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

**UNDER ARTICLE 25 TFEU**

**On progress towards effective EU Citizenship 2011-2013**

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

## UNDER ARTICLE 25 TFEU

### On progress towards effective EU Citizenship 2011-2013

#### 1. INTRODUCTION

In the framework of the European Year of Citizens 2013 and in accordance with Article 25 of the Treaty on the Functioning of the European Union (TFEU), the present report covers major developments in the field of EU citizenship between **1 January 2011 and 31 March 2013**. Following the entry into force of the Lisbon Treaty, it also refers to the European Citizens' Initiative and the prohibition of discrimination on grounds of nationality<sup>1</sup>.

On discrimination on other grounds (Article 19 TFEU), the Commission will, in November 2013, publish a report on the implementation of the Racial Equality Directive<sup>2</sup> and the Employment Equality Directive<sup>3</sup> which will look into discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation in a consistent manner. The Commission will also publish a report on the application of the Directive on equal opportunities and equal treatment of men and women<sup>4</sup>.

The Lisbon Treaty gave full legal effect to the Charter of Fundamental Rights of the European Union, which enshrines EU citizens' rights in its Title V (Articles 39-46). The three Annual Reports on the application of the Charter of Fundamental Rights, adopted in March 2011<sup>5</sup>, April 2012<sup>6</sup> and May 2013<sup>7</sup>, hence also include a record of progress on Union citizens' rights.

#### 2. DEVELOPMENTS IN THE FIELD OF EU CITIZENSHIP RIGHTS

##### 2.1. Recent case-law developments on EU citizenship

In a number of key rulings, the Court of Justice of the European Union has fleshed out its consistent affirmation that "**citizenship of the Union is intended to be the fundamental status of nationals of the Member States**"<sup>8</sup>.

In the *Zambrano*<sup>9</sup> judgment, the Court held that Article 20 TFEU precludes national measures which could deprive Union citizens of the genuine enjoyment of the substance of their rights as Union citizens. Applying this criterion in that particular case, it concluded that an irregular migrant in a Member State whose minor dependent children are nationals of that country must

<sup>1</sup> Articles 18 and 24 TFEU were integrated by the Lisbon Treaty in Part Two of the TFEU "Non-discrimination and Citizenship of the Union".

<sup>2</sup> Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>3</sup> Directive 2000/78/EC establishing a general framework for equal treatment in employment, occupation and vocational training.

<sup>4</sup> Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

<sup>5</sup> COM(2011) 160 - [http://ec.europa.eu/justice/fundamental-rights/files/annual\\_report\\_2010\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/annual_report_2010_en.pdf).

<sup>6</sup> COM(2012) 169 - [http://ec.europa.eu/justice/fundamental-rights/files/charter-brochure-report\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/charter-brochure-report_en.pdf).

<sup>7</sup> COM(2013) 271- [http://ec.europa.eu/justice/fundamental-rights/files/charter\\_report\\_2012\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/charter_report_2012_en.pdf).

<sup>8</sup> See, for instance Case C-184/99 *Grzelczyk*.

<sup>9</sup> Case C-34/09, *Ruiz Zambrano*.

be allowed to reside and work there. The Court explained that a refusal to grant this parent such a right would deprive the children from the genuine enjoyment of the substance of their rights as Union citizens as it would force them to leave the territory of the European Union. The Court further specified that this applies even where the children have never exercised their right to free movement within the EU.

In another case, *Dereci*<sup>10</sup>, the Court highlighted the specific and exceptional nature of the situations in which this criterion can apply. The criterion only applies to situations where the EU citizen would be forced to leave the territory of the Union as a whole (not only the territory of the Member State of which he/she is a national). Moreover, it relates to situations in which a right of residence may not be refused to a third country national who is a family member of a national of a Member State, as the effectiveness of the Union citizenship enjoyed by that national would otherwise be undermined. However, the fact that the Union citizen wishes to reside together with a third-country national family member is not sufficient to accept that he/she would be forced to leave the EU if the family member is not granted a residence right.

