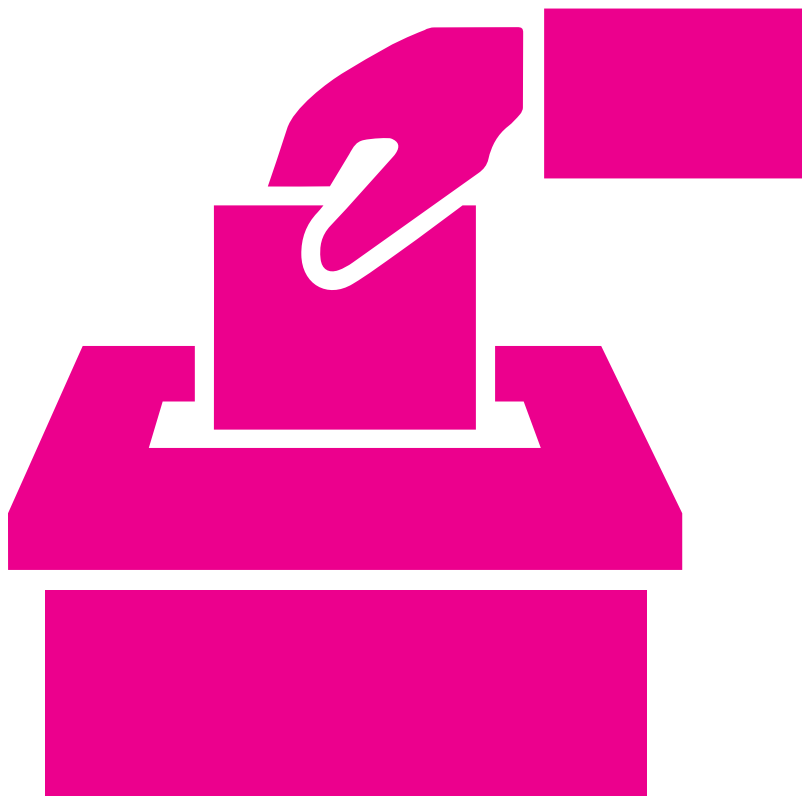




Self-Determination
Caucus

Democracy
Diversity
Dialogue
Decision for all



Proposal for an EU Regulation

Instrument to ensure non-discrimination on grounds of nationality
in relation to European citizenship in cases of democratic exercise
of the right of self-determination within the EU

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Instrument to ensure non-discrimination
on grounds of nationality in relation
to European citizenship in cases of democratic exercise
of the right of self-determination within the EU

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Proposal for a

EU REGULATION ESTABLISHING A FRAMEWORK TO GUARANTEE THE EQUAL PROTECTION OF RIGHTS AND FREEDOMS OF EUROPEAN CITIZENSHIP IN CASES OF DEMOCRATIC EXERCISE OF THE RIGHT OF SELF DETERMINATION WITHIN THE EUROPEAN UNION

(Legislative acts)

REGULATION

REGULATION (UE, Euratom) xxxx/ xxxxx OF EUROPEAN PARLIAMENT AND OF THE COUNCIL

of xx xxxxxxx 202x

Framework to guarantee the equal protection of rights and freedoms of European citizenship in cases of democratic exercise of the right of self-determination within the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first and second paragraph of Art. 18 TFEU - Non-discrimination on the grounds of nationality - thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) [Framework to guarantee the equal protection of the rights and freedoms of citizenship in the processes of democratic exercise of the right to self-determination of the peoples of Europe] In accordance with the Treaties, the democratic exercise of self-determination by a sub-state community within the European Union must in first instance be addressed and resolved under the constitutional requirements of the Member States, within the broader context of the EU's principles and values. At the same time, the European dimension of these processes requires the establishment of a European legal framework to ensure the equal protection of citizenship rights and freedoms in cases where a sub-state community, in compliance with the constitutional requirements of a Member State, expresses a wish to separate from the Member State and remain within the EU. This framework of guarantees also foresees the intervention of the EU's institutions and bodies as mediators in cases of conflict between the sub-state community and the Member State in these settings, in order to prevent the potential breach of the EU's principles and values.

(2) [Prohibition of discrimination on grounds of nationality] Art. 18 TFEU States that within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The aim of this Article is to ensure that all EU citizens are treated equally within the scope of the Treaties, and it is a specific formulation of the general principle of equality, which is one of the fundamental principles of EU law. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

(3) [Application of the principle of non-discrimination] According to the case law of the ECJ, every provision of EU law must be interpreted in the light of the general principle of equality¹, of which the prohibition of discrimination on grounds of nationality in Article 18 TFEU is a specific expression. The first paragraph of Article 18 TFEU (prohibition of discrimination on the grounds of nationality) applies independently to situations governed by EU law with respect to which the TFEU does not lay down specific rules on discrimination.² Furthermore, the general principle of non-discrimination requires that comparable situations must not be treated differently, and that different situations must not be treated in the same way unless such treatment is objectively justified.³

(4) [Citizenship of the Union] Article 20 TFEU establishes Citizenship of the Union. Every person holding the nationality of a Member State shall be a citizen of the Union and shall enjoy the rights and be subject to the duties provided for in the Treaties, in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder. By establishing European citizenship and creating an area of freedom, security and justice, the Union places the individual at the heart of its activities. European citizenship presupposes the existence of a political relationship between European citizens, founded on the existence of a European political area.

