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The attribution of national citizenship by Member States and its impact on EU values

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Abstract [En]: This article examines the attribution of national citizenship by Member States. Its core focus is Malta's citizenship-by-investment scheme, which was declared illegal by the CJEU in the ruling in case C-181/23 *Commission v Malta*. This case shows that EU law imposes substantive obligations on Member States on citizenship attribution. The conclusion of the Court which is based, amongst other grounds, on solidarity as an EU value, is criticised for a number of reasons; it is also claimed that citizenship attribution is subject to obligations under the Common Foreign and Security Policy. A brief contrast is drawn with Hungary's extension of nationality to ethnic kin abroad, which raises concerns regarding its democratic *ethos* but falls outside EU competence because it does not create new EU citizens. The article argues that both cases raise concerns for respect of EU values. Yet, while the Maltese legislation comes within the scope of EU law, making citizen attribution subject to the jurisdiction of the Court of Justice, the Hungarian legislation does not. Nonetheless, in the latter case citizenship attribution may affect the value of democracy, thus pushing the outer boundaries of what the Union should tolerate from its Member States. It cannot be excluded that the ruling *Commission v Malta* may constitute an important precedent for the Court of Justice to consider the Hungarian measures incompatible with EU values of art. 2 TEU, should the Court of Justice have the opportunity to rule on this issue in future direct or indirect actions.

Titolo: L'attribuzione della cittadinanza da parte di Stati membri e l'impatto sui valori dell'UE
Abstract [It]: Il presente articolo esamina l'attribuzione della cittadinanza nazionale da parte degli Stati membri. L'analisi si concentra principalmente sul regime maltese di cittadinanza sulla base di investimento, dichiarato illegale dalla Corte di giustizia nella sentenza C-181/23, *Commissione contro Malta*. Tale decisione mostra che il diritto dell'Unione impone obblighi sostanziali agli Stati membri in materia di attribuzione della cittadinanza. La conclusione della Corte, fondata tra l'altro sul valore della solidarietà, è criticata per diversi motivi; si sostiene inoltre che l'attribuzione della cittadinanza sia soggetta anche agli obblighi derivanti dalla politica estera e di sicurezza comune. Il contributo presenta un breve confronto con l'estensione della cittadinanza da parte dell'Ungheria a connazionali all'estero, pratica che solleva preoccupazioni in termini di *ethos* democratico ma che resta al di fuori della competenza dell'Unione poiché non crea nuovi cittadini dell'UE. L'articolo sostiene che entrambi i casi sollevano interrogativi riguardo al rispetto dei valori dell'UE. Tuttavia, mentre la legislazione maltese rientra nell'ambito di applicazione del diritto dell'Unione, rendendo l'attribuzione della cittadinanza soggetta alla giurisdizione della Corte di giustizia, questo non è il caso per quella ungherese. Ciononostante, in quest'ultima situazione l'attribuzione della cittadinanza può incidere sul valore della democrazia, spingendo al limite ciò che l'Unione dovrebbe tollerare dai propri Stati membri. Non è escluso che la pronuncia nella causa contro Malta possa costituire un precedente importante per la Corte di Giustizia per considerare le misure ungheresi come incompatibili con i valori di cui all'art. 2 TUE, qualora il giudice dell'Unione si dovesse trovare a decidere di tale questione per effetto di futuri ricorsi diretti o indiretti.

Keywords: EU citizenship, attribution of Member State's nationality, EU values, citizenship by investment
Parole chiave: cittadinanza UE, attribuzione della cittadinanza di uno Stato membro, Valori dell'UE, cittadinanza sulla base di investimento

* Articolo sottoposto a referaggio.

abuse of European citizenship… without there being a prohibition against such abuse in the EU Treaties. **3.4.** Does Malta's CBI programme violate EU values? The ambiguous contours of invoking the principle of solidarity. **3.5.** The violation of the principles of mutual trust and sincere cooperation is not, in itself, sufficient to render Malta's CBI programme unlawful. **3.6.** The Granting of Citizenship and the Constraints Imposed by the CFSP in Relation to the Exercise of This National Prerogative. **3.7.** Unresolved issues on citizenship attribution and future Treaty amendments **4**. When citizenship attribution is not subject to conditions under EU law: the redrawing of constituencies in Hungary. **5.** Conclusion.