The Court further indicated that national authorities or courts should assess in every case whether a refusal to grant a residence right would undermine the right to protection of family life in the light of Article 7 of the Charter of Fundamental Rights in situations covered by Union law and of Article 8 of the European Convention on Human Rights where Union law is not applicable.

More recently, in *O, S*<sup>11</sup>, the Court confirmed that the principles stated in the *Zambrano* judgment apply only in exceptional circumstances, but specified that their application is not confined to situations in which there is a blood relationship, underlining that the relevant factor is the relationship of dependency (legal, financial or emotional).

## 2.2. Acquisition and loss of EU citizenship

According to EU law, every person holding the nationality of a Member State is a citizen of the Union. It is for the Member States to decide who their nationals are and to lay down the conditions for the acquisition and loss of their nationality, having due regard to EU law<sup>12</sup>.

Over the reporting period, the Commission replied to approximately 62 individual queries, 29 European Parliament questions and six petitions on such matters.

The Commission received questions from Members of the European Parliament on situations where Member States decided to grant nationality to groups of people such as those belonging to ethnic minorities in other countries or who deposit certain amounts in a domestic bank. The authors questioned **whether Member States are free to lay down the conditions for the acquisition of their nationality**, notably in the light of the Court of Justice case law that, in the exercise of their competence in this respect, Member States "must have due regard to EU law".

Interpreting this proviso in the *Rottmann Case*<sup>13</sup>, the Court did not challenge the exclusive competence of Member States to determine who may become their national and thus a Union citizen. Rather, it imposed limits on their power to deprive Union citizens of the rights attached to their Union citizenship status. In particular, it affirmed that, in respect of citizens

<sup>10</sup> Case C-256/11, *Dereci and others*.

<sup>11</sup> Joined Cases C-356/11 and C 357/11, *O, S*.

<sup>12</sup> See for instance Case C-369/90 *Micheletti and others*.

<sup>13</sup> Case C-135/08.

of the Union, the exercise of Member States' power to lay down rules for the acquisition and loss of nationality, *in so far as it affects rights conferred and protected by the legal order of the Union*, as is the case with a decision withdrawing naturalisation, is amenable to judicial review carried out in the light of EU law. The situations described in the questions received by the Commission concerned decisions for *granting* the nationality of a Member State, which did not affect rights conferred and protected by the legal order of the Union.

### 2.3. Free movement and residence of EU citizens (Directive 2004/38/EC)

#### 2.3.1. Measures to ensure the correct transposition and application of Directive 2004/38/EC<sup>14</sup>

The right of EU citizens to move and reside freely within the territory of the Member States is one of the pillars of EU integration.

Over the reporting period, the Commission pursued a **rigorous enforcement policy** aimed at ensuring the full and effective transposition of the Directive by all Member States. As a result, the vast majority of Member States amended their laws, or committed themselves to doing so, so as to ensure compliance with the rules on free movement. The Commission is closely monitoring delivery on these commitments and has been working with the Member States concerned to tackle outstanding issues.

In 2011, the Commission took action against twelve Member States<sup>15</sup>. In 2012 - beginning of 2013, it sent reasoned opinions in seven of these twelve cases<sup>16</sup>. As a result, so far, five Member States have amended their legislation or committed themselves to doing so<sup>17</sup>. The main issues raised in the infringement proceedings concern the **rights of entry and residence for family members of Union citizens**, including same-sex spouses or partners<sup>18</sup>, the conditions for issuing visas and residence cards to non-EU family members and the material and procedural safeguards against the expulsion of EU citizens.

The Your Europe web portal<sup>19</sup> informs EU citizens about their rights. A specific section is devoted to free movement rights. The Commission is also publishing an updated version of its guide for EU citizens on freedom to move and live in Europe<sup>20</sup>.

