in European citizenship,⁵⁵ even if the subject of the citizenship statute was not initially on the agenda, since it was designed to be deliberative with direct, that is, citizen-led, participation. Through the on-line multilingual platform and the European citizens' four panels of participants,⁵⁶ chosen by sortition to be representative of the population of the 27 Member States, it made recommendations for a people-oriented and rights-based EU. In this respect, it shared the statute's rationale and centred on a similar exploration of the possibilities of creating a European public sphere and making citizen participation a permanent pillar of the decision-making process.

A process by which citizens should take the lead in putting forward a statute on European citizenship would not start logically with a blank sheet of paper but with the existing Treaty provisions, policies and programmes together with the recommendations from the CoFoE. The ECIT draft⁵⁷ provides one model and there is also a version published by the RENEW group in the European Parliament.⁵⁸ Indeed, since the citizens explicitly supported the idea of a statute on European citizenship in the conclusions of the Conference,⁵⁹ they should be given the opportunity to take the lead in this process. It is important to learn from the experience of such panels during CoFoE and make further improvements by ensuring more representation of young people

54 Thomas, A., 2022. *THE COMPARISON BETWEEN THE ECIT DRAFT STATUTE ON EUROPEAN CITIZENSHIP AND PROPOSALS BY CITIZENS DURING THE CONFERENCE ON THE FUTURE OF EUROPE: The case for the implementation of a European Statute on citizenship in order to consolidate EU citizens' ambitions, democracy and the protection of their rights.* Available at: https://mcusercontent.com/7519bb38001403f18caef2c18/files/12ded2b1-7878-334d-a7bb-cd4e91136643/ECIT_Statute_and_the_citizens_CoFoE_Alize_e_THOMAS.pdf.

55 See the Joint Declaration on the Conference on the Future of Europe signed on 10 March 2021 by the Presidents of the three institutions; <https://www.consilium.europa.eu/en/policies/conference-on-the-future-of-europe/>.

56 The four panels had different themes, namely, stronger economy, social justice, jobs and education, youth, culture, sport and digital transformation (Panel 1); values, rights, rule of law, democracy and internal security (Panel 2); climate change, environment and health (Panel 3) and EU in the world and migration (Panel 4). The panels made 49 proposals, including more than 326 measures which were included in the report received by the CoFoE's executive board.

57 ECIT Foundation, 2022. *Statute on European Citizenship.* Available at: <https://ecit-foundation.eu/statute>.

58 RENEW EUROPE, 2022, n 43 above.

59 Conference on the Future of Europe, 2022. *Report on the Final Outcome.* Available at: <https://futureu.europa.eu/pages/reporting?format=html&locale=en>. See Proposal 25; see also Thomas, 2022, n 54 above, pp. 5, 30–31.

and minorities, more time for deliberation and better support by a variety of experts.

Accordingly, we would recommend that a draft statute prepared by the Commission should be put to a citizen panel chosen by sortition. In this way, the statute on EU citizenship would not be just a statute in the name of the citizens of the EU, but a statute of the citizens taking authorship of a renewed European citizenship. After all, the CofE provides a model not only for how to involve citizens but also for how proposals made in citizens' assemblies can be put forward and taken up by the plenary sessions in which the EU institutions and the Member States are represented. The proposals adopted on this basis and having as their legal anchorage Article 25 TFEU could then be subsequently approved by the EU Institutions following the procedure laid down in Article 25 TFEU.⁶⁰ The European Commission could act promptly by incorporating the statute in the public consultation process which will lead to the 2023 Citizenship report in the run-up to the European elections in 2024.

5 Conclusion

Efforts to realise the constructive potential of EU citizenship in a European political landscape which has changed significantly over the last ten years owing to the sovereign debt crisis, people's exodus owing to the Syrian war, Brexit, the rise of populism and authoritarian nationalism, the Covid-19 pandemic and the recent Russian invasion of Ukraine and the ensuing mass exodus of people, should now be focussed on the adoption of an EU citizenship statute. Drawing inspiration from the Charter of Fundamental Rights and the European Pillar of Social Rights and favouring de Bono's lateral thinking approach, it would not be a very difficult task to bring together the scattered components of EU citizenship and to link them with fundamental rights and social rights. A statute on EU citizenship as presented in this manifesto would provide a focal point for EU citizens and for civil society, would encourage a more cross-cutting approach in EU institutions and strengthen the pillars of democratic participation and rights. In this way, EU citizenship would have a fully-fledged material scope incorporating civil, political and social rights and reinforce the legal requirement that EU citizens should be treated with dignity,

60 Article 25 TFEU provides that 'the Council, acting unanimously in accordance with the special legislative procedure and after obtaining the assent of the European Parliament, may adopt provisions to strengthen or to add to the rights listed in Article 20(2) TFEU'.

respect, equality and non-discrimination by all national public authorities and EU institutions within the jurisdictional confines of the European Union.

Since 1993, when the TEU which established the institution of EU citizenship entered into force, Article 25 TFEU has institutionalised a constructivist EU citizenship, that is, the principle that EU citizenship should be viewed to be an evolutionary institution. In other words, the drafters of the Treaty envisaged the maturation of this institution in time without the requirements of an intergovernmental conference. But the activation of Article 25 TFEU requires political commitment on the part of EU institutions and national executives to continue the pioneering vision of uniting people within a legal and political framework that sustains dignified living and co-living, enhances the quality of life and working conditions and ensures the flourishing of younger generations.

Various meetings on the statute on EU citizenship between the cross-party group of MEPs and civil society representatives have revealed a natural tension between those who see the value of a statute in bringing together what exists and those who seek a more aspirational agenda. There are strong arguments on both sides. Those who insist on the priority of strengthening the existing rights point to the impact of Covid 19 on freedom of movement and the various barriers to the exercise of European rights. There is certainly a need for better implementation and enforcement. Those who wish to capitalise on opportunities for reform argue that links with social rights and fundamental rights must be present and that new citizenship rights must be added. We do not see why a statute on EU citizenship cannot incorporate both perspectives; in fact, our institutional proposals make the case for the combination of both of them.

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