



## **EU citizenship: between state nationality and supranational citizenship**

*By Sandra Mantu\**

### *Enjoying rights as a matter of EU law*

In 1992, the European Union established EU citizenship as a supranational form of citizenship, to which legal and enforceable rights were attached. EU citizenship is additional to state nationality, without replacing it. From an external perspective, EU citizenship can be seen as an agreement between EU states concerning the treatment to be enjoyed by their nationals once outside the state of own nationality, which is strongly linked with the principle of non-discrimination on the basis of nationality.

State nationality remains the relevant criterion for identifying EU citizens as evidenced by the special declaration on nationality attached to the Maastricht Treaty, according to which whether a person is a state national or not is decided by the national law of the state in question.<sup>1</sup> Although the EU has no direct competences over nationality, the Court of Justice of the EU has stated that when exercising their powers in the sphere of nationality law, the Member States must have due regard to European Union law.<sup>2</sup> EU citizens enjoy a special position: if the exercise of state power in the field of nationality law affects rights conferred and protected by the legal order of the Union, it must be amendable to judicial review in light of EU law.

Harmonizing the nationality laws of the 28 EU states has been suggested and highlighted as an important issue since acquiring nationality opens the way to EU citizenship and the right to free movement but it remains an open question. For example, the European Commission acknowledges the need for sharing knowledge and exchanging experiences on conditions and procedures for attribution of state nationality, but perceives its role as being primarily about the dissemination of good practices and coordination. Nonetheless, the success of EU citizenship - as a special status enjoyed by persons who would otherwise be labeled migrants - can be grasped from statistical data showing low naturalization rates for mobile EU citizens. This suggests an interesting dynamic between EU citizenship and state nationality, in the sense that EU citizenship offers enough protection making naturalization in the host EU state unnecessary.

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<sup>1</sup> Declaration on Nationality of a Member State, attached to the Treaty of Maastricht, OJ 1992 C 191:98.

<sup>2</sup> Case C-369/90 *Micheletti*, EU:C:1992:295; Case C-135/08 *Rottmann* EU:C:2010:104.



### *The limits of supranational citizenship*

Although EU citizenship and the rights attached to it can serve as a model for the treatment of migrants, its shortcomings highlight the tensions that remain – even with a highly integrated regional bloc – between state nationality and the idea of a national community, and migrants’ rights. EU citizenship excludes third country nationals from its scope. The EU has introduced a special regime for third country nationals who are long-term resident in a EU state, in an attempt to approximate their rights to those of EU citizens.<sup>3</sup> EU citizens irrespective of how long they have resided in a host state can nevertheless be expelled. EU law sets limits to state power in this field, but the possibility of expulsion stresses the fact that EU citizenship is not a nationality status. Expulsion and removal are increasingly linked with termination of residence rights for economically inactive EU citizens who are seen as burdens on the welfare system of the host state, while criminal activity is another ground for expulsion.<sup>4</sup>

Brexit brings new challenges for EU citizenship and its model of membership. It shows that regional integration can be reversed and that supranational (citizenship) rights can be terminated. Once the UK leaves the EU, UK nationals will *en masse* lose their EU citizenship status and the rights attached to it. Conversely, EU-27 nationals resident in the UK will become foreigners subject to UK immigration law, rather than EU citizens entitled to EU rights. While residence and social rights have been the main areas of concern, political rights derived from EU citizenship will also be terminated. British nationals in the EU may qualify under one of the legal measures adopted in respect of TCNs, but this group lacks political rights. The uncertainty of the negotiations between the EU-27 and the UK in respect of citizens’ rights is a source of concern for EU citizens. One strategy pursued by affected citizens is to acquire the nationality of their host state. However, EU citizens are confronted with different nationality policies and rules in relation to dual nationality, language requirements, integration measures etc, which may bring on the table the need to coordinate and, even harmonize nationality laws in the EU.

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This paper was prepared for the EU-LAC Foundation’s Newsletter of December 2017 on the theme Migration and Diaspora. This article gives the views of the author.

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<sup>3</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

<sup>4</sup> S. Mantu (ed.) *Expulsion and EU citizenship*, Nijmegen Migration Law Working Papers Series 2017/02, <http://repository.ubn.ru.nl/handle/2066/179152>



## Short bio

Sandra Mantu is researcher at the Centre for Migration Law (CMR), Faculty of Law, Radboud University Nijmegen (NL). In 2014, Sandra defended her PhD thesis that dealt with the legal rules and practices of citizenship deprivation in a selection of EU Member States and their link with EU citizenship. She has been involved in several EU funded projects looking at the legal aspects of EU citizenship and EU migration and mobility frameworks. She is currently key staff member in the CMR's Jean Monnet Centre of Excellence work programme and main researcher in EXPULCIT a project that focuses on the expulsion of EU citizens from host Member States. Her most recent publication is a co-edited volume with Carolus Grutters and Paul Minderhoud, *Migration on the Move – essays on the dynamics of migration* (Brill 2017).