#### 2.3.2. Enquiries and complaints handled

Over the reporting period, 1566 individual queries on free movement and residence issues were submitted to the Commission, of which 581 were registered as formal complaints. The Commission also replied to 147 European Parliament questions and 137 petitions.

In 2011, there were 2 413 enquiries on free movement issues submitted to the Europe Direct Contact Centres and 3 787 in 2012 (representing 3.9 % of EDCC annual volume).

Free movement and residence-related issues are among the top three areas in terms of numbers of SOLVIT enquiries (922 enquiries) and cases (481 cases handled and closed by SOLVIT in the reporting period, 88% of which were solved).

<sup>14</sup> OJ L 158, p 77.

<sup>15</sup> AT, BE, DE, CY, CZ, ES, IT, LT, MT, PL, SE, UK. ([http://europa.eu/rapid/press-release\\_IP-11-981\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-11-981_en.htm?locale=en)).

<sup>16</sup> CZ, LT ([http://europa.eu/rapid/press-release\\_IP-12-75\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-75_en.htm?locale=en)), UK ([http://europa.eu/rapid/press-release\\_IP-12-417\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-417_en.htm?locale=en)) AT, DE and SE ([http://europa.eu/rapid/press-release\\_IP-12-646\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-646_en.htm?locale=en)) and BE ([http://europa.eu/rapid/press-release\\_MEMO-13-122\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-122_en.htm)).

<sup>17</sup> MT amended its legislation. ES, IT, PL and SE committed themselves to doing so by spring 2013.

<sup>18</sup> See also the Report on the application of the Charter of Fundamental Rights, COM(2013) 271.

<sup>19</sup> <http://ec.europa.eu/youreurope/index.htm>.

<sup>20</sup> [http://ec.europa.eu/justice/citizen/files/guide\\_free\\_movement\\_en.pdf](http://ec.europa.eu/justice/citizen/files/guide_free_movement_en.pdf).

### 2.3.3. *Examples of issues addressed*

National authorities have the right to expel EU citizens from their territory only under certain strict material and procedural safeguards established by EU law. To ensure legal certainty for EU citizens, it is essential that these safeguards are fully and correctly transposed by all Member States.

In 2010, the French authorities issued the occupants of unauthorised camps, mostly Romanian and Bulgarian **Roma**, with expulsion orders and orders to leave the French territory. The Commission conducted a dialogue with the French authorities which led to the full incorporation in the French legislation of the safeguards established by EU law. The new legislation entered into force in June 2011.

Denmark adopted new expulsion rules which entered into force in July 2011 and also applied to EU citizens, raising serious concerns about their compatibility with EU free movement rules. Following the Commission's intervention and contacts with the Danish government, the **Aliens Act** was amended in June 2012.

These examples show that dialogue with Member States can be an effective means to solve issues to the benefit of EU citizens.

Another example of the Commission's action to ensure EU citizens' rights to non-discrimination and dismantle obstacles to free movement are the cases relating to the **registration of foreign double names**. Following the Commission's action in 2010, Sweden amended its legislation in 2012 to allow for the registration of foreign double surnames for Swedish nationals. Also, the Commission took Belgium to court to enforce this same right for children born in Belgium of one Belgian parent and one parent from another Member State.

### 2.3.4. *Future priorities*

Following its action to ensure transposition, the Commission will **focus on the application of the EU free movement rules on the ground**. It is carrying out two studies on the application of Directive 2004/38/EC. The first, launched at the end of 2012, will examine how the right to free movement and residence is affected by formalities and procedures relating to the issuing of residence documents. The second, launched in early 2013, will evaluate the situation and the impact of mobility of EU citizens at local level.

The results will feed into further actions as announced in the 2013 EU Citizenship Report, such as simplifying formalities for EU citizens and promoting the efficient handling of free movement cases at local level.

Further, full enforcement of the EU rules on free movement remains a priority for the Commission. A report on the application of these rules will be produced once this enforcement effort and the subsequent overall assessment of the impact of the free movement policy have been completed.