1. Introduction

As a matter of principle, the attribution of citizenship is a prerogative of States: they have the authority to define who belongs to the polity and who may participate in the political life the State itself.[1] Citizenship is therefore at the heart of the identity of a political community. Within the European Union (EU), individual Member States hold the competence to determine who is a citizen. EU citizenship, established by Article 20 TFEU,[2] is a derived status acquired by virtue of the acquisition of the nationality of a Member State, and is automatically lost if an EU national, holding a single nationality of a Member State, ends up losing it.[3]

However, it is settled case law that even in a domain reserved to national competence, Member States must have due regard to obligations stemming from EU law. The Court of Justice has limited Member States' powers in the *withdrawal* of national citizenship since 2010, in circumstances where the loss of the nationality of a Member State also entailed losing EU citizenship.[4] In a recent case, *Commission v Malta*,[5] the Court has shown that EU law is relevant in matters of attribution of national citizenship.[6] The case concerns the legality of the so-called 'golden passports', or citizenship by investment ('CBI') schemes, whereby, in exchange for a certain payment or investment, an individual can acquire a new nationality.[7] In the case of the EU, a golden passport enables a third country national to acquire the citizenship of a Member State, and, as a result, EU citizenship. The Court states that rules on citizenship may undermine 'the implementation of the process of integration that is the *raison d'être* of the European Union itself'.[8]

[1] Including on who gets to be part of the polity, and so on, in a dialectic process of self-constitution.
[2] 'Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.'
[3] See also Case C-135/08, *Rottmann*, EU:C:2009:588, Opinion of AG Poiares Maduro, para 15.
[4] Case C-135/08 *Rottmann* para 56; Case C-369/90, *Micheletti* ECLI:EU:C:1992:295 para 10; Case C-179/98, *Mesbah* ECLI:EU:C:1999:549 para 29.
[5] Case C-181/23 *Commission v Malta.*
[6] This may be evinced by case C-118/20, *JY v Wiener Landesregierung* ECLI:EU:C:2022:34. In that case, an Estonian national had renounced to her nationality in the course of a procedure where Austrian authorities assured that she would be granted Austrian citizenship. Could the Austrian authorities 'change their mind' and not grant Austrian citizenship, in these circumstances? The Court held that for such a choice to be lawful, a strict proportionality test was necessary. For other cases, see C-181/23 *Commission v Malta*, Opinion of AG Collins para 50.
[7] For the perspective of political theorists on this matter, see A. SHACHAR, *Citizenship for Sale?* in SHACHAR AND OTHERS (eds), *The Oxford handbook of citizenship*, Oxford University Press, Oxford, 2017; and L. MAVELLI, *Neoliberal Citizenship: Sacred Markets, Sacrificial Lives,* Oxford University Press, Oxford, 2022.
[8] C-181/23 *Commission v Malta* para 91.

Member States do not have unlimited discretion in deciding who becomes their national; they must exercise their powers by taking into account the obligations stemming from EU law.[9] On this basis, in that ruling the Court has declared the commercialisation of the granting of the nationality (and, by extension, the conferral of Union citizenship) by Malta incompatible with EU law. In particular, the invocation of national identity by a Member State as a ground to protect the national prerogative of choosing who is a citizen is not sufficient to justify the legislation, given the impact that citizenship attribution has on other Member States.

In this article, we aim to explore the complex relation between the *attribution* of national citizenship and EU law taking two case studies.

The first, and main focus of the Article is the Maltese CBI scheme which has been just sketched out; the second case considered is used as analytical contrast illustrating not so much the reach of EU competence but the potential effect of national attribution on EU values: this is the award of Hungarian nationality to ethnic Hungarians. Living mainly in neighbouring countries, they have overwhelmingly voted in favour of the government that granted them Hungarian citizenship, giving rise to suspicions that the conferral was driven by short-term political interests. This manipulation of electoral constituencies is what in the US is known as 'gerrymandering', and may affect the functioning of a democracy, which is protected under art. 2 TEU and also by Article 3 of Protocol 1 of the European Convention on the Protection of Human Rights, concerning the right to free and fair elections. What the Maltese and the Hungarian case have in common is that they may negatively affect EU values, but while the Court found that EU law imposes limits on Malta, we argue that it does not in case of Hungary, in so far as the legislation in question does not create new EU citizens (it creates new Hungarian citizens, but who, by and large, already held EU citizenship as nationals of another Member State).

