

Discussion document on dismantling the obstacles to EU citizens' rights
Informal meeting of the Justice and Home Affairs Ministers
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The concept of citizenship of the European Union, introduced by the Treaty of Maastricht in 1992, added a new political dimension to the hitherto primarily economic nature of European integration. Every person holding the nationality of an EU Member State is now also automatically a citizen of the European Union. EU citizenship does not replace national citizenship. Instead, it confers upon all EU citizens an additional set of rights, guaranteed by the EU Treaties, which lie at the heart of their everyday lives. EU citizenship is destined to be the fundamental status of Member States' nationals, enabling those who find themselves in the same situation to enjoy within the scope of the Treaty the same treatment in law irrespective of their nationality. Accordingly, EU citizenship has enhanced individual rights significantly.

The entry into force of the Lisbon Treaty strengthened the notion of EU citizenship and its accompanying rights in several ways. The rights of EU citizens are specifically listed in the Treaty on the Functioning of the European Union (TFEU) and it is made clear that the list is not exhaustive. By virtue of the TFEU, EU citizens have, inter alia, the right to move and reside freely within the territory of the Member States, 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, 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, and 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.

Moreover, the Lisbon Treaty complements these citizenship rights by introducing a new right, the Citizens' Initiative, which enables one million citizens to invite the Commission to bring forward legislative proposals. The citizens' perspective is reaffirmed in the new definition of members of the European Parliament as 'representatives of the Union's citizens' and not simply as 'representatives of the peoples of the States brought together in the Community'.

The rights inherent in EU citizenship are further enshrined in the legally binding Charter of Fundamental Rights of the EU.

According to the Charter's Preamble, the Union 'places the individual at the heart of its activities, by establishing a citizenship of the Union and by creating an area of freedom, security and justice'. The Stockholm Programme, the EU's work programme in the field of Freedom, Security and Justice, and consequently, the Trio Presidency's Programme also reflects this core principle by aiming to create an open and secure Europe serving and protecting its citizens. Accordingly, EU citizens' rights should not be regarded merely within the textual framework of the Treaties, but should be extended, beyond the rights explicitly referred to in the Treaties, to each EU sectoral policy serving EU citizens. On the other hand, it should be noted that enshrining EU citizens' rights in the EU legal acts, either in primary or in secondary law, is not always sufficient in itself to properly serve EU citizens. Although EU citizenship rights are firmly anchored in primary EU law and substantially developed in secondary law, a gap still remains between the applicable legal rules and the reality confronting citizens in their daily lives, particularly in cross-border situations. Placing the EU citizen at the heart of the EU's activities requires us to make Union citizenship a tangible reality. To this end it is also indispensable that citizens' rights should not only exist as abstract legal concepts, but also as rights implemented effectively and advantages accessible for all of the approximately 500 million EU citizens. Those who are taking advantage of Union citizenship by extending aspects of their life beyond national borders, through travel, study, work, marriage, divorce, retirement, buying or inheriting property, voting, receiving medical treatment or just shopping online from companies established in other Member States, should be able to fully enjoy their rights under the Treaties.

In his report 'The citizen and the application of Community law' of 8 June 2008, Alain Lamassoure, Member of the European Parliament, illustrated vividly various administrative hurdles facing Europeans when they seek to exercise their rights. In addition, the European Parliament's report on 'Problems and prospects concerning European citizenship' of 20 March 2009 detailed persistent obstacles to the cross-border enjoyment of rights.

In response to expectations of making EU citizenship more effective in practice, on 27 October 2010 the European Commission published its report on dismantling the obstacles to EU citizens' rights. The Commission's report has broadened the scope of EU citizenship

related problems and focuses much more on the horizontal obstacles to be tackled in the future, while its previous regular reports on EU citizenship did not go beyond a mainly descriptive summary, required by Article 25 TFEU, of the major developments that occurred in the field of EU citizenship in the relevant three-year period. The broad scope of the EU citizenship report 2010 including both the identification of the obstacles to effective EU citizenship rights and the initiatives for tackling these obstacles is intentionally designed by the Commission to overcome the persistent fragmentation of the EU as regards matters of direct interest to citizens and to replace the hitherto ‘organigramme logic’ with a horizontal and result-oriented approach.

In its report of October 2010, which was also accompanied by the traditional progress report under Article 25 TFEU and the evaluation report of the 2009 European Parliament elections, the Commission, based on citizens’ complaints, has identified 25 main obstacles that they may face throughout their lives. According to the report a huge number of EU citizens involved in cross-border situations may encounter obstacles in the enjoyment of their rights in various roles in their lives: either as private individuals (e.g. people who want to marry or get divorced, who became victim of a crime or who have double taxation problems), consumers of goods and services (e.g. who want to buy a product from other EU Member States via the Internet or who need strengthening their passenger rights), residents, students, tourists and professionals (e.g. who face uncertain procedures for recognition of professional qualifications or for getting social security services) or as political actors (e.g. people who want to exercise their right to vote in local or European Parliament elections).

The Commission has defined in its report 25 short- and medium-term initiatives for tackling the obstacles to citizens’ enjoyment of their rights. The majority of actions identified as suitable to dismantle obstacles fall into three main categories: 1) effectively enforcing existing EU citizens’ rights in Member States, 2) making the enjoyment of these rights easier and simpler in practice by eliminating unnecessary complications, 3) raising citizens’ awareness of their rights.

The Commission considers its report to be the beginning of a process for a further identification of obstacles that citizens still face and solutions for them. The Commission intends by its comprehensive report on EU citizenship to launch a debate with other EU institutions, among others with the Council, on how EU citizenship can fulfill its potential in

terms of enhancing Europeans' life chances by delivering concrete benefits that will have a visible impact.

Having regard to the Commission's EU citizenship report and the horizontal, EU citizens centered approach represented by that report, and striving to give the issue of EU citizenship a holistic perspective within the Council as well, the Hungarian Presidency invites the Justice Ministers as ministers having the closest link to tackling the problems of, and obstacles to effective EU citizenship, to discuss the following questions:

- 1) Do you agree with the overall approach taken by the Commission to examine the obstacles citizens face? Do you agree with the assessments made by the Commission on the obstacles to EU citizens' enjoyment of their rights?
- 2) Can you see any other obstacles besides those enumerated in the Commission's report that cause crucial difficulties for EU citizens? If so, what do you think the proper solution can be for dismantling these obstacles?
- 3) How do you think the Council should manage the dossiers relating to EU citizenship? Compared to the other sectoral working parties of the Council, what role should the Justice Ministers and the FREMP working party play in managing the dossiers relating to EU citizens' rights,?

Given its scope, the currently negotiated Regulation on Succession will not affect the legal relations of enterprises and other actors of business life, but it will affect the legal relations of natural persons, i.e. of European citizens. The future Regulation will only represent real 'added value' if it significantly simplifies the exercise of EU citizens' rights in cross-border succession cases.

The present situation in international succession matters is indeed characterized by a high degree of „legal isolation” of Member States. In cross border succession cases involving property in more than one Member State it is often necessary to open succession proceedings separately in different Member States in order to settle the succession case separately for each succession property. This is because in succession matters decisions or other acts issued by courts, authorities or notaries of a Member State are not recognised and enforced in other

Member States. The primary reason is that in the field of succession matters not only the jurisdictional and conflicts of law rules, but also the substantive rules and those governing the settlement of succession cases diverge. The national legal instruments that prove the rights of heirs (or other beneficiaries) to inherit (order transferring an estate, certificate of succession, authentic instruments etc.) are generally incompatible with each other. This necessitates *parallel proceedings* in Member States, which leads to delay, extra financial burdens and administrative difficulties for those who receive a share of the inheritance (heirs, legatees etc.)

The future Regulation will only reach its objective if it eliminates the necessity of parallel legal proceedings and concentrates them in a given Member State (the one which has jurisdiction). In addition, it must guarantee that a decision issued in one Member State is recognised in other Member States as well, and that it has legal effect as regards the property located in other Member States. The administrative requirements to be additionally met by the interested persons (heirs, legatees etc.) according to the law of the Member State where the property is situated should be reduced to a minimum.

The future Regulation should not lose sight of these fundamental objectives, which should guide not only those chapters which regulate *directly* the free circulation of decisions issued in succession cases (decisions, authentic instruments, European Succession Certificate), but also the chapters which concern other important issues of international succession law, namely jurisdiction and conflicts of law. It must be stressed that unification of jurisdictional and conflicts of law rules is not an aim for its own sake but it serves to realise the principle of free circulation.

In the light of the above, which do you think are the key elements of the draft Regulation which require a legal solution that effectively simplifies the assertion of citizens' rights in cross border cases?