The Commission continues to call on Member States to share information and best practice, including on fighting abuse and fraud in relation to free movement.

## 2.4. **Electoral rights**

EU citizens living in a Member State other than that of which they are nationals have the right to participate (as voters and candidates) in municipal and European Parliament elections in that country under the same conditions as its nationals.

During the reporting period, the Commission replied to approximately 100 individual queries, 50 European Parliament questions and 9 petitions on EU citizens' electoral rights.

In five instances, the Commission pursued dialogues with Member States on issues regarding the transposition of Directive 94/80/EC (right of EU citizens to participate in municipal elections) and in ten instances regarding the transposition of Directive 93/109/EC (right of EU citizens to participate in European elections). As a result, the Member States amended their legislation or announced amendments to comply with EU law<sup>21</sup>. The Commission is finalising its assessment and will closely monitor delivery on their commitments and the full compliance of national laws.

In addition, the Commission contacted eleven Member States that did not allow non-national EU citizens to found or become members of political parties, which is contrary to Article 22 TFEU. In two cases, the situation was clarified, in one case national legislation was adopted in line with EU law and in another case amendments were announced. Action was taken against the seven remaining Member States<sup>22</sup>.

In its **report on municipal elections**<sup>23</sup> issued on 9 March 2012, the Commission assessed how EU citizens' electoral rights are implemented at local level and suggested that the Member States should adopt targeted measures to stimulate citizens' participation and increase turnout.

On 12 March 2013, the Commission presented a **Communication on "Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct" and a Recommendation "on enhancing the democratic and efficient conduct of the elections to the European Parliament"**, aimed at strengthening the European dimension of the European elections. By increasing efficiency and reducing administrative burden, the Recommendation will also improve the functioning of the mechanism to prevent double voting provided for by Directive 93/109/EC.

On 20 December 2012, the Council adopted **Directive 2013/1/EU**<sup>24</sup>, which makes it easier for EU citizens to stand as candidates in the 2014 European Parliament elections, as they will only need to produce an identity document and a declaration that they fulfil the eligibility conditions.

Finally, as announced in the 2010 EU Citizenship Report, the Commission launched a debate with those Member States who deprive their nationals of the right to participate in national elections when they exercise their free movement and residence rights and leave their country of origin (disenfranchisement). Following a focused debate that took place in the joint hearing organised with the European Parliament on EU citizenship on 19 February 2013, the Commission is announcing concrete actions in its 2013 EU Citizenship Report.

## 2.5. Consular protection

EU citizens travelling to or living in a non-EU country where their Member State is not represented have the right to enjoy the protection of the diplomatic and consular authorities of any Member State under the same conditions as the nationals of that State.

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<sup>21</sup> CY, PL and RO adopted new legislation; CZ, SI and SK announced amendments of their legislation in time for the 2014 EP elections. EE and LV provided satisfactory explanations, while BG, HU, LT and MT recently adopted legislation which is under consideration.

<sup>22</sup> CZ, ES, GR, LT, LV, PL and SK.

<sup>23</sup> Report on the application of Directive 94/80/EC on 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, COM(2012) 99.

<sup>24</sup> Council Directive 2013/1/EU amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to 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 26, p. 28).

On 23 March 2011, as a follow-up to the 2010 EU Citizenship Report, the Commission presented a Communication on *Consular protection for EU citizens in third countries: State of play and way forward*<sup>25</sup> and launched a dedicated website<sup>26</sup>.

On 14 December 2011, the Commission adopted a proposal for a **Directive on consular protection for Union citizens abroad**, which aims to establish clear and legally binding rules on cooperation and coordination between Member States' consular authorities to ensure that unrepresented EU citizens have non-discriminatory access to protection from other Member States' diplomatic or consular representations in a third country.

## **2.6. The right to petition the European Parliament**

EU citizens have the right to petition the European Parliament on Union matters which affect them directly. In 2012, the European Parliament's Committee on Petitions received 1964 submissions, as compared with 2091 in 2011 and 1746 in 2010.

Between January and September 2012, 1010 petitions were declared admissible out of a total 1400 petitions registered (72%), as compared with 998 petitions in 2011 (71%) and 989 in 2010 (60%). The admissible petitions were either referred to an institution or body or closed with a direct reply to the petitioner.

As in previous years, the most common subject matters for petitions in 2012 were fundamental rights/justice, the environment and the internal market.

## **2.7. The right to complain to the European Ombudsman**

EU citizens have the right to complain to the European Ombudsman about maladministration in the activities of the EU institutions, bodies, offices and agencies, with the exception of the Court of Justice acting in its judicial role.

Over the reporting period, the Ombudsman registered around 2500 complaints a year. The number of complaints outside his mandate fell from 1983 in 2010 and 1846 in 2011 to 1720 complaints in 2012. This decrease is mainly thanks to the Ombudsman's interactive guide which directs complainants to the competent authority. In 2012, 19 281 citizens used the guide to obtain advice.

The number of opened inquiries based on complaints increased from 323 inquiries in 2010 to 450 in 2012. This increase stems from the Ombudsman's success in reaching out to potential complainants.

The most common focus of enquiries is lack of transparency in the EU administration. In 2012, 21.5% of cases were transparency-related, as compared with 33% in 2010 and 25% in 2011. In 20% of all inquiries closed in 2012 (80 cases), the Ombudsman was able to secure a positive outcome.

## **2.8. European Citizens' Initiative**

Under the European Citizens' Initiative, the Commission can be invited to propose legislation in areas in which it has the powers to do so if the initiative has the support of one million citizens.

**Regulation (EU) No 211/2011**, which applies since 1 April 2012, sets out the rules and procedures for such initiatives.

Between April 2012 and February 2013, the Commission received 27 requests to register proposed initiatives. Issues range from unconditional basic income and high-quality education

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<sup>25</sup> COM(2011) 149.

<sup>26</sup> <http://ec.europa.eu/consularprotection>.

for all to media pluralism and voting rights. A first initiative has, according to its organisers, gathered the required number of statements of support<sup>27</sup>, but has not yet been formally submitted to the Commission.

In 2011, the Commission established a group of Member States' experts to exchange views, know-how and best practice on the tasks to be carried out by the Member States in the citizens' initiative procedure.

## **2.9. Statistical data on EU citizens who have exercised their right to free movement and residence**

As of 1 January 2012, there were approximately 13.6 million EU citizens residing (for at least 12 months) in a Member State of which they were not nationals. There are however many more EU citizens exercising their right to free movement and residence. In 2011 over 180 million trips were made for private reasons in the EU and almost 30 million for business reasons.

## **3. DEVELOPMENTS AS REGARDS THE PRINCIPLE OF NON-DISCRIMINATION ON GROUNDS OF NATIONALITY**

Article 18 TFEU and Article 21(2) of the Charter of Fundamental Rights prohibit discrimination on grounds of nationality within the scope of application of the Treaties without prejudice to special provisions contained therein.

Given that this principle applies with regard to any matter falling under the material scope of EU law, upholding this principle is an integral part of the Commission's role in ensuring the correct application of EU law in the various policy areas, as illustrated by some indicative examples below from the reporting period.

In a series of actions brought against six Member States (Austria, Belgium, France, Germany, Greece and Luxembourg), the Commission contested national provisions reserving **access to the notary profession** to nationals of the Member State concerned. In its judgments of 24 May 2011, the Court of Justice agreed that such provisions were discriminatory on grounds of nationality and thus in breach of the Treaty<sup>28</sup>.

In 2011, in another example of enforcement action, the Commission took Austria to court because of a national rule granting **reduced fares on public transport** only to students whose parents were in receipt of Austrian family allowances. In its judgment of 4 October 2012, the Court supported the Commission's position, upholding the principle that EU students studying elsewhere in the EU have the same right to some benefits as local students<sup>29</sup>.

In 2012, the Commission took action on problems encountered by non-Maltese EU citizens residing in Malta in accessing **reduced water and electricity tariffs** under the same conditions as those available to Maltese citizens.

The Commission also took targeted policy action in areas where specific problems relating to discrimination on grounds of nationality were identified.

A number of complaints and calls for legal clarity from stakeholders pointed to the existence of questionable nationality restrictions on access to sporting activities and/or sports

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<sup>27</sup> [http://europa.eu/rapid/press-release\\_IP-13-107\\_en.htm](http://europa.eu/rapid/press-release_IP-13-107_en.htm).

<sup>28</sup> Cases C-53/08, C-47/08, C-50/08, C-54/08, C-61/08 and C-51/08.

<sup>29</sup> Case C-75/11.

competitions in some Member States. To address these, the Commission adopted a [Communication](#)<sup>30</sup> in January 2011 on the development of the European Dimension in Sports that provides guidance to Member States on how to ensure practices that do not discriminate on grounds of nationality **on access to sporting activities and/or sports competitions**.

In December 2011, the Commission provided guidance to Member States on how to ensure that **cross-border inheritance tax** rules do not discriminate on grounds of nationality<sup>31</sup>. This action was followed up through a horizontal enforcement exercise tackling national inheritance tax rules that were contrary to the EU Treaties.

At the end of 2012, the Commission launched a study in order to carry out a thorough assessment of national direct tax legislation to determine whether they create unfair disadvantages for workers and persons that move to another Member State. This initiative follows a previous one launched in 2010 to scrutinise Member States' direct tax legislation to ensure that they do not discriminate against cross-border workers. On this basis, the Commission is taking the appropriate action and will follow the same approach regarding the above mentioned 2012 study.

In May 2012, the Commission issued guidelines to Member States<sup>32</sup> for non-discriminatory **vignette systems for passenger cars and motorcycles**.

In June 2012, as part of its efforts to boost growth through better implementation of the Services Directive (Directive 2006/123/EC), the Commission announced<sup>33</sup> measures to ensure proper enforcement of the principle of non-discrimination based on the nationality **of recipients of services**, also issuing specific guidance to Member States on the application of this principle<sup>34</sup>.

Acknowledging that **access to payment accounts and other banking services** has become essential for citizens' participation in economic and social life, and as announced in the [Single Market Act II](#)<sup>35</sup> of October 2012, the Commission is adopting on the same day as that of the present report an initiative aimed *inter alia* at overcoming nationality discrimination relating to such accounts and banking services<sup>36</sup>.

At the end of 2012, the Commission launched a study<sup>37</sup> to evaluate how the principle of non-discrimination on the grounds of nationality is implemented in national laws in the area of **access to higher education, including financial aid**.

Finally, on 26 April 2013, the Commission proposed a **Directive** facilitating the effective exercise of the right to free movement of workers in the EU<sup>38</sup>, which aims, *inter alia*, to prevent discrimination on the basis of nationality of **mobile EU workers**.

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<sup>30</sup> SEC(2011) 66/2.

<sup>31</sup> COM(2011) 864.

<sup>32</sup> COM(2012) 199.

<sup>33</sup> COM(2012) 261.

<sup>34</sup> SWD(2012) 146.

<sup>35</sup> COM(2012) 573.

<sup>36</sup> Proposal for a Directive of the European Parliament and the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, COM (2013)266.

<sup>37</sup> 'Evaluation of EU rules on free movement of EU citizens and their family members and their practical implementation'.

<sup>38</sup> Proposal for a Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, COM(2013) 236.

#### **4. CONCLUSION**

This report outlines the main developments and actions at EU level on EU citizenship since 2011. It complements and accompanies the 2013 EU Citizenship Report.