

THE EUROPEAN UNION CITIZENSHIP IN THE CONTEXT OF THE AREA OF FREEDOM, SECURITY AND JUSTICE

Introduction¹⁹⁷

People want to live in a European Union that is prosperous and peaceful, where their rights are respected and their security protected. They want to be able to travel freely, and to move temporarily or permanently to another European country in order to study, to work, to found a family, to set up a business or to retire.

Freedom, security and justice are key values that form an integral part of the European model of society. They are a cornerstone of the European integration. The Union has already succeeded in providing its citizens with a single market, economic and monetary union, and the capacity to meet global political and economic challenges. It has also made substantial progress towards an area of freedom, security and justice; the priority now has to be to put the citizen at the heart of this project.

The area of freedom, security and justice must above all be a single area in which fundamental rights are protected, and in which respect for the human person and human dignity, and for the other rights included in the Charter of Fundamental Rights, is a core value. For example, the exercise of these freedoms and the citizen's privacy must be preserved beyond national borders, especially by protecting personal data; allowance must be made for the special needs of vulnerable people and citizens must be able to exercise their specific rights to the full, even outside the Union.

Respect for the individual and for human dignity, referred to in the Charter, is a core value in the area of freedom, security and justice. In this area without internal borders, citizens can move freely and enjoy their rights fully.

If citizens of the European Union want to effectively use the rights deriving from EU citizenship, notions of European Union citizenship is necessary to define and clarify its content.

1. Citizenship of the European Union – a general outline

Citizenship of the European Union is one of the notions, which reflected reflects the special/separate nature of EU integration as a group, and a special relationship with the European Union and its Member States.

The origin of this legal notion must be sought in the history of the European Communities. The first formal recognition containing the legal definition of citizenship of

¹⁹⁷ Annotation: Authors deal with the issue of the citizenship of the European Union as amended by the Treaty of Lisbon. The Article brings content notions of European Union citizenship and explains the various rights and obligations of Union citizens. Authors have paid attention to the European citizens' initiative as a new legal notion in the European law.

Keywords: area of freedom, security and justice, European citizenship, rights and obligations of Union citizens.

the European Union can be found in the Treaty on European Union (the Maastricht Treaty), which represents the “cornerstone” for the European Union. The Maastricht Treaty which was signed on 7 February 1992 and entered into force on 1st November 1993, refers to citizenship of the European Union (EU) in its second part, in Articles 8 to 8e. The purpose of introducing this new legal notion was primarily an effort to strengthen European identity and enable European citizens to participate in the process of European integration in a more intensive way.

The Maastricht Treaty defines the EU citizen as follows: “*Every person holding the nationality of a Member State shall be a citizen of the Union. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.*”¹⁹⁸

As the above reflects the source of citizenship is the citizenship of a European Union member state and a sort of assumption, which enables citizens to meet the Member State to use and develop the rights and obligations conferred by the Maastricht Treaty.

In this context it is important to highlight the fact that the European Union on the one hand, recognizes that all people (regardless of whether they are Union citizens, third country nationals or stateless persons) within its jurisdiction have some “*universal rights*” and on the other hand, it reserves “EU citizens” some “special rights” that are specifically linked to the citizenship of the Union. These rights in the context of the Maastricht Treaty includes the right to move and reside freely within the territory of the Member States, the right to vote and stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, protection of diplomatic and consular authorities of other Member States, right of petition and the right to refer to the Ombudsman.¹⁹⁹

The notion of EU citizenship is influenced by the Amsterdam Treaty, which is a revision of the treaties and entered into force on 1st May 1999. The Amsterdam Treaty in relation to the Citizenship introduced amendments to the principle of European citizenship in Articles 17-21 of the Treaty establishing the European Community and expanded the rights of citizens by enabling any citizen to apply to the Union institutions and bodies in any of the languages of the Union and to have an answer in the same language.

Under the Amsterdam Treaty “*Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship*”, meaning that the European Union citizenship is additional and it does not replace national citizenship and it also states that EU Member States citizenship is a prerequisite for obtaining EU citizenship and citizenship rights as guaranteed citizenship of the Member States. It is therefore the relationship between the European Union and nationals of its Member States, from which the specific rights and obligations are derived. The only condition for obtaining EU citizenship is a citizenship of an EU Member States, implying that the Member States are exercising a monopoly over determining who can and who cannot be EU citizens. Meanwhile, EU citizenship is neither an option nor a competitor of citizenship.

¹⁹⁸ The Treaty on European Union (92/C191/01), Art. 8th.

¹⁹⁹ The Treaty on European Union (92/C191/01), Art. 8 to 8e.

European Union citizens are therefore a person becomes automatically, then it takes the nationality of a Member State of the European Union.²⁰⁰ At the same time a citizen of the Union if he/she wants to use the content of citizenship, he/she must have some relation to another Member State, participation in the life of another Member State, without which the vast majority of the provisions of the Treaty, based on the citizenship of the Union, has no effect. Those provisions cannot be used in domestic situations.

The last stage in the development of European law and also the Notion of European citizenship is the adoption of the Lisbon Treaty, which entered into force on 1 December 2009. Lisbon Reform Treaty is the treaty amending the founding treaties - the Treaty on European Union and the Treaty establishing the European Community, the second of those contracts, renamed the Treaty on the Functioning of the European Union.

With regard to the citizenship of the EU under the Lisbon Treaty is beneficial in particular to integrate the general provisions relating to citizenship in the Treaty on European Union (WEU) in the chapter on the provisions on democratic principles. It is important especially to Article 9 TEU, which proclaims that “*in all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies*“ and defines a citizen of the Union the same way as the provision of Article 20 of the Treaty on the Functioning of the European Union. Particular attention should be paid to the provision of Article 11. 4 TEU relating to European citizens' initiative. This provision Lisbon Treaty introduces for the first time in the history of direct democratic procedures for cross-border and transnational level and the importance of *European citizens' initiative* for European integration so far beyond the pure legal scope.

With regard to the provisions of the Treaty on the Functioning of the European Union (TFEU) governing the citizenship of the Union Institute - Part II: non-discrimination and citizenship of the Union, Articles 20-25 (ex Articles 17-22 EC Treaty) in this area, the Lisbon Treaty failed to produce almost no significant changes compared with previous rules. Only limited changes relating to the processing, strengthening those provisions and some sort of link with the general provisions on citizenship of the Union set out in the Treaty on European Union.

The formal definition of the Notion of EU citizenship includes the Charter of Fundamental Rights of the European Union, the ratification of the Lisbon Treaty has become legally binding. The Charter of Fundamental Rights, in its Title V, entitled Citizenship, contains a detailed treatment of the rights deriving from citizenship of the European Union. The range of rights as provided in this section of the Charter, but it is wider than the range of rights conferred by citizenship in the matter of the Treaty on the Functioning of the European Union.

Moreover, the Charter provides for the right to good administration (Article 41), subject to a special arrangement. Other rights deriving from citizenship, which are listed in the Charter shall apply according to the conditions laid down in the Treaties and in accordance with Article 52. 2 of the Charter. (Eg Article 39. Corresponds to a right guaranteed in Article 20. TFEU 2, etc.).²⁰¹ The establishment of euro civil rights in the Charter of Fundamental Rights legally binding and it means that the rights of citizenship of

²⁰⁰ Conditions of entry of a Member State are governed by national laws. In the case of the Slovak Republic it is the Act no. 40/1993 Code, as amended.

²⁰¹ For more see: Legend of the Charter of Fundamental Rights (OJ C303 12.14 in 2007), p. 17

the Union are to a large proportion of duplicate Euro citizens feeling protected and is a sign that the citizen is getting more attention to European integration.²⁰²

Citizenship of the European Union can thus be regarded as an important element in strengthening and safeguarding the European integration process and is a complement, extension of rights and obligations contained in the national of a Member State.

2 Content of the citizenship of the Union

When defining the content of EU citizenship, it is necessary to underline the fact that citizenship is not unique, but it presumes the existence of the nationality of a Member State. At the same time there is no dual citizenship, because the European Union as a whole does not show signs of a sovereign state and therefore the existence of nationality/citizenship and European citizenship is not dual citizenship in the strict sense.

European citizenship is a dual vertical relationship - the relationship of the citizen and the Member State and also the relationship between citizens and the European Union.²⁰³ The rights deriving from European citizenship but are subject to significant restrictions. They are plowing back only if an EU citizen resident in another Member State than he is a national of or, in the diplomatic and consular protection abroad.

This means that the EU citizen has at least two groups of rights. The first group includes the rights deriving from national citizenship rights and the second group shows for EU citizens under European Union law. EU law as modified by individual rights and duties of European citizens, while guaranteeing certain rights to EU citizens on the territory of other Member States. These rights can be considered content of European citizenship. These are the rights calculated in Articles 20-25 of the Treaty on the Functioning of the EU:

- a) *“the right to move and reside freely within the territory of the Member States;*
- b) *the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;*
- c) *the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;*
- d) *the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.”²⁰⁴*

Another instrument, which explicitly codifies the rights of EU citizens, is the Charter of Fundamental Rights. -Citizenship is regulated by Title V, entitled Citizenship. In addition to the above rights of European citizens the EU Charter of Fundamental Rights declares the right to good governance. Article 41-is based on the existence of the Union, which is based on the rule of law and whose characteristics have been developed in case

²⁰² The exemption applies to Poland, Great Britain and the Czech Republic, for which there is the Charter of Fundamental Rights legally binding. These countries have recovered in the negotiation of treaties called novellas. "Opting out".

²⁰³ TRELLOVÁ, L. Institute of citizenship from the perspective of the European Union, p. 122nd

²⁰⁴ The Treaty on the Functioning of the European Union - consolidated version (OJ C83 03/30/2010), Art. 20. 2nd

law, which contains good governance as a general principle of law.²⁰⁵ The law is specific in that respect that it is not linked to nationality, but the bearer of all these rights are natural and legal persons resident in a Member State of the Union. These people have a right to have their issues dealt with by the EU institutions impartially, fairly and in reasonable time.

Other rights deriving from EU citizenship, which are reflected in the Charter of Fundamental Rights, are applicable under the conditions laid down in the Treaties and in accordance with Article 52. 2 of the Charter.

Content of the citizenship of the EU constitute the rights resulting from the general provisions on EU citizenship, integrated within the chapters relating to the provision of democratic principles. Deserves particular attention to Article 11 of the Treaty on European Union, which states:

- a) *“the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”* – (Article 11. 1 TEU) - horizontal civil dialogue,
- b) *“the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society”* (Article 11. 2 TEU) – vertical civil society dialogue,
- c) *“not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”* (Article 11. 4 TEU) - the European Citizens Initiative.²⁰⁶

The last group of rights deriving from EU citizenship law introduced in the European Treaty of Lisbon. The benefit in terms of subject area is primarily to integrate the general provisions relating to citizenship in the Treaty on European Union, the chapter on the Provisions on democratic principles. The Lisbon Treaty strengthens the rights of European citizens towards the European Union, in particular by facilitating the participation of citizens and representative associations of civil society in debates on *“European citizens.”* In this respect, of particular importance is the provision of Article 11. 4 Treaty on European Union relating to European citizens' initiative, which we will devote considerable attention.

With respect to European citizens, they have not been clearly defined. In addition to general obligations of the principles on which it is based on EU law as a separate law, the obligations of EU citizens based on the specific provisions governing the powers and policy.

Ad a) the right to free movement and residence within Member States

Treaty on the Functioning of the EU's Article 21 provides that *“Every citizen of the Union shall have the right to move and reside freely within the territory of the Member*

²⁰⁵ See Judgment of 31 March 1992 in Case C-255/90 P. Burban, the Court of First Instance of 18 September 1995 in Case T-167/94 Nölle, and 9 July 1999 in Case T-231/97 New Europe Consulting).

²⁰⁶ The Treaty on European Union - consolidated version (OJ C83 30/03/2010), Art. 11th

*States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.*²⁰⁷

The right to free movement of citizens and their families within the European Union is one of the main principles on which the Union is founded, and one of the fundamental freedoms of European citizens.

In the beginning of the European Communities, the right to free movement and residence only covered the economically active population, i.e. workers (employees) and self-employed. Gradually the circle of people that can benefit from freedom of movement within the European Community expanded. Based on the Directive 90/364/EHS, 90/365/EEC and 90/366/EEC have acquired the right to reside in another Member State and those living on independent incomes (rent, dividends), seniors and students. The real breakthrough came by the adoption of the Maastricht Treaty, on 7th February 1992, which established the Institute of European Union citizenship. Until then the free movement of persons was technically subject to their economic activity but after the introduction of citizenship, freedom of movement has been guaranteed to every citizen of the Union.

Citizenship of the Union confers on every citizen of the European Union a set of fundamental individual rights to move and reside freely within the territory of any Member States of the European Union. The most important event in this area was the entry into force of the European Parliament and Council Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of any Member States of the 30th April 2004.²⁰⁸

The Directive applies only to EU citizens who move to or reside in a Member State other than that of which they are a national of, and to their family members who accompany or join them. The directive contains 40 articles and is divided into seven chapters:

- 1st Chapter - general provisions,
- 2nd Chapter – right of exit and entry,
- 3rd Chapter – right of residence,
- 4th Chapter – right of permanent residence,
- 5th Chapter – provisions common to the right of residence and the right of permanent residence,
- 6th Chapter – restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health
- 7th Chapter – final provisions.

The relevance of the Directive-lies mainly in that it codifies in one instrument the complex legislative corpus and the rich case-law of the ECJ on the issue and creates a single legal regime within the context of citizenship, facilitates the exercise of the right of residence by simplifying conditions and formalities (e.g. by abolishing the system of residence permits for Union citizens), reinforces the rights of family members (e.g. by extending family reunification rights to registered partners), creates an unconditional

²⁰⁷ The Treaty on the Functioning of the European Union, consolidated version (OJ C83, 30.3 in 2010), p. 57th

²⁰⁸ The official name of this Directive: Directive 2004/38/ec of the European parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L/158, 30.4.2004, p. 77-123).

permanent right of residence after five years of continuous legal residence in the host Member State and increases protection against expulsion of Union citizens and their family members on grounds of public policy, public security and public health.²⁰⁹

Ad b) The right to vote and stand as candidates in European Parliament elections and in elections to municipal bodies in the Member State

In a democratic society is the right to vote one of the basic civil rights of the individual. In the European Union, this right is enshrined in Article 22 TFEU, which provides that every citizen of the Union residing in a Member State which is not a member, has the right to vote and be elected to local authorities, resp. in European Parliament elections in the Member State in which he resides, under the same conditions as nationals of that State.

The purpose of such adjustments is to encourage the application of the principle of equality and non-discrimination between nationals of the Member States and nationals of other Member States and also is a corollary of the right to move and reside freely within the territory of the Member States.

In municipal elections, EU citizens have the right to vote throughout the European Union. Their active and passive voting rights are provided for in Article 22. 1 TFEU, which *“Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.”*

The right analogy is also provided for in Article 40 of the Charter of Fundamental Rights, which states *„Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.”*

Further details of the application of the electoral rights of EU citizens in municipal elections are regulated in Council Directive 94/80/EC of 19 December 1994²¹⁰ laying down detailed arrangements for exercising voting rights of Union citizens in municipal elections in the Member State of which they are nationals.

This Directive provides for equal treatment of citizens of Member States who reside in other Member States, as citizens, and the right to vote in municipal elections by giving such individuals under the same conditions as citizens of that State. The Directive gives only two general conditions under which that right can be limited, to:

- a) Member States may provide that only their own nationals may hold the office of elected head, deputy or member of the governing college of the executive of a basic local government unit if elected to hold office for the duration of his mandate,
- b) where, on 1 January 1996, in a given Member State, the proportion of citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20 % of

²⁰⁹ COMMISSION OF THE EUROPEAN COMMUNITIES. Fifth Report on Citizenship of the Union(1 May 2004 – 30 June 2007), COM (2008) 85 final, p.4.

²¹⁰ The official name of this Directive is as follows:: Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (OJ L 368, 31.12.1994, p. 38-47)

the total number of citizens of the Union residing there who are of voting age, that Member State may, by way of derogation from this Directive.

The possibility of EU citizens to participate in elections to the European Parliament in European law is based on Article 22. 2 TFEU, which “*every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State*” as well as Article 39 of the Charter of Fundamental Rights.²¹¹

The primary law follows of Council Directive 93/109/EC of 6 December 1993²¹² laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

The Directive lays down detailed arrangements under which European Union (EU) citizens residing in a Member State of which they are not nationals may exercise the right to vote and to stand as a candidate in that country. It does not affect the rights of a Member State's own nationals at elections to the European Parliament, whether or not those nationals reside inside the country.

The Directive defines the requirements which must be satisfied by a national of another Member State who wishes to vote or to stand as a candidate in his Member State of residence; such a person must:

- a) be a citizen of the Union,
- b) be resident in the Member State in which he proposes to vote or to stand as a candidate,
- c) satisfy the same conditions as a national of that Member State, who wishes to vote or to stand as a candidate (the principle of equality between domestic and other Union voters.

It is ultimately a matter for each Member State to indicate which persons are its nationals.

Union voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No one may vote more than once or stand as a candidate in more than one Member State.

Free choice of where to vote: a Union voter is to be entered on the electoral roll of his Member State of residence only if he so requests in advance. A voter who opts for the right to vote in his Member State of residence undertakes not to exercise a right to vote in his Member State of origin. In Member States where nationals are required to vote, Union voters who ask to be entered on the electoral roll are subject to the same obligation.

²¹¹ Article 39 of the Charter of Fundamental Rights states that “*Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.*”

²¹² The official name of this Directive is as follows: Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (OJ L 329, 30.12.1993, p. 34-38).

A candidate must not have been deprived of his voting rights in his Member State of residence or his State of origin. When he submits his application to stand as a candidate, a Union national must provide proof supplied by his Member State of origin that he is entitled to stand as a candidate there.

The Member State of residence may if it so wishes refuse to enter voters who are disqualified from voting in their Member State of origin.

In order to have his name entered on the electoral roll, a Union voter shall produce the same documents as a voter who is a national. But Member States may require Union voters to provide additional information in the form of a formal statement.

The legal remedies available to nationals must also be available to Union citizens who are refused entry on the electoral roll or whose application to stand as a candidate is rejected.

A system of exchange of information between Member States is provided for in order to prevent citizens from voting more than once or standing as candidates in more than one Member State.

There are derogations and transitional provisions based on length of residence covering the cases of:

- a) any Member State where more than 20% of the potential electorate consists of resident nationals of other Member States,
- b) Member States which have granted the right to vote for their own national Parliaments to resident nationals of other Member States,
- c) citizens of the Union who already enjoy the right to vote for the European Parliament in their Member State of residence.

If voting is compulsory in the Member State of residence, Community voters who have expressed the wish to do so shall be obliged to vote.²¹³

Ad c) The right of EU citizens to diplomatic and consular protection

EU citizens' right to consular protection is defined in particular in TFEU and the Charter of Fundamental Rights. Under Article 23 TFEU *“Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.”* Under Article 46 of the Charter of Fundamental Rights *“Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State”*.

Both articles show, that the right of EU citizens to consular protection is defined only as a framework and its implementation will require the creation of other standards.

²¹³http://europa.eu/legislation_summaries/justice_freedom_security/citizenship_of_the_union/123025_en.htm (16.6.2010.)

The first documents relating to the elaboration of the right to consular protection of European leaders is a decision of the Member States of 12/19 1995²¹⁴ on the protection of citizens of the European Union by diplomatic and consular representations (95/553/EC). According to Article 1 “Every citizen of the European Union is entitled to the consular protection of any Member State's diplomatic or consular representation if, in the place in which he is located, his own Member State or another State representing it on a permanent basis has no: accessible permanent representation, or accessible Honorary Consul competent for such matters.”

The decision also provides for four basic conditions for citizen's right to consular protection. The first of these is the lack of possibilities to provide consular protection to citizen through the diplomatic or consular authority of his/her own state, i.e. a situation in which a Member State has no permanent diplomatic or consular representation in another country, which are its nationals. The second condition is the existence of the nationality of any EU Member State which the applicant demonstrates by the presentation of his/her passport, identity card or other proof of nationality for providing consular protection for EU citizens. By the decision, “European” consular protection must consist of assistance in the event of death, serious accident or serious illness, pre-trial detention or arrest, and mission support people in distress back to their homeland and help victims of violent crime. In addition to the above five situations in which all EU Member States must provide consular protection, diplomatic missions and consular posts may provide the applicant - a citizen of the EU with assistance within their powers voluntarily, i.e. under any other circumstances. The last subject to “European” consular protection is the principle of non-discrimination, which means that diplomatic and consular missions must provide the required consular protection to the persons seeking aid in the same manner as in the case of nationals of a Member State which they represent. The only exception is a citizen of the Union's request to provide financial assistance or advance or on the expenditure incurred. This is possible only in extreme emergencies or with the consent of the competent authorities of the Member State in which the person seeking to provide consular protection to nationals. The consent may be granted by the Ministry of Foreign Affairs or the nearest diplomatic mission.

To implement the above decision by EU Member States through the EU Council 19th December 1995 an act entitled “Measures implementing protection for EU citizens by diplomatic and consular representations (11107/95)” was adopted in which Member States undertook to take the necessary steps to ensure the issue of measures such as formal instructions for its own diplomatic and consular authorities. Both those decisions came into force in May 2002 (ten years after approval of the Maastricht Treaty) upon the notification of all members of the EU General Secretariat of the Council, the completion of domestic procedures necessary to the decision valid.²¹⁵

In connection with that fact cannot be ignored that under international law²¹⁶ to protect the citizen by the other States subject to obtaining the consent of a third country. Article 23 of TFEU obliges Member States to initiate necessary in this regard the international negotiations. This fact also noted the Commission in its Green Paper on diplomatic and consular protection of Union citizens in third countries in 2007 as a solution

²¹⁴ Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (OJ L 314, 28.12.1995, p. 73–76)

²¹⁵ ROSPUTINSKÝ, P. *Právo občana EÚ na konzulárnu ochranu*, p.7.

²¹⁶ MAZÁK, J., JÁNOŠIKOVÁ, M. *Základy práva Európskej únie.*, p. 84

was proposed to add a special clause of contracts written by the European Union and the Member States and third countries, under which third countries would agree to the fact that Union citizens can help any Member State which is in the country represented.²¹⁷

Ad d) Right to refer to the European Ombudsman

The right of citizens of the Union to address the European Ombudsman and the institutions and advisory bodies of the Union, is guaranteed by Article 24 TFEU, as well as Article 43 of the Charter of Fundamental Rights.²¹⁸ Generally, this right of citizens to be termed the „right to complain to the European public defender of rights.“

The above article 24 TFEU further TFEU Article 228, which is a cornerstone of European operations, refer to the Ombudsman. According to that article the European Ombudsman „shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them.“

Provisions concerning European Ombudsman and the Ombudsman's Office can be found in the Rules of Procedure. These provisions are systematically included in Title IX, entitled „Public Defender of Rights.“ Articles 204 and 206 of the Rules of Procedure contain a procedural issue - the election and removal of the European Ombudsman from office. Article 205. 2 of Rules of Procedure, require the Ombudsman to prepare a report for the European Parliament on cases of maladministration and other annual reports. This article refers to the European Ombudsman's Statute and its implementing regulations. Both these documents are also annexed Rules of Procedure.²¹⁹

On the basis of Article 228. 4 TFEU the European Parliament is authorized to „take the status by means of regulations and general conditions of the Ombudsman's duties.“ The final version of the Statute was adopted by the EP. 94/262 of 9 March 1994.²²⁰ The last revision, which enhances the investigative powers of European Ombudsman, was in June 2008 and entered into force on 31st July 2008.

The European Ombudsman's Statute defines and establishes general rules and conditions for the exercise of its functions.

Ad e) The Citizens Initiative

²¹⁷ Article 43 of the Charter of Fundamental Rights states: „Every citizen of the Union, as well as the natural person who resides, or any legal entity established in a Member State has the right to the European Ombudsman cases of maladministration in the institutions, bodies, offices and agencies Union, with the exception of the Union's exercise of its judicial powers.“

²¹⁸ Article 43 of the Charter of Fundamental Rights states: „Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.“

²¹⁹ Annex No. XI rules of Procedure of the European Parliament - the performance of the public defender of rights.

²²⁰ The official name of this decision is: Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman, adopted by the European Parliament on 9 March 1994 (OJ L 113, 4.5.1994, p. 15), as amended by the 14th March 2002 (OJ L 92, 9.4.2002, p. 13) and 18th June 2008 (OJ L 189, 17.7.2008, p. 25).

The role of the Lisbon Treaty is to strengthen the democratic structure of the European Union. One of the main innovations is the introduction of European citizens' initiative, the European initiative of citizens to be regarded as the first progress at the transnational level, which is, however, in the meaning of the contract, limited to citizens of the Union. It should be stressed that the new European citizens' initiative is not a direct initiative such as those provided for in a number of Member States, which give rise to a binding referendum, but rather an "agenda initiative" calling on the Commission to draw up legislation. It is a minority instrument that simply creates an opportunity to influence the political agenda. The right of legislative initiative remains with the Commission, and any legislative process that may follow will do so in accordance with the appropriate procedures.²²¹

Of course, this instrument needs certain rules and standards. However, as the instrument of direct democracy at the European level are currently in the process of creation, it is necessary that there is enough room to further develop the notion of European citizens' initiative.

Article 11. 4 TEU declares: „*not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.*” This new provision is a significant step forward in the democratic life of the Union. It provides a singular opportunity to bring the Union closer to the citizens and to foster greater cross-border debate about EU policy issues, by bringing citizens from a range of countries together in supporting one specific issue.

The procedures and conditions required for such initiatives are provided in accordance with Article 24. 1 TFEU. The key features of the citizens' initiative are enshrined in the Treaty. In particular the Treaty requires that the signatories of a citizens' initiative should number at least one million and that they should come from a significant number of Member States. The initiative must also be within the framework of the Commission's powers and must concern matters where citizens consider that a legal act of the Union is required in order to implement the Treaties.

However, the Treaty leaves it up to the European Parliament and the Council, acting in

accordance with the ordinary legislative procedure, to set out in a Regulation the procedures and conditions for how the citizens' initiative will function in practice. For this reason, on 31 March 2010 the proposal of the European Parliament and of the citizens' initiative was adopted.

The proposal establishes procedures and conditions for a citizens' initiative and contains 22 articles. Preliminary provisions defining basic concepts such as „*citizens' initiative, and the organiser of the signatories*“ and define requirements for promoters and signatories. Consequently, the proposal lays down requirements for the organizers and signatories to the contract, the conduct of the proposed registration of citizens' initiative as well as the procedures and conditions for collecting declarations of support.

The Treaty states that the signatories of the initiative must come from a “*significant number of Member States*” to ensure that the initiative in expressing a view is

²²¹ EUROPEAN ECONOMIC AND SOCIAL COMMITTEE. Draft opinion SC/032 Download the Lisbon Treaty into practice: Participatory Democracy and the European initiative of citizens (Article 11), p. 7th

widely representative of the Union. It is for this reason that Article 7 of the proposal, sets out the minimum number of Member States to one third, while drawing on other provisions of the contracts under which it is sufficient to ensure representation of interest to the Union to nine, i.e. one third of Member States.²²²

Furthermore, the proposal provides for a decision on the admissibility of the proposed citizens' initiatives, requirements for verification and authentication of the declaration on the promotion, protection of personal data and the final provisions of the Annexes are devoted to reviews and review clause.

European citizens' initiative is an important step forward in the democratic life of the European Union. It provides a unique opportunity to bring the Union closer to citizens and to encourage a wider cross-border discussions on policy, and linking people from different countries to promote a single theme.

As stated above, the key features of a citizens' initiative are contained in the Treaty. The Treaty left it to the European Parliament and the Council to establish the procedures and operating conditions of a citizens' initiative in practice.

1. Consolidated text of the Treaty on European Union and the Treaty on European Union (OJ C 83 of 03.30.2010).
2. Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (OJ L 329, 30.12.1993, p. 34–38)
3. Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (OJ L 368, 31.12.1994, p. 38–47)
4. Decision No 1904/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing for the period 2007 to 2013 the programme Europe for Citizens to promote active European citizenship (OJ L 378, 27.12.2006, p. 32–40)
5. Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (OJ L 314, 28.12.1995, p. 73–76)
6. Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties adopted by Parliament on 9 March 1994 (OJ L 113, 4.5.1994, p. 15) and amended by its decisions of 14 March 2002 (OJ L 92, 9.4.2002, p. 13) and 18 June 2008 (OJ L 189, 17.7.2008, p. 25).
7. Decision of the European Ombudsman adopting implementing provisions adopted on 8 July 2002 and amended by decisions of the Ombudsman of 5 April 2004 and 3 December 2008
8. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and

²²² It is a limit to be used, for example, to start the process of subsidiarity as set out in Article 7. 2 of the Protocol on the application of the principles of subsidiarity and proportionality.

reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) (OJ L 1

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