(5) [Fundamental Status of EU citizenship] Union citizenship assumes the nationality of a Member State, but is also a legal and political concept independent of that of nationality. As the ECJ has stated, the European Union is a new legal order of international law, the subjects of which comprise not only Member States but also their nationals;⁴ Citizenship of the Union is intended to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality.⁵ Furthermore, and having regard to its importance, the ECJ has stated that Member States have an obligation to apply their national rules regarding the withdrawal of nationality that entails the loss of citizenship of the Union in a manner that has due regard to EU law.

(6) [Right to participate in democratic life] According to Article 10 TEU, the functioning of the Union shall be founded on representative democracy and every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as closely as possible to the citizen. Article 11 TEU also guarantees that the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all

¹ Case C-98/91, *Herbrink*, EU:C:1994:24.

² Case C-8/77, *Sagulo*, EU: C: 1977:131.

³ Case C-117/76, *Ruckdeschel*, EU:C:1977:160; Case C-315/93, *Flip*, EU:C:1995:102.

⁴ Case 26/62, *van Gend & Loos*, EU:C:1963:1.

⁵ Case C-184/99, *Grzelczyc*, EU:C:2000:485.

areas of Union action, and the institutions assume the obligation to maintain an open, transparent and regular dialogue with representative associations and civil society.

(7) [Citizenship rights] Article. 20 TFEU provides a list of rights derived from European citizenship, which include the right to move and reside freely within the EU, the right to vote and stand as a candidate in European Parliament and municipal elections in the Member State of their residence, and the right to petition the European Parliament and contact the European Ombudsman. Articles 11 TEU and 24 TFEU also provide the right for European citizens to launch or support a European Citizen's initiative, requesting the Commission to propose legislation on a specific matter of their concern.

(8) [EU Fundamental freedoms] The free movement of persons constitutes one of the fundamental freedoms of the EU's internal market, which comprises an area of freedom, security and justice without internal frontiers, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime. The free movement of citizens is integrally linked to the free movement of workers, goods, services, establishment and capital movements within the Union. Article. 3.3 TEU reflects an approach that focuses on the internal market but at the same time promotes social, political and cultural values. Thus, the aforementioned classic European economic freedoms are also instruments for achieving greater territorial, economic and social cohesion, and solidarity among the Member States.

(9) [Freedom of movement] The free movement of citizens within the EU is also protected under Article. 45 of the EU Charter of Fundamental Rights and is further regulated in the 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. Article. 24 of the Directive states that all Union citizens residing in the territory of a Member State on the basis of the Directive itself shall enjoy equal treatment with the nationals of that Member State, within the scope of the Treaties.

(10) [European values] The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, enshrined in Article 2 of the Treaty on European Union (TEU). As established by Article 2 TEU, those values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

(11) [The rule of law] The rule of law requires that all public powers act within the constraints set out by law, in accordance with the values of democracy and the respect for fundamental rights as stipulated in the Charter of Fundamental Rights of the European Union (the 'Charter') and other applicable instruments. It requires, among others, that the principle of legality be respected, implying

a transparent, accountable, democratic and pluralistic law-making process, and legal certainty. The ECJ has declared that legal certainty requires that the rules of law be clear, precise, and predictable as regards their effects, and that their application must be foreseeable by those subject to them.⁶

(12) [Compliance with EU law, principles and values]. In accordance with the case law of the ECJ, if a situation comes within the scope of EU law, the exercise by the Member States of their retained powers cannot be discretionary. It is subject to the obligation to comply with EU law, principles and values.⁷ This is also fundamental for the principle of mutual trust between the Member States, which is the cornerstone of European judicial cooperation within the area of freedom, security and justice, since it makes it possible to establish and maintain a legal area without internal frontiers. This principle requires each Member State to recognise, save in exceptional circumstances, that all the other Member States respect the law of the Union and, in particular, the fundamental rights recognised by that law⁸.

(13) [Consequences for European citizenship resulting from the withdrawal of a Member State from the EU] Recent developments following the United Kingdom's decision to withdraw from the European Union in the exercise of Article. 50 TEU have highlighted the significant consequences of the loss of European citizenship for the nationals of that State, and the severe impact of the termination of the enjoyment of EU citizenship rights for other EU citizens in the existing State's territory⁹. In particular, they have had a significant impact on the enjoyment of their political and democratic participation rights, free movement rights, and on trade in goods and services between Member States.

(14) [Negotiated and consensual self-determination within the EU] These developments have brought to the fore the lack of clarity in the EU legal framework regarding the legal response to a negotiated and consensual process of democratic self-determination leading to a sub-state people or community breaking away from a Member State, and the continuity of both resulting states (new and continuing) within the Union. This creates further uncertainty regarding its impact on the EU citizenship status of nationals of that Member State and of the territory that is seeking to redefine its status within the Union, and on the citizenship rights of EU nationals living in those entities, as well as on the citizenship rights of nationals of the territory seeking to redefine its status who are legally

⁶ Case 72-2010, *Criminal proceedings against Costa* EU:C:80 and Case 201-2008 *Plantanol GmbH & Co KG v Hauptzollamt Darmstadt* (C-201/08)

⁷ Case C-135/08, *Rottmann*, EU:C:2010:104.

⁸ Definition of the principle of mutual trust: Opinion 2/13 of the Court of Justice of 18 December 2014 on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ECLI:EU:C:2014:2454; para. 191;

⁹ Case C-673/20, *Préfet du Gers*, EU:C:2022:449.

residing in other Member States of the EU. This uncertainty poses a clear risk to the political and democratic participation rights and the free movement of citizens within the Union, which is fundamental to its internal market.

(15) [European Dimension] While the response to a democratic process of self-determination and the Regulation of the particular conditions for its exercise is, in first instance, an internal constitutional matter for the Member State(s) concerned, any such process may also have implications for the European Union and requires a legal response from the European legal order. As a result:

- Principle of legal certainty. The Rule of Law, and in particular its requirements of clarity, precision and foreseeability, require EU law to provide a clear and predetermined legal answer to situations where a sub-state community aims to democratically break away from its host State and remain a member of the European Union, and this legal answer must be in line with the EU's fundamental values and principles.
- Protection of European Citizens' rights and freedoms. European citizens immersed in or affected by a process of democratic self-determination within one (or several) Member State(s) must be able to rely on European Union law for the exercise and full protection of their citizenship rights and freedoms.

(16) [Peoples of Europe] The EU recognizes "the diversity of cultures and traditions of the peoples of Europe" (Charter of Fundamental Rights of the European Union) and therefore assumes the commitment to respect the "peoples of Europe", to promote their development and to safeguard their welfare (Article. 3 TEU). It also recognises it is immersed in a "process of creating an ever closer union among the peoples of Europe" (Article. 1 TEU), interpreted in an open, dynamic and flexible manner. There is no basis in the Treaties for the exclusion of sub-state peoples or nations from the references to the "peoples of Europe" above, whose development and welfare must be protected. There is also no basis in the Treaties for opposing the democratic redrawing of the Union's internal boundaries as part of the EU integration process.

(17) [Compatibility of the exercise of self-determination with the principle of democracy]. Respect for fundamental rights, including the rights of persons belonging to minorities, democracy and the Rule of Law, are values on which the Union is founded and whose institutional system must promote (Article. 2 TEU). These fundamental values and principles include the right to self-determination as recognized in international law and which, in the context of constitutional democracies, must be interpreted in line with the principle of democracy:

- Article. 1 (2) of the UN Charter lists within the purposes of the UN: To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

- Article. 1 (1) of the International Covenant on Civil and Political Rights of 1966 and Art. 1(1) of the International Covenant on Economic, Social and Cultural Rights of 1996 both declare that all peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

(18) [EU MS withdrawal procedure] The European Union Treaties themselves include a process which enables a process of democratic self-determination for a Member State that no longer wants to remain within the Union. Indeed, Article. 50 TEU specifically enables a Member State to withdraw from the Union.

(19) [Compatibility of the democratic exercise of self-determination with European principles, values and treaties.] The right to democratic self-determination of the peoples of Europe is therefore fully compatible with the EU Treaties and EU law, insofar as the process in each case complies with EU's principles and values. This includes both the internal dimension of the right to self-determination, understood as the right of the peoples of Europe to self-government within an existing State, and its external dimension, understood as the right of these peoples to determine their political status, including the formation of a new independent State via secession.

(20) [Self-determination of sub-state communities within EU] This Regulation is concerned with the democratic exercise of the right to self-determination of sub-state communities in the unique context of the EU's multilevel constitutional order, where a sub-state community aims to separate from a Member State but to remain within the Union. From the perspective of the EU, these processes must be considered a *sui generis* exercise of internal self-determination, as while resulting in an internal redrawing of boundaries between its Member States, they also serve to resolve tensions within and strengthen the democratic foundations of the broader self-determination process of European peoples at the level of the Union itself. In these processes of sub-state self-determination, these sub-state communities express not only their will to create a new state, but also a clear commitment to the European integration process and its wider objectives. These processes therefore clearly differ from a process where a Member State or a sub-state community express a wish to leave the EU. The aim of this Regulation is to guarantee that these sub-state self-determination processes are accommodated and resolved within the EU's legal order, ensuring the equal and full protection of the rights of all EU citizens involved or affected, in accordance with the EU's law, principles and values.

(21) [Consequences of loss of nationality on European citizenship rights involved in self-determination process]. The ECJ has recently established that the nationals of a Member State that exits the EU following the process in Art. 50 TEU will lose their European citizenship and all related rights, including their political and democratic participation rights in the EU and those of free movement within the EU,

as a result of the State's decision.¹⁰ This ruling also resulted in the loss of significant citizenship rights for those EU citizens from other Member States residing in the exiting State. Furthermore, the court rejected the claims of discrimination on grounds of nationality in relation to EU citizenship rights for a UK national residing in an EU Member State on similar grounds. Central to the court's reasoning in this case was that these were the consequences of the decision taken by the United Kingdom to specifically withdraw from the EU, by virtue of Article. 50 TEU.

(22) [Protection of EU citizens right involved in process of self-determination] However, the withdrawal of a Member State from the Union is a different situation from one where the citizens of a part of a Member State in the exercise of a democratic process of self-determination express the wish to separate from the Member State, but at the same time express their democratic will to remain within the EU. Core to this distinction is the lack of clearly expressed decision to leave the EU, and the continuing commitment of the citizens involved to the EU integration process and its objectives.

(23) [Guarantees of non-discrimination on grounds of nationality in democratic processes of self-determination]. In the case of a democratic process of self-determination within a Member State of the European Union, through the constitutional procedures agreed with the Member State and in full compliance with EU law, values and principles, and fundamentally where both the Member State and the new State entity have expressed a clear democratic will to remain within the EU, non-discrimination on grounds of nationality in relation to European citizenship must be guaranteed from the perspective of EU law:

- With regard to European Citizenship, the comparable situation to the nationals of the new State entity, and in particular, those residing in other Member States, from the perspective of EU law is that of the nationals of the Member State within the Union;
- Analogously, with regard to European Citizenship, the comparable situation to the nationals of other Member States residing in the new State entity from the perspective of EU law is that of the nationals of other Member States residing in the Member State within the Union;
- All groups are EU citizens enjoying full citizenship rights and freedoms, and, notwithstanding the process of self-determination at the MS level, want to maintain their EU citizenship rights in the new context;
- While the citizens in the new State entity will acquire or have acquired a new nationality as a result of the self-determination process, any difference in treatment on this basis is not justified.

¹⁰ Case C-673/20, Préfet du Gers, EU:C:2022:449.

(24) [EU response to a democratic process of self-determination] In order to avoid a breach of the prohibition of discrimination on the grounds of nationality established in EU law, in the case of a democratic process of self-determination within a Member State, the response to the current situation of legal uncertainty most in line with the EU's Treaties, principles and values is that EU law should clarify that both the Member State and the new State entity may remain within the European Union while the process unfolds and during the transitional period following the notification of the outcome. During this period the European institutions and Member States have an obligation to cooperate with, and facilitate the accommodation of the new State entity as a Member State of the Union, as part of the required adjustment to EU law and the Treaties.

(25) [Continuity of EU citizenship rights and freedoms] In order to ensure the continuity of EU citizenship rights and freedoms in this context, from the moment of the notification of the outcome of the self-determination process and until the final agreement on the EU membership of the new State entity:

- Both the nationals of the Member State and of the new State entity should retain EU citizenship with full rights on an equal basis, including their rights to free movement within the Union, if this is the result of the democratically expressed will of the citizens of these political communities.

- The nationals of other Member States residing in both the Member State and in the new State entity should retain EU citizenship with full rights on an equal basis, including their rights to free movement.

(26) [EU framework for determining the compatibility of a democratic process of self-determination with EU law]. In order to determine whether a process of self-determination in an EU Member State complies with EU law, values and principles, and should therefore be recognised by the EU, EU legislation should establish a set of legal criteria in order to provide a clear framework for these processes to be considered legitimate. Recognising that the constitutional frameworks of different Member States may provide for different requirements for the exercise of a process of self-determination of a sub-state community, and that these different requirements and processes may all be compatible with the EU's principles and values, this framework must provide a set of general principles and criteria regarding the legitimacy of the claim, the legitimacy of decision adopted at the end the process and the legitimacy and guarantees for the implementation of the outcome. This framework will also provide an important point of reference for avoiding and, where necessary, managing conflict in such cases.

(27) [Reinforcing the legitimacy of the EU] The provision by the Union of a guarantee framework for sub-state processes of democratic self-determination and the guarantee of the fulfilment of the rights for all persons involved or affected by them will reinforce the legitimacy of the EU itself as a process of European integration, conceived as the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly and as closely as possible to the citizens (Article. 1 TEU). This will complement the provisions of Article 50 TEU, which provides for the withdrawal of a Member State from the Union, with a clear framework for channelling and ordering the possible withdrawal of a sub-state community from its parent State but without leaving the EU.

(28) [Guarantee for the stability of the Union] This framework on the democratic conditions for the exercise of self-determination processes and for guaranteeing the legitimacy of decisions to alter the political status of a sub-state community within the EU is also a guarantee for the stability of the Union and for the European integration process. This framework provides a guarantee of compliance with the rule of law both by the Member State(s) concerned and by the sub-state community which wishes to alter its political status within the Union. It is also a guarantee for all European citizens, by protecting the rights of all persons involved in or affected by the self-determination process, including those who are part of a minority or may become a minority in the new State entity

(29) [Compliance with EU law, values and principles]. Despite the Regulation of the conditions to exercise a democratic self-determination being an internal constitutional matter for Member States, democratic self-determination processes within the Union also come within the ambit of EU law. Furthermore, the ECJ has Stated that situations resulting in the loss of EU citizenship and related rights as a result of the loss of the nationality of a Member State must be regulated in accordance with the principle of proportionality from the point of view of EU law¹¹. Because of this, the exercise by the Member States of their retained powers in this context is subject to the obligation to comply with the EU law, values and principles and must take into consideration the rights of Union citizenship.

(30) [Territorial integrity] In particular, in this context the territorial integrity of a State (Article. 4 TEU) does not constitute legitimate grounds in itself for a Member State to refuse to seriously engage with requests to initiate a democratic process of self-determination, to fail to comply with EU law, values and principles, or to guarantee the rights and freedoms of Union citizenship in this context. The concept of "territorial integrity", which is recognised in international law in order to protect States or nations suffering external aggression, cannot be used *mutatis-mutandis* to prevent democratically defended territorial claims with sufficient support and legitimacy from being put forward, debated and resolved through political channels.

¹¹ Case Tjebbes & others, C-221/17, EU:C:2019:189; Case Wiener Landesregierung, Asunto C- 118/20

(31) [Intervention of the EU institutions in conflicts arising in the context of a self-determination process within the EU] Furthermore, the EU dimension of these self-determination processes enables the European Union to intervene as a mediator in the case of conflicts arising from a process of self-determination in one or various Member State (s), and when there is a risk of breach of the EU's values and principles. In this way, it will assist the EU in pursuing some of its broader aims and objectives, such as conflict resolution and the preservation of democratic quality and the rule of law within the Union.

(32) [Respect for political pluralism, freedom of expression and culture of open dialogue] European values such as pluralism, non-discrimination, tolerance and justice, among others (art 2 TUE), promote a culture of open dialogue on all matters in the political sphere, without the use or threat of criminal sanctions against politicians who peacefully exercise their political mandates, and treats even fundamental opposition as a necessary and welcome part of a living democracy.¹² This is further supported by the case law of the European Court of Human Rights, which states that allowing different political agendas to be proposed and debated is at the heart of democracy, including those agendas that challenge the way a state is currently organised, if they do not harm democracy itself¹³. The Council of Europe's Pejčinović Report¹⁴ extends the protection of freedom of expression to the political sphere, so that the freedom of political expression protects those manifestations and positions that may lead to changes in the territorial structure of the State, even when this implies challenging constitutional principles.

(33) [EU extensive and qualified experience in conflict resolution] The EU has a long experience of diplomatic intervention in conflict resolution outside its borders, including in cases of self-determination processes. Therefore, it would be paradoxical not to apply this conflict resolution know-how within the EU borders where such internal conflicts arise. Indeed, the Union was born out of a process of territorial conflict resolution and the way in which these challenges are managed and resolved affects the quality of democracy and the rule of law within its own territory. These conflicts regarding the potential redrawing of the internal boundaries between Member States are related to the political principles that underpin the Union and, while challenging, they provide an opportunity to further strengthen and legitimise the role of the EU's institutions within its constitutional order.

¹² Follow-up report on the implementation of Resolution 2381 (2021) Rapporteur: Mr Boriss Cilevičs, Latvia, Socialists, Democrats and Greens Group & 10.2.8. "Should politicians be prosecuted for statements made in the exercise of their mandate?"

¹³ This is summarised in the Pejčinović Report SG/Inf(2022)36.

¹⁴ CoE: Information Documents, SG/Inf(2022)36', 6 October 2022: "Freedom of political speech: an imperative for democracy (Marija Pejčinović Burić, Se Secretary General of the Council of Europe).

(34) [EU Mediation and Dialogue Capacities] Following the Gothenburg Programme for the Prevention of Violent Conflicts, adopted by the European Council on 15 and 16 June 2001 at the initiative of the Swedish Presidency, the European Union has made it an objective of its external action policy to promote a comprehensive conflict prevention policy as one of the main objectives on the European agenda, thus contributing to a global culture of prevention. The Treaty of Lisbon has clearly included this objective as one of the main tasks of its exterior action, stating that the EU's objective is to "preserve peace, prevent conflicts and strengthen international security". Within this framework, the Union has developed various programmes and instruments, and provided itself with a structure to consolidate a comprehensive approach to conflict prevention, including both long-term and short-term measures. The aim of this Regulation is to ensure that the actions of the EU institutions within its internal borders are consistent with its security and conflict prevention policy, which the European institutions are developing at the global level and which has gained such prestige in recent decades.

(35) [Strengthening the EU rule of law in the UE] Within the EU institutions, and in particular in the European Parliament, there is growing concern about the violation of European values by Member States and the erosion of the quality of democracy, and thus of the rule of law. The European Commission has identified ways to strengthen the rule of law instruments and has expressed its intention to deepen the monitoring of events related to the protection of the rule of law in the Member States through a regular review cycle. This Regulation will further contribute to that objective.

(36) [The principle of subsidiarity] Since the objectives of this Regulation, namely to establish a framework to ensure non-discrimination in relation to European citizenship in cases of the democratic exercise of the right of self-determination within the EU and to clarify the EU's response to such cases, cannot be sufficiently achieved by the Member States and can therefore, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

TITLE I. GENERAL PROVISIONS

Article 1. Subject matter

This Regulation establishes the necessary rules to ensure non-discrimination on grounds of nationality in relation to European citizenship in cases of negotiated and consensual democratic exercise of the

right of self-determination within the EU by sub-state communities, to specify the response of the EU institutions and Member States to such cases, and to provide guarantees to ensure compliance with the EU Treaties and European values and principles.

Article 2. Definitions

For the purposes of this Regulation, the following definitions shall apply:

- Right to self-determination in a democratic context: For the purposes of this Regulation, the democratic exercise of the right to self-determination shall mean the process by which a sub-state community within a Member State of the Union freely determines its political status in accordance with the procedure laid down in this Regulation. This process includes the possibility for the sub-state community to become an independent State in order to freely pursue its own economic, social and cultural development, in solidarity with the rest of the peoples of Europe.
- Rule of Law: For the purposes of this Regulation, “the rule of law” refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality, which implies a transparent, accountable, democratic and pluralistic law-making process; legal certainty; the prohibition of arbitrary action of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, including with respect to fundamental rights; the separation of powers; and non-discrimination and equality before the law. The rule of law should be understood having regard to the other values and principles of the Union enshrined in Article 2 TEU.¹⁵
- Non-discrimination on grounds of nationality: For the purposes of this Regulation the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on nationality regarding persons with European citizenship who are involved in or affected by the democratic exercise of the right of self-determination of a politically articulated community within a Member State. This group of persons may not be discriminated against on the grounds of their nationality in relation to European citizenship, unless there are duly justified reasons and in accordance with the principle of proportionality.

Article 3. Scope

1. Within the limits of the powers conferred upon the Union, this Regulation shall apply in relation to:

¹⁵ This definition is the same as that given in the Regulation (UE, Euratom) 2020/2092, on a general regime of conditionality for the protection of the Union budget.

- (a) The consideration by the Union institutions and bodies of the compatibility of negotiated and consensual processes of sub-state self-determination within the EU with the Union's laws, principles and values.
- (b) Where a negotiated and consensual process of sub-state self-determination within the EU is considered compatible with the Union's laws, principles and values, and the sub-state community has expressed its will to separate from the Member State and remain within the EU:
 - (i) The recognition and continuation of EU citizenship rights and freedoms of persons from the sub-state community, while the process unfolds and during the transition period until an agreement is reached on the EU membership of the new State entity and any necessary legal or Treaty amendments are enacted.
 - (ii) The recognition and continuation of EU citizenship rights and freedoms of nationals of other Member States who are in the territory of a sub-state community, while the process unfolds and during the transition period until an agreement is reached on the EU membership of the new State entity and any necessary legal or Treaty amendments are enacted.
 - (iii) The EU's legal response to the outcome of the self-determination a process and, in particular, the establishment of a transition period following the decision of the sub-state community, and the initiation of a process to facilitate the necessary changes to the EU Treaties and law to enable continuation of both the Member State and the new State entity within the Union.
- (c) The intervention of the EU's institutions and bodies, within their sphere of competences, to facilitate the resolution of a conflict in the context of a process of self-determination within the EU, and to prevent the risk of breach of the EU's principles and values.

2. This Regulation shall not apply in relation to self-determination processes or to territorial sovereignty conflicts in which third States are directly involved or claims are raised regarding unredeemed territories.

TITLE II. SUB-STATE COMMUNITIES AND THE PRINCIPLE OF SELF-DETERMINATION IN THE EUROPEAN UNION

Article 4. The democratic exercise of the right of self-determination within the EU

1. In order to prevent the breach of the principle of equality and of non-discrimination on grounds of nationality in relation to European citizenship, the consensual and negotiated exercise of self-determination by sub-state communities within one or various Member States in accordance with this Regulation shall result in the Union's Institutions and Member States recognising the legitimacy of the decision resulting from the process of self-determination.

2. This chapter sets out the guarantees and conditions required for a process of democratic self-determination by a sub-state community within the EU to be considered compatible with the EU's laws, values and principles.

3. The consideration of the compatibility of a process of democratic self-determination by a sub-state community with the EU's laws, values and principles, and in particular, if the requirements set out in this Regulation have been met in each specific case, will be the responsibility of the EU's own institutions, in accordance with their competences and functions.

4. In those cases where a process of democratic self-determination is considered in compliance with the requirements in this Regulation, and where the citizens of a sub-state community decide to separate from a Member State and remain within the Union, this Regulation determines the legal response to this decision from the Union and its Member States. It provides a framework to facilitate the subsequent dialogue regarding the modification of Union law necessary to implement the decision, including the recognition of the new State entity as a EU Member State in accordance with the provisions of the Treaties and this Regulation, and guarantees the protection of the principle of non-discrimination in relation to the citizenship rights of those involved in or affected by the decision of the sub-state community throughout this process.

Article 5. Values and principles that provide the basis for the democratic exercise of the right to self-determination

The regulated procedure for the exercise of the right of self-determination shall be based on the following principles, all of which are interrelated, and can be found in the constitutional traditions and international obligations common to all Member States, and in the legal framework of the European Union:

- a) Democratic principle
- b) Principle of pluralism and respect for diversity
- c) Principle of sovereignty
- d) Principle of respect for fundamental rights, including the rights of persons belonging to minorities.
- e) Principle of the rule of law.
- f) Principle of prohibition of the illegitimate use of violence and the abuse of power
- g) Principle of sincere cooperation and mutual trust between Member States and the Union
- h) Principle of subsidiarity

Article 6. Guarantee framework to strengthen the rule of law in democratic exercises of self-determination in the EU in accordance with common values

1. The guarantees of a regulated procedure for the democratic management of self-determination processes must be in accordance with the following principles:

(a) [Right to review its political status] It is in conformity with the common values of the EU that the citizens of a sub-state community may initiate a process of review of its political status that leads to a decision on its sovereignty, if the conditions of legitimacy of the demand are met.

(b)[Dialogue, negotiation and agreement] The procedure for the management of self-determination processes should articulate a process of dialogue and negotiation that avoids both de facto channels and imposition.

(c) [Democratic resolution] The regulated procedure shall provide for the adoption of legitimate decisions on the basis of the democratic principle, which includes the free expression of the will of the communities concerned, respect for the fundamental rights of all individuals and minorities, respect for the rule of law and good faith negotiation .

(d) [Political pluralism] The regulated procedure shall not limit or prohibit the free expression of the will of the communities concerned through their legitimate representative bodies.

(e) [Agreed conditions] The conditions of clarity concerning the democratic exercise of the self-determination of the sub-State community shall be agreed in good faith between the institutions of the State and the institutions of persons that represent the sub-State community.

(f) [Publicity of the conditions] The conditions that determine the legitimacy of the decision-making process must be clear and known to the citizenry in advance, and should not be altered unilaterally.

(g) [Clear legal basis] The conditions for the management of initiatives to update the political status of sovereignty must have a clear and sufficient legal basis previously accepted by all parties concerned. The parties will provide mechanisms of mutual guarantee and mediation to avoid situations of veto in this context.

2. Phases of the process of the democratic exercise of the right of self-determination

The framework of guarantees must take into account the conditions of democratic legitimacy required at each stage of the process: the legitimacy of the sub-state community's claim, the legitimacy of the decision, and the reciprocal guarantees in implementing the result.-

(A) CONDITIONS OF LEGITIMACY OF THE CLAIM TO SOVEREIGNTY

(a) [Democratic legitimacy of the claim] The democratic legitimacy of the claim to sovereignty is founded on the support of broad sectors of the population, the pronouncement in this sense of their representative institutions, and respect for fundamental rights and the rule of law in the defence of their propositions. Consequently, obtaining significant percentages of votes and parliamentary seats over time in the territorial area that they aspire to represent is an important criterion for this purpose, as is the direct expression of the popular will by means of a popular consultation called for this purpose.

(b) [Quantifiable democratic will at the start of the process] It is necessary to differentiate between the support required to initiate this review process, not necessarily a majority, and the final decision on the controversy raised. Therefore, assessing the will of the citizens of a sub-state community as sufficient to initiate the statute review process of the sub-state community can be done in different ways:

In the case of a sub-state political community with a legislative chamber, the condition to initiate the process would be the existence of a parliamentary and/or governmental majority in this sense. The role of the sub-state parliament, if any, should be especially relevant.

In the event that the sub-state community is formally represented in the central organs of the State, the initiative proposed by its representatives in these central institutions, particularly in its parliament, should be relevant.

If there is no such degree of institutionalisation, a second option would be to add to the initiative a significant number of local institutions in the territory of the sub-state community which could open up a dialogue with the State for the purpose of reviewing the political statute.

(c) [Alternative democratic mechanisms] Should the State not provide regulated mechanisms to evaluate the political will of the sub-state community regarding the review of its political status and for the purpose of answering this claim, the European institutions could take into consideration the will expressed by the citizens of the sub-state community through alternative democratic instruments.

B CONDITIONS FOR LEGITIMACY OF THE DECISION

(a) [Quality deliberation] The decision on the status of the sub-state community should be taken in the framework of a transparent deliberative process, in which contrasting, truthful information and

equitable public debate are ensured. All options in this respect must provide sufficient information on their proposals, and to this end, it must be possible to freely express such information. Free debate must also be possible in all media, especially in public media outlets, both at State and sub-state level, on an equal footing.

(b) [Representative and participatory democracy] It is up to the citizenry of the sub-state community to make the decision on its sovereign status. In this decision-making process, the different ways of expressing the citizenry's democratic will should be combined and coordinated, so that any decision adopted has sufficient legitimacy. In this sense, the mechanisms of direct citizen participation - consultations and referendums- should be articulated within a framework of representative and participatory processes continued over time, so as to avoid fortuitous plebiscitary decisions.

(c) [Modalities of referendums] The mechanisms of direct citizen participation that could form part of a decision-making process can be both citizen-initiated and institution-initiated and can include different options: non-binding popular consultations, ratification, multi-option or successive referendums, or referendums with a pre-set time distance, in the event of not achieving a sufficient difference between the options put forward.

(d) [Equality among the parties] In consultation and referendum campaigns it must be ensured that all options can compete on an equal footing. The recommendations of the Venice¹⁶Commission and the Parliamentary Assembly of the Council of Europe¹⁷ on the subject of referendums must be taken into consideration.

(e) [Campaign funding] Fairness and equality in citizens' deliberation should be guaranteed by public funding of the campaign, so as to ensure sufficient dissemination of the options put forward and a balanced debate among them.

(f) [Date] Dates for relevant democratic decisions, whether taken directly by citizens or through their representatives, must be neutral and should be agreed and published in good time, so that the preceding political campaign can guarantee satisfactory knowledge of the options and quality public deliberation.

¹⁶ CDL-AD (2007) 008rev-e.

Code of good practice on referenda adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007). The Venice Commission, dated October 8, 2020, has reviewed and updated its position on referendums through the document "Revised Guidelines on the Conduct of Referendums" CDL-AD(2020)031.

¹⁷ Resolution 2251 (2019) 1 Update of the guidelines to ensure a fair referendum in the Council of Europe's Member States.

(g) [Question] The question whose answer expresses the citizens' will regarding the sovereignty status of the sub-state community should be clear and intelligible, so that there is no doubt about the democratic decision adopted in each case. The State and the democratic representatives of the sub-state community will enter into negotiations to agree on the wording of the question, as a manifestation of the principle of good faith.

(h) [Electoral roll]. The electoral roll applicable in popular consultations and referenda concerning the revision of the sovereignty status of the sub-state community should be in line with what is applicable in ordinary elections held in that territory, unless agreed differently by the parties..

(i) [Electoral commission] The process of citizens' decision-making by way of a referendum should be supervised by an electoral organisation, independent of the State and sub-state governments, which must ensure that the legal and/or agreed conditions are met. The European institutions could exercise such an observer role, in agreement with the parties.

(j) [Majority decision] In the event of one or more decisional or ratification referendums, the final binding decision on the political status of the sub-state community should be taken by a majority of its citizens, in accordance with the recommendations of the Venice Commission and the Parliamentary Assembly of the Council of Europe.

(k) [Reversibility and repeatability] The reversibility of any decision should be guaranteed, as well as the repeatability of the claim. Both constant reconsideration of the issue and absolute closure to other possible future decisions on the status of the sub-state community should be avoided by the parties establishing the necessary conditions of clarity, at the beginning of the process.

C CONDITIONS OF LEGITIMACY AND GUARANTEES FOR THE IMPLEMENTATION OF THE OUTCOME

(a) [Prior willingness to cooperate] The prior and express will to maintain cooperative relations between the State and the sub-state community, in a possible subsequent scenario of separation and the emergence of a new independent State, is an essential factor that facilitates the democratic management of self-determination process .

(b) [Cooperation and Good Will] Once the relevant decision has been taken in accordance with the agreed procedures, the Member State and the new State entity in which the sub-state community is constituted shall accept the decision of the majority of the citizens of the sub-state community and cooperate in good faith in implementing the outcome.

(c) [Consequences of non-compliance] If the Member State does not act in good faith or does not comply with the standards agreed with the sub-state community or those established in the framework for democratic of self-determination process , the European Institutions may intervene in

accordance with Article. 8 of this Regulation. When intervening in this context, the relevant Union Institutions may take into account unilateral declarations of independence, once their democratic legitimacy has been verified.

Article 7. The consequences of a democratic exercise of self-determination for the EU institutions and Member States

1. The negotiated and consensual democratic exercise of self-determination by a sub-state community within a Member State in accordance with this Regulation entails an obligation for the European institutions and Member States to recognise the legitimacy of the decision and to negotiate in good faith on the request for amendment of EU law to give effect to it.
2. Once the outcome of the process of self-determination is officially notified to the European Union, the EU institutions and Member States shall agree on a provisional regime to regulate the transition period between the notification and the final agreement on the EU membership of the new State entities, including the adoption of any necessary legal and institutional changes.
3. During the transitional period until an agreement is reached on the EU membership of the new State entity and any necessary legal or Treaty amendments are enacted, and in order to avoid any breach of the principle of non-discrimination on the grounds of nationality in relation to European citizenship:
 - a) In the cases of democratic self-determination which meet the requirements of legitimacy provided in this Regulation, the new State entities resulting from the self-determination process will continue to be bound by Union law, if they express their will to remain within the Union. They will be able to send representatives to participate in the different forums of political deliberation and decision-making, without the right to vote.
 - b) In the cases of democratic self-determination which meet the requirements of legitimacy provided in this Regulation, the citizens of the new State entity shall retain their European citizenship and full rights and freedoms deriving therefrom during the process of negotiation, recognition and integration, except for those rights which require substantial institutional or legal changes.
 - c) Nationals of other Member States shall at all times retain their full rights and freedoms as European citizens within the territory of the new State entity, if it expresses its will to remain within the Union. If it does not express this will, a transitional period will be agreed with the new State entity, during which these rights and freedoms will be protected to the higher degree
4. As soon as the outcome of the self-determination process has been notified, the EU institutions and the Member States shall begin negotiations on the necessary amendments to the law and Treaties of

the Union to include the required adjustments to adapt their provisions to the reality resulting from the self-determination process.

5. In accordance with the principle of loyal cooperation between the Union and the Member States, all Member States have a duty to assist the new State entity resulting from a process of self-determination which meets the criteria set out in this Regulation in fulfilling the requirements for accession and completing the different stages of the process of becoming a full member of the Union.

6. All Member States shall refrain from any action which could significantly delay or jeopardise this process.

Article 8. Mechanisms to reinforce the rule of law in self-determination processes and to avoid situations of risk to European values

1. [Neutral observation] While the management of a process of self-determination corresponds in the first instance to each Member State, from the moment the request to initiate a process of sub-state self-determination is legitimately expressed, the various European institutions will become neutral observers of the development of the process and may act within their respective functions and competences to promote a framework for the effective guarantee of the principles and values set out above.

2. [Mediation] In the case of a conflict between the State and the sub-State community regarding the self-determination process, the various European institutions may contribute, within their respective competences, to facilitating its resolution, in accordance with European laws, values and principles, including the possibility of articulating a mediation mechanism, which will be independent of the parties involved in the process.

3. [Intervention in the event of a clear risk of a serious breach of EU values by the Member State] In the event of a clear risk of a serious breach of EU values by the Member State in relation to the self-determination process, the EU institutions will initiate the procedure provided in Article 7 of the Treaty on European Union.

4. [Intervention in the event of a clear risk of a serious breach of EU values by the sub-state community] In the event of a clear risk of a serious breach of EU values by the sub-state community in relation to the self-determination process, the EU institutions will provide their support to the Member States in the implementation of internal mechanisms and procedures.

TITLE III. NON-DISCRIMINATION ON GROUNDS OF NATIONALITY

Article 9. Prohibition of discrimination on grounds of nationality in relation to European citizenship in the democratic exercise of the right to self-determination

1. There shall be no direct or indirect discrimination on grounds of nationality regarding persons with European citizenship who are involved in or affected by the democratic exercise of the right of self-determination of a politically articulated sub-state community within a Member State, unless there are duly justified grounds and in accordance with the principle of proportionality.

2. For the purposes of paragraph 1:

(a) Direct discrimination shall be taken to occur where a person is treated less favourably than another who is, has been or would be in a comparable situation on grounds of nationality in relation to European citizenship.

(b) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a specific nationality affected by a democratic exercise of the right to self-determination at a particular disadvantage compared with other persons in relation to European Citizenship, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(c) Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when an unwanted conduct on the grounds of nationality in relation to European citizenship takes place with the purpose or effect of violating the dignity of a person or persons and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

TITLE IV. FINAL PROVISIONS

Article 10. Reporting the European Parliament

The Commission shall report by to the European Parliament and the Council on the application of this Regulation, and in particular on the effectiveness of the measures adopted.

Article 11. Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from J..... ..

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done in Brussels,

For the European Parliament

The President

xxxxxxx

For the Council

The President

xxxxxxx



Self-Determination Caucus

Democracy
Diversity
Dialogue
Decision for all