The objective of this article is to examine to what extent EU law has legal instruments to react to legislations on citizenship attribution that affect EU values.[10]

This article proceeds as follows. By way of background, Section 2 conceptualises the connections between the key concepts of this article: citizenship, democracy, and national identity, zooming in on the literature on citizenship by investment, and on that about citizenship attribution by 'ethnicity'.

Section 3 discusses the primary case study of this article, concerning legal issues arising from the award of the nationality of a Member State to a third country national, when acquiring such national citizenship also entails the automatic acquisition of EU citizenship. The discussion will focus on the ruling *Commission*

[9] See, on this, L. AZOULAI, *The "Retained Powers" Formula in the Case Law of the European Court of Justice: EU Law as Total Law?* in *European Journal of Legal Studies*, n. 4, 2011, p. 178.

[10] L. D. SPIEKER, *EU Values Before the Court of Justice: Foundations, Potential, Risks*, Oxford University Press, Oxford, 2023.

v Malta and will comment the reasoning leading the Court of Justice to consider the Maltese legislation in breach of EU law.

Section 4 presents a secondary case study, and is dedicated to what EU law has to say, if anything, about a Member State attributing its nationality not to third country nationals, but to those of another Member State, when this has a direct and significant impact on electoral results. This is illustrated with reference to Hungary's changes in its electoral system and indeed in its electorate since 2010. Concluding remarks on how the two case studies affect EU values will follow.

2. Citizenship, democracy, and national identity

The notion of "citizenship" is linked to national identity because, through a process of dialectical influence, the citizens *are* the polity of a State.[11] Sharing common duties and values toward the same community fosters a sense of common identity, because citizenship entails membership 'and membership has invariably involved degrees of participation in the community'.[12] The attribution of citizenship also has ramifications for territorial claims. For example, policies granting citizenship to individuals in disputed territories can be interpreted as a claim to sovereignty. Even though territorial change by force is prohibited by international law,[13] foreign policy can lead to citizenship attribution after conquest, as occurred in the case of Crimea, or parts of the Donbass region in Ukraine, which Russia now claims to have annexed.[14]

National identity is protected by EU law. A clause to this effect was first introduced in the Maastricht Treaty (Article F.1), with the aim of protecting national democratic models against potential encroachments arising from deeper EU integration:[15] Member States feared that conferring more powers to the EU might, in the future, enable the Union to override or at least dilute the democratic choices made at national level. With the later Treaty amendments (Amsterdam, Nice, and Lisbon), national

[11] In modern times, the state (rather than the nation) is the political entity 'supposed to play a constitutive role in defining the political identity of the citizen within a democratic polity'. J. HABERMAS, *Citizenship and National Identity* in B. VAN STEENBERGEN (ed), *The Condition of Citizenship,* Sage, London, 1994.

[12] D. HELD, *Between State and Civil Society: Citizenship* in J. ANDREWS (ed), *Citizenship*, Lawrence and Wishart, London, 1991, p.20, cited in K. ROSTEK and G. DAVIES, *The Impact of Union Citizenship on National Citizenship Policies* in *European Integration Online Papers,* n. 10, 2006, p.1.

[13] This can be derived from Article 2(4) UN Charter prohibiting, as a rule, the use or threat of force in international relations. See also Articles 3 and 4 of the Helsinki FinalAct, 1August1975, and J. CRAWFORD and I. BROWNLIE, *Brownlie's Principles of Public International Law,* Oxford Univiversity Press, Oxford, 2012 p. 242.

[14] See Team of the Official Website of the President of Russia, 'Concert Marking 10th Anniversary of Crimea and Sevastopol's Reunification with Russia' (*President of Russia*, 19 March 2024). For arguments on the illegality of the annexation, O. MEREZHKO, *Crimea's Annexation by Russia – Contradictions of the New Russian Doctrine of International Law* in *Heidelberg Journal of International Law*, n. 75, 2015, p.167.

[15] G. DI FEDERICO, *L'identità nazionale degli Stati membri nel diritto dell'Unione europea. Natura e portata dell'art. 4, par. 2*, TUE, Editoriale Scientifica, Napoli, 2017, p.10; F. CASOLARI, *Il Processo Di Europeizzazione Delle Identità Nazionali Degli Stati Membri: Riflessioni Sulle Traiettorie Del Costituzionalismo Europeo*, in *Rivista Quaderni AISDUE*, n. 2, 2024, p.269.

identity was decoupled from the Member States' democratic model– democracy now being expressly recognised as an EU value in Article 2 TEU. There are processes of mutual influence between the national identities of the Member States and the common identity of the EU,[16] and invoking national identity does not exempt a Member State from its obligation under EU law,[17] but the fact remains that Treaties explicitly recognise that '[t]he Union shall respect the equality of Member States before the Treaties as well as their national identities' (Article 4(2) TEU), 'such that those States enjoy a certain degree of discretion in implementing the principles of the rule of law'.[18]

Let us now turn to programmes of citizenship by investment. Historically, the origins of citizenship by investment can be traced back to the 1980s, with early programs emerging in micro-states in the Pacific and the Caribbean, as well as in Ireland.[19] The proliferation of 'golden passport' and 'golden visa' schemes accelerated in the early 2000s, reflecting a broader trend towards the marketization of citizenship. Shachar emphasizes that the rise of CBI is not merely a straightforward cash-for-passport transaction, but rather a manifestation of a more intricate citizenship market, influenced by neoliberal transformations and the differing motivations of states and investors.[20] The ethical implications of such schemes have given rise to concerns. Critics argue that commodifying citizenship undermines the principle of equality, as it privileges the wealthy while potentially marginalizing those without financial means.[21] Others contend that citizenship should not be treated as a marketable commodity because of the moral implications involved.[22] This perspective aligns with the concept of *ius pecuniae*, which refers to the acquisition of citizenship through financial means, and stands in stark contrast to traditional notions of citizenship based on birth or residence.[23] Within the EU, the proliferation of these programmes has attracted

[16] C-204/21 *Commission v Poland* ECLI:EU:C:2023:442 para 72. L. CORRIAS, *National Identity and European Integration: The Unbearable Lightness of Legal Tradition,* in *European Papers*, n 1, 2016, p.383; K. LENAERTS and J.A. GUTÍERREZ-FONS, *Epilogue. High Hopes: Autonomy and the Identity of the EU*, in *European Papers*, n 8, 2023, p. 1495; CASOLARI, *Il Processo*, *cit.*

[17] C-673/16 *Coman* ECLI:EU:C:2018:385 paras 43-44.

[18] Case C-156/21 *Hungary v Parliament and Council* ECLI:EU:C:2022:97 para 233.

[19] S. CARRERA, *The Price of EU Citizenship: The Maltese Citizenship-for-Sale Affair and the Principle of Sincere Cooperation in Nationality Matters*, in *Maastricht Journal of European and Comparative Law*, n. 21, 2014, p. 406.

[20] A. SHACHAR and R. HIRSCHL, *On Citizenship, States, and Markets*, in *Journal of Political Philosophy*, n. 22, 2014, p. 231.

[21] D.E. UTKU and I. SIRKECI, *Ethics of Commodified (Golden) Citizenship*, in *Journal of Economy Culture and Society*, 2020, p. 365.

[22] L. EREZ, *A Blocked Exchange? Investment Citizenship and the Limits of the Commodification Objection* in D. KOCHENOV and K. SURAK (eds), *Citizenship and Residence Sales. Rethinking the Boundaries of Belonging*, Cambridge University Press, Cambridge, 2023, p. 335.

[23] J. DZANKIC, *Citizenship With a Price Tag: The Law and Ethics of Investor Citizenship Programmes*, in *Northern Ireland Legal Quarterly*, n. 65, 2019, p. 387.

significant attention.[24] In particular, in 2019 the European Commission identified a range of risks associated with the practice: lack of security, money laundering, tax evasion, and corruption.[25]

Democracy also needs to be mentioned here: it is a value of the EU (Article 2 TEU), which is given concrete expression in the political rights conferred to EU citizens in Articles 10 and 11 TEU. Its relevance to a discussion on citizenship and national identity lies in the fact that, in a democracy, citizens help shape the destiny of the community they belong to, for example through elections.[26] To ensure the proper functioning of electoral democracy, elections should be free and fair. This also implies that the composition of the electoral body must not be manipulated for partisan gain.[27]

These conceptual links frame the core inquiry of this article: the extent to which EU law constrains Member States when the attribution of national citizenship also determines access to EU citizenship. The Maltese citizenship-by-investment scheme provides the central case study for this analysis. A brief discussion of Hungary's extension of citizenship to ethnic kin abroad is included as a contrast case, illustrating situations where the attribution of nationality raises normative concerns (for their potential impact on Article 2 TEU).

3. The legality of the 'golden passport' programmes and the ruling in *Commission v Malta*

This section turns to the main focus of the article: the legal implications of Malta's citizenship-by-investment programme under EU law

3.1. The legal background and the Opinion by Advocate General Collins

The relevance of EU law in the award of national citizenship is demonstrated by the 'golden passports' saga, which concerns the practice of awarding citizenship by investment ('CBI') within the EU. Malta, Cyprus, and Bulgaria have operated such schemes, which have also benefited of Russian nationals.[28] In

[24] O. PARKER, *Commercializing Citizenship in Crisis EU: The Case of Immigrant Investor Programmes*, in *Journal of Common Market Studies*, n. 55, 2016, p.332; CARRERA, *cit.*; J. DŽANKIĆ, *Investment-Based Citizenship and Residence Programmes in the EU*, EUI Working Paper, 2015; KOCHENOV and SURAK (eds), *Citizenship and Residence Sales, cit.,* ZABROCKA, *The sale of EU citizenship and the 'law' behind it*, in *Statelessness & Citizenship Review*, n. 5, 2023, p. 44.

[25] Report from the Commission to the European Parliamenti, the Council, the European Economic and Social Committee, and the Committee of the regions. Investor Citizenship and Residence Schemes in the European Union. COM(2019) 12 final

[26] Thus the ECJ protects 'the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly' Case C-138/79 *Roquette Frères*, ECR 1980-03333 para 33. K. LENAERTS, *The Principle of Democracy in the Case Law of the European Court of Justice*, in *International & Comparative Law Quarterly*, n. 62, 2013, p. 282.

[27] See, to this effect, principle 3.4 and 3.6 of T. TRIDIMAS and E. MUIR, *Charter of Fundamental Constitutional Principles of a European Democracy*, European Law Institute, Vienna, 2024: 'Electoral constituencies must be determined on an equitable, fair, and objective basis' and 'Amendments to electoral laws must be subject to sufficient constraints to prevent abuse by the incumbent Government or the parliamentary majority.' These are discussed again in section 4.

[28] There are variations between the schemes, also in terms of the use that the country will make of the money, i.e., in the contribution to the 'public good' that the new citizen will make, and therefore to the benefit that the population will

short, these programmes have raised concerns that they are 'a corrupt scheme to support the corrupt'.[29] In October 2020, the Commission sent letters of formal notice to Malta and Cyprus,[30] then highlighted its concerns regarding an investor citizenship scheme operated by Bulgaria.[31] In its 2022 report on Albania (a candidate to accession), the Commission cautioned the country against developing such a scheme.[32]

Focusing on Malta, in March 2023, the Commission decided to lodge an infringement action before the European Court of Justice. The Commission argued that even in areas where Member States retain competence, such as the attribution of citizenship, that competence must be exercised with due regard to obligations stemming from EU law. In particular, it referred to the obligation, derived from the principle of sincere cooperation in Article 4(3) TEU, and from the status of Union citizenship in Article 20 TFEU, to preserve the mutual trust underpinning EU citizenship. The Commission also submitted that an investor citizenship scheme, entailing the systematic granting of a Member State's nationality in exchange for predetermined payments or investments, without requiring a genuine link between the State and the applicants, compromises and undermines the essence and integrity of Union citizenship established in Article 20 TFEU, and breaches the principle of sincere cooperation. The Commission additionally argued that the Maltese CBI was unlawful because it was transactional in nature and did not establish a genuine link between the investor and the country.[33]

In its defence, Malta argued that although Member States' competence to determine the acquisition of nationality must be exercised with due respect to EU law, this duty cannot undermine the national identity of the Member States. Malta further contended that EU law does not impose a legal obligation on Member States to require a 'prior genuine link' with the country of naturalisation. Malta also argued that the Court may only review the exercise of national competences in granting nationality when such actions constitute, in a general and systematic manner, serious breaches of the values or objectives of the European Union. According to Malta, the Commission had also failed to prove that the CBI in question was contrary to the Union's objective: it did not, in law or in fact, consist of an automatic and

derive. Details are available at Commission, 'Staff Working Document accompanying the report on Investor Citizenship and Residence Schemes in the European Union' SWD (2019) 5 final.

[29] Ana Gomes, Member of the European Parliament, cited in Transparency International (L. BRILLAUD and M. MARTINI) and Global Witness, 'European Getaway. Inside the Murky World of Golden Visas' (Transparency International 2018).

[30] As for Cyprus, the country ceased processing applications altogether and even withdrew the citizenship thus obtained by some investors. See European Commission, *"Golden passport" schemes: Commission proceeds with infringement case against MALTA* (6 April 2022).

[31] On 24 March 2022, the Bulgarian Parliament approved an amendment to the Bulgarian Citizenship Act, which a view to end the investor citizenship scheme. In Bulgaria, 12 golden passports were also withdrawn. K. NIKOLOV, 'Bulgaria revokes 12 golden passports' (*Euractiv*, 9 December 2022).

[32] European Commission, *Albania 2022 report*, COM(2022) 528 final 6.

[33] C-181/23 *Commission v Malta* paras 42-62.

unconditional access route to Maltese nationality, providing for the systematic granting of nationality in exchange for predetermined payments or investments.[34]

The Opinion of Advocate General Collins focussed – like the Commission oral submissions – on the argument that, in order to preserve the integrity of EU citizenship, there must be a 'genuine link' between a Member State and its nationals. The AG found that EU law does not require such a link for the attribution of national citizenship.[35] The granting of national citizenship is a matter falling within the exclusive competence of the Member States, and it is for each of them, having regard to international law, to lay down the conditions under which their nationality may be acquired or lost.[36] International law does not require a 'genuine link' as a condition for the attribution of citizenship.[37]

The issue attracted doctrinal attention before the judgment was delivered. In short, the most widespread position appeared to be that the EU lacked competence in the area.[38] The principle of conferral mandates that the EU cannot intervene in individual cases where the attribution of national citizenship is the source of EU rights for an individual. Weiler described the case brought against Malta as 'an egregious exercise of jurisdictional creep and circumvention of constitutionally correct procedures'.[39] It was also anticipated –correctly, as it turns out – that the Court might 'infer some constraints to CBI schemes from the principle of sincere cooperation'.[40] It was further suggested that the Commission's argument might succeed in Court, as even competences that remain the exclusive prerogative of Member States must be

[34] Ibid paras 63-78.
[35] Case C-181/23 *Commission v Malta*, Opinion of AG Collins para 55.
[36] Ibid para 44.
[37] Ibid para 56.
[38] J. SHAW, *Citizenship for Sale: Could and Should the EU Intervene?* in R. BAUBÖCK (eds), *Debating Transformations of National Citizenship*, Springer, Cham, 2018; W. MAAS, *European Governance of Citizenship and Nationality*, in *Journal of Contemporary European Research*, n. 12, 2016, p. 433; D. KOCHENOV and J. LINDEBOOM, *Pluralism through Its Denial: The Success of EU Citizenship* in G. DAVIES and M. AVBELJ (eds), *Research Handbook on Legal Pluralism and EU Law*, Edward Elgar, Cheltenham, 2018; D. SARMIENTO, *EU Competence and the Attribution of Nationality in Member States*, Investment Migration Working Paper, 2019; C. MARGIOTTA, *"Ricchi e poveri" alla prova della cittadinanza europea. