

## Citizenship of the European Union

Willem Maas

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### Summary and Keywords

Citizenship is usually conceptualized as a unitary and exclusive relationship between an individual and a sovereign state; yet the European Union (EU) has developed the most advanced form of contemporary supranational citizenship. Citizenship of the European Union guarantees EU citizens and most members of their families the right to move, live, and work across the territory of the EU. It also guarantees the right to vote in local and European elections in the member state of residence, the right to consular protection outside the EU when the member state of nationality is not represented, the right to access documents or petition Parliament or the Ombudsman in any of the official languages, and the right to be treated free from nationality-based discrimination. Though on the political agenda since the postwar origins of European integration, EU citizenship was not formalized into EU law until the Maastricht Treaty. Since then, the Court of Justice of the European Union (CJEU) has declared that “EU Citizenship is destined to be the fundamental status of nationals of the Member States” and there are ongoing discussions about the relationship between EU and member state citizenship. In terms of identity, increasing numbers of Europeans see themselves as citizens of the EU, and questions of citizenship are at the heart of debates about the nature of European integration.

Keywords: citizenship, nationality, free movement, discrimination, political rights, migration, identity, governance, European Union politics

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## Introduction: Origins and Evolution

The idea of a common European citizenship has many precursors, but after World War II most European political leaders supported creating a supranational community in which individual citizens shared a common status. Thus, Winston Churchill in 1948 called for “a European group which could give a sense of enlarged patriotism and common citizenship” and hoped “to see a Europe where men of every country will think as much of being a European as of belonging to their native land” (cited in Maas, 2017B), and the Hague Congress proposed direct access for citizens to a European court guaranteeing their rights under a common charter, and also called for “a European passport, to supersede national passports and to bear the title ‘European’ for use by the owner when travelling

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to other continents” (Maas, 2014, p. 173). Hendrik Brugmans, co-founder and first president of the Union of European Federalists, later Rector of the College of Europe, saw the need to “organize a European political consciousness, in which alone federal democracy can work. This European public opinion will not be the sum of individual national public opinions, it will be something *sui generis*, an occurrence quite new in history, the discovery of common citizenship of Europeans as such” (cited in Maas, 2017B, p. 88).

The 1951 European Coal and Steel Community (ECSC) treaty provided the first free movement rights for coal and steel workers, provisions that were included at the insistence of the Italian delegation (Maas, 2005). Because extending European rights to individuals constrains member states to respect those rights, states might prefer bilateral or multilateral agreements worked out through intergovernmental bargains; thus, European Commissioner Étienne Davignon is correct in his 1979 assessment that “the status of ‘Community citizen’ [was] officially recognized from the moment when the Treaties granted rights to individuals and the opportunity of enforcing them by recourse to a national or Community court” (cited in Maas, 2007, p. 4). Despite the ECSC Treaty’s guarantee of free movement rights for workers, however, some member states dawdled in implementing those rights. Political leaders in states such as Italy so opposed these delays that the Common Assembly (the precursor of the European Parliament) included free movement in the proposals for what would become the Treaty of Rome; free movement was the sole policy issue to appear in the proposals, which otherwise concerned only institutional reforms. The Common Assembly proposed that the High Authority (the precursor of the Commission) should take over from the member states the responsibility to establish common definitions of worker qualifications, propose immigration rules, insure that social security arrangements did not inhibit worker mobility, and address disparities between labor supply and demand (discussed in Maas, 2007, § 1.1).

Free movement for workers fit with the belief of Jean Monnet, at the time president of the High Authority, that Europe’s circumstances required “that we unite Europeans and that we do not keep them separated. We are not joining states, we are unifying men.” Consistent with such sentiments, the Treaty of Rome extended free movement rights to all Community workers except those employed in the public service. Workers gained the right to move freely within Community territory to accept employment, to reside in any member state to work, and to continue residing there after having been employed. Though member state governments could limit mobility rights based on public policy, health, or security concerns, the Treaty of Rome empowered the Commission to make proposals to achieve free movement for workers during a transition period scheduled to end by January 1, 1970—a key difference from the ECSC provisions which had left the member states themselves responsible for drafting and implementing free movement. Helped by the propitious economic climate (unemployment decreased dramatically throughout the 1960s and some member states were starting to look outside the Community for more workers), full implementation of free movement rights for Community workers was achieved by 1968, ahead of schedule (see Maas, 2007, §§ 1.2, 1.3).

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Regulation 1612/68 states: “Any national of a Member State, shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State [. . . and] with the same priority as nationals of that State.” The accompanying Directive (68/360) stipulates that member states would “abolish restrictions on the movement and residence of nationals of [other member] States and of members of their families.” Many observers saw free movement as a new form of citizenship, and in 1961, Commissioner Lionello Levi Sandri had presented it as “the first aspect of a European citizenship.” Commission president Walter Hallstein similarly called free movement one of “the most spectacular points in the programme which is to lead to the integration of Europe” and wondered whether it would “point to the beginning of a common European ‘citizenship,’”—echoing Levi Sandri’s assertion that free movement of persons “represents something more important and more exacting than the free movement of a factor of production. It represents rather an incipient form—still embryonic and imperfect—of European citizenship.” By the end of the 1960s, the idea of a common European citizenship had thus been firmly entrenched in Europe’s political imagination.

The Community’s first enlargement occurred on January 1, 1973, as the six founding member states were joined by Denmark, Ireland, and the United Kingdom. At the first joint summit with the government leaders of the new member states, held in Paris in October 1972, the Belgian and Italian Prime Ministers suggested granting all Community citizens the right to vote and run for office in local elections in their place of residence, while German Chancellor Willy Brandt suggested putting “social policy into a European perspective” so that “our citizens will find it easier to identify themselves with the Community.” Besides their common promotion of political rights in local elections, Belgian Prime Minister Gaston Eyskens called for “practical steps to encourage the movement of youngsters within the Community” by recognizing their academic credentials throughout the Community, and Italian Prime Minister Giulio Andreotti advocated establishing “a European citizenship, which would be in addition to the citizenship which the inhabitants of our countries now possess” (quoted in Maas, 2007, p. 31).

At the 1973 Copenhagen European Council, the government leaders of the nine member states of the newly expanded Community adopted a report on European identity which, they argued, would evolve as a result of the “political will to succeed in the construction of a United Europe” (this section draws on Maas, 2007, § 2.1). One year later, at the 1974 Paris European Council, the government leaders resolved both to “study the conditions and the timing under which the citizens of the nine Member States could be given special rights as members of the Community” and to consider “establishing a passport union,” meaning a “stage-by-stage harmonization of legislation affecting aliens” (a common immigration policy) and “abolition of passport control within the Community,” with Italy pushing the question of “under what conditions and according to what timetable European citizenship could be granted to the citizens of the nine Member States.” The government

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leaders assigned Belgian Prime Minister Leo Tindemans the task of studying these proposals.

As Tindemans was working, the Commission presented a report entitled “Towards European Citizenship,” which examined the idea of a passport union and the conditions under which member states could grant the right to vote and eligibility for public office to citizens of other member states. The Commission presented these rights as “the logical goal of the principle of national treatment and integration into the host country.” The rest of the report examined the design and timing of political rights, concluding that equal treatment for European citizens in terms of economic and social rights was politically acceptable because it had “long been a subject for frequent negotiation between States,” but that public opinion might not support “equal treatment for foreigners in the political field. This is a new idea and the public will have to be given an opportunity to get used to it.” The Commission emphasized that European citizenship implied that citizens of any member state should automatically be treated in another member state as if they were citizens of that state. Though member states could consider facilitating naturalization, simply exchanging nationality seemed “less promising than the idea of equality with the nationals of the host State,” because the emphasis should remain on residence rather than nationality. The Commission argued that eligibility for election at national level and access to high political office could not be immediately introduced, though “complete assimilation with nationals as regards political rights” was desirable in the long term.

The Tindemans report, released at the end of December 1975, was more cautious than the Commission report’s plans for completely integrating mobile European citizens into their host countries. The chapter on a “People’s Europe” mentioned the need for common European rights, particularly where such rights “can no longer be guaranteed solely by individual states.” Furthermore, the report noted that, regarding “movement of persons, measures leading to uniformity of passports and later to a passport union are currently under discussion” and that the Community should not only facilitate access to health care across Europe and speed up the mutual recognition of credentials but actively work to eliminate border controls on “persons moving between member countries, as a corollary of passport union.”

## Citizenship in the Treaties

The Community’s first enlargement, to the United Kingdom, Ireland, and Denmark, slowed down the process of reaching agreement about a common European citizenship due to opposition from the United Kingdom and Denmark, but the addition of Greece in 1981 and Spain and Portugal in 1986 reinvigorated the process. In 1984, the European Parliament under the leadership of Altiero Spinelli proposed a Draft Treaty establishing the European Union (DTEU), which specified that citizens of the member states shall ipso facto be citizens of the Union. Citizenship of the Union shall be dependent upon citizenship of a member state; it may not be independently acquired or forfeited. Citizens of the Union shall take part in the political life of the Union in the forms laid down by the Treaty,

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enjoy the rights granted to them by the legal system of the Union and be subject to its laws (DTEU Article 3).

These proposals were not included in the 1985 Single European Act (SEA), but the SEA did achieve more powers for the Parliament through the cooperation procedure. The new procedure helps explain why the member states could afford to ignore Parliament's citizenship proposals in the DTEU but largely accepted them in the discussions preceding Maastricht, helped by the 1986 accession of Spain and Portugal.

In the context of the end of the Cold War, the reunification of Germany, and discussions about significant enlargement, questions of citizenship and free movement played a significant role in the negotiations preceding the Maastricht Treaty, which finally achieved what many had long advocated (Bierbach, 2017; Maas, 2007, ch. 3). The Maastricht Treaty declared: "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union." Amending the Treaty of Rome, the Maastricht Treaty granted all EU citizens four sets of rights: free movement rights, political rights, the right to common diplomatic and consular protection abroad, and the right to petition Parliament and appeal to the Ombudsman. First, Maastricht consolidated and expanded free movement by decoupling it from employment status and giving it direct effect, meaning that the right to move and to reside anywhere within EU territory became an individual right for all EU citizens, in contrast with the partial provisions previously in place. Second, all European citizens gained the right to vote and to stand as candidates in European Parliament and local elections in their state of residence, under the same conditions as citizens of that state. Third, the right to consular and diplomatic protection by the foreign service of other member states was an innovation in international law that the member states expected would "strengthen the idea of European solidarity as perceived by the citizens in question" (Maas, 2007, p. 51). Finally, the right to petition the European Parliament enhanced democratic legitimacy by creating a direct political link between the Parliament and EU citizens, and the right to appeal to the Ombudsman represents a direct and legally binding relationship between individual citizens and EU institutions (Maas, 2007, p. 52).

Though they have since become more favored (Gerhards, Lengfeld, & Schubert, 2015), in many member states there was extensive popular opposition to Maastricht's citizenship provisions, particularly the political rights; this opposition helps explain the difficult politics of ratification within many member states, including Denmark and France. Addressing such concerns, the European Council meeting in Edinburgh in December 1992 concluded that Maastricht's citizenship provisions "give nationals of the Member States additional rights and protection," that they "do not in any way take the place of national citizenship," and that the "question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned" (discussed in Maas, 2007, § 3.3). Further clarifying this position, and with the governments of the United Kingdom and Denmark blocking the wider conception of citizenship rights supported by the other member states, the Treaty of Amsterdam added a

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clause to the citizenship provisions: “Citizenship of the Union shall complement and not replace national citizenship” (discussed in Maas, 2007, § 4.2).

The Nice Treaty extended qualified majority voting to free movement. Provisions on passports, identity cards, residence permits, social security, and social protection were exempted from qualified majority voting and would continue to require unanimity. But the change prompted the Commission to draft legislation extending the rights of Europeans to move freely which, after extensive negotiations, the member states adopted in 2004 as the Citizens’ Rights Directive (2004/38/EC). The Directive affirms that “Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence,” and that it was thus necessary to revise the existing legislation that dealt separately with workers, the self-employed, and students and other inactive persons “in order to simplify and strengthen the right of free movement and residence of all Union citizens.” It furthermore asserts that guaranteeing “permanent residence by Union citizens who have chosen to settle long term in the host Member State would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union.” Employed and self-employed persons and their families acquire rights to social assistance, but host states retain discretion to grant such assistance to students and people not in work until they reside in the host state for five years, when they acquire permanent residence. The Directive thus codifies two CJEU decisions: one concerning student maintenance grants and another that EU citizens (and members of their families, even if they are third-country nationals) who do not have residence rights as workers still have such rights through EU citizenship (Maas, 2007, §§ 4.3, 4.4).

The first comprehensive draft of the 2003 Constitutional Treaty specified that each EU citizen “enjoys dual citizenship, national citizenship and European citizenship; and is free to use either, as he or she chooses; with the rights and duties attaching to each,” but this was dropped in subsequent drafts because of the objections of some of the larger member states (Maas, 2007, p. 85). The Constitutional Treaty was not passed (following defeats in referendums in France and the Netherlands), but the Lisbon Treaty added a new formulation which specifies that “Citizenship of the Union shall be additional to national citizenship,” thereby replacing the Amsterdam Treaty’s “complement and not replace” phrasing.

## Scope and Impact of EU Citizenship

The relatively brief treaty provisions on EU citizenship have generated extensive jurisprudence. Since 2001, the CJEU has emphasized repeatedly that “Union citizenship is destined to be the fundamental status of nationals of the Member States” (*Grzelczyk*, C-184/99), more fundamental than member state citizenship. The Court has used “European citizenship to stretch, and gradually vest in constitutional garb, pre-existing free movement rights for economic actors” (Strumia, 2017, p. 675). More than anything else, free movement of persons epitomizes the EU (Recchi, 2015), though some legal scholars

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see the legal basis of EU citizenship's free movement of persons provisions as continuing to be tied to legal protections for the free movement of goods (Tryfonidou, 2016). Starting from an early skepticism in the years after Maastricht, most scholars now agree that shared citizenship is a significant development in European integration (Guild, Gortázar, & Kostakopoulou, 2014; Olsen, 2012; Schmidt, 2014; Wiener, 1998).

Meanwhile, continuing developments in EU citizenship jurisprudence generally share the view that, in the long run, "only seamless protection of fundamental rights under EU law in all areas of exclusive or shared EU competence matches the concept of EU citizenship" (Advocate General Sharpston), meaning that the important question becomes, "What precisely is the scope of EU competence?" This is important because rights, laws, and even citizenship always remain politically contested, meaning that the expansion of EU citizenship's rights is reversible (Maas, 2007, § 6.1). Indeed, comparatively, the process of establishing rights is not unidirectional, as rights can be and often are reduced, repealed, or revoked.

The development of jurisprudence based on EU citizenship mirrors the significant changes in the ways in which EU officials have represented EU citizenship, from early grounding in economics through the idea of a people's Europe to a Europe of rights (Pukallus, 2016). The reports on EU citizenship regularly issued by the Commission emphasize that "EU citizenship and the rights it confers lie at the heart of the European Union, and are highly valued by Europeans" (2017 report) and report on progress on implementing EU citizenship.

The Commission reports also focus on the progress in feelings of European citizenship, which show a steady trend upward. In the Spring 2018 Eurobarometer survey, for example, 70% of respondents across the EU felt that they were citizens of the EU, the highest ever recorded (the same as Autumn 2017, and an increase from 64% in Autumn 2015), with respondents in the United Kingdom having among the lowest such feeling, meaning that Brexit shifted the average feeling of European citizenship upward. There was also a strong generational difference; for example, 70% of U.K. respondents ages 15-24 felt they were citizens of the EU, compared with only 44% of those age 55 and over.

EU citizenship's impact remains in question in cases of clear discrimination, such as actions by some member states to deport Roma who are EU citizens (Gehring, 2013; Parker & López Catalán, 2014), which earn rebukes from European authorities but no sanctions. Member state authorities also continue to discriminate against poor or otherwise disadvantaged Europeans who may need to access social benefits. Jurisprudence has incrementally broadened opportunities for EU citizens to claim social benefits while living in another member state, but legal uncertainty and administrative barriers in practice restrict access (Blauberger & Schmidt, 2014).

Member state governments seeking to restrict access to social benefits to insiders while excluding outsiders can be compared to the other governments which act in similar ways, and restricting benefits to insiders enjoys democratic legitimacy (Maas, 2017A).

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The 2004 and 2007 enlargements, in particular, led to notable increases in intra-EU migration, and the economic downturn and austerity policies exacerbated by the 2008 financial crisis caused widespread concern about alleged adverse impacts of immigration on the labor markets and welfare states of the EU15 countries (Ruhs & Palme, 2018). The iconic figure of the “Polish plumber” symbolizes such concerns: the free movement of EU citizens from Poland and other countries which joined the EU in 2004 and 2007 into western EU member states such as France, Germany, and the United Kingdom raised worries and may have contributed to the rise of Euroskeptic parties in the destination states, as well as contributing to the result of the 2016 Brexit referendum in the United Kingdom – though successive EU-wide opinion surveys show that ever-increasing numbers of Europeans identify with Europe (Maas, 2020A).

Arguably, devising pan-European forms of social assistance for people moving between member states is necessary to sustain European integration. Programs such as a European unemployment insurance program financed by central EU funds would reassure publics concerned about actual or potential internal European migration, in ways comparable to how centrally funded social assistance programs blunt similar worries in federal states (Maas, 2017A).

## Relationship between EU and Member State Citizenship

EU citizenship is the most advanced form of supranational citizenship in existence: shared supranational rights within the African Union, Mercosur or Unasur, ASEAN (Association of Southeast Asian Nations), or similar arrangements elsewhere do not have nearly the same degree of political or institutional development as EU citizenship. Yet EU citizenship remains derivative of member state citizenship: the only way to acquire EU citizenship is by becoming a citizen of a member state (Maas, 2017C).

Member states have always asserted their monopoly on defining who is a citizen for the purposes of EU law (Maas, 2016). The European Court of Justice ruling in July 1992 that “it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality” (Case C-369/90, *Micheletti*) suggested that member states would need to take EU law into account when making decisions about how individuals acquire or lose citizenship (Maas, 2016). The European Parliament had resolved in November 1991 that the EU could “establish certain uniform conditions governing the acquisition or loss of the citizenship of the Member States, by virtue of the procedures laid down for the revision of the Treaty,” but at the Edinburgh Summit following the Maastricht Treaty, the member states declared that “the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the nationality law of the Member State concerned” (discussed in Maas, 2007, p. 53, 2016).

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The growth of investor citizenship schemes (Džankić, 2019; Parker, 2017), in which a state offers legal residence (leading to citizenship after some time) or even citizenship in return for an investment, has raised concerns about the commodification of EU citizenship. This was most evident in the case of Malta, which offered Maltese citizenship (and thus the rights of EU citizenship, including the right to live and work elsewhere in the EU) in return for a donation to Malta.<sup>1</sup> The European Parliament promptly resolved that “outright sale of EU citizenship undermines the mutual trust upon which the Union is built,” leading Malta to amend its program, and the Commission to conclude that “naturalisation decisions taken by one Member State are not neutral with regard to other Member States and to the EU as a whole” (discussed in Maas, 2016). Investor citizenship programs are not the only form of member state naturalization and denaturalization policies which affect the other member states.

Most notably, the 2016 Brexit referendum in the United Kingdom reopened many issues about the status of EU citizenship as well as various post-Brexit scenarios for citizenship, both in the EU and the United Kingdom (Huber, 2019; Kostakopoulou, 2018; Mindus, 2017). In the Good Friday Agreement of 1998, the governments of the United Kingdom and Ireland had recognized “the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland,” leading to worries that Brexit would annul the settlement (Maas, 2020B). More generally, there are ongoing debates about whether EU citizenship can or should be disentangled from member state citizenship (Orgad & Lepoutre, 2019).

## Conclusion

Citizenship of the European Union has profoundly altered the meaning of the EU for its citizens by entrenching direct relationships between individual citizens and EU authorities and institutions in ways that echo the development of citizenship in states. Though the idea of a common European citizenship was much discussed in the immediate post-war period, the member states did not include it in the original treaties. The ECSC treaty did include free movement rights for workers, and the Treaty of Rome expanded these rights to most workers and members of their families while giving the Commission the task of drafting implementation measures and proposing further integration. As the free movement rights were implemented during the 1960s, Commission officials and others presented them as the first aspect of a European citizenship. In 1972 the governments of Italy and Belgium again proposed formally introducing European citizenship, including further promoting free movement between the member states through steps such as the mutual recognition of credentials and granting all Community citizens the right to vote and run for office in local elections in their place of residence; German Chancellor Willy Brandt suggested putting “social policy into a European perspective” so that “our citizens will find it easier to identify themselves with the Community.” These proposals were further developed during the 1970s but faced opposition particularly from the governments

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of the United Kingdom and Denmark, which had joined the Community in 1973. The further enlargements to Greece (1981) and Spain and Portugal (1986) provided new impetus and European citizenship was finally inserted into the treaty at Maastricht, with incremental changes since then.

From an initially tepid reception (discussed in Maas, 2007), scholars subsequently recognized that “citizenship rights have had an astonishing career from being a rather meaningless Treaty addition to being a central tenet of EU law” and that prohibiting nationality-based discrimination and restrictions on free movement has “led to a significant broadening of rights of EU citizens, and resulting difficulties of member states to restrict social benefits, and increasingly even of shaping their national citizenship law,” (Schmidt, 2011, pp. 20, 21) even though there are also more restrictive interpretations (O’Brien, 2017).

EU citizenship has generated significant jurisprudence and after 2001 most questions regarding free movement of persons refer to EU citizenship as the fundamental status of nationals of the member states, leading to a recognition that shared citizenship is a significant development in European integration. Feelings of European citizenship also show an upward trend, though concerns about intra-EU migration following the 2004 and 2007 enlargements and the economic downturn and austerity policies exacerbated by the 2008 financial crisis caused concern about the openness of member state welfare systems. Such concerns in turn prompted calls for EU social entitlements, such as an unemployment insurance program financed by European rather than member state funds. By comparison with other regional or supranational integration efforts, EU citizenship stands alone as the most highly developed, but member states continue to assert their historical monopoly on defining who is a citizen for the purposes of EU law. Meanwhile, developments such as the spread of investor citizenship programs and the British exit from the EU raise questions about the desirability of harmonizing naturalization and denaturalization policies and about whether EU citizenship can or should be disentangled from member state citizenship (Maas, 2016, 2020B).

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### Notes:

(1.) Initially, the amount required was €650,000 plus €25,000 for spouses and children under 18 plus €55,000 for dependent parents ages 55 or older or unmarried children ages 18-25. After amendments, the amount was raised to €1.15 million (Maas, 2016).

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**Willem Maas**

Department of Political Science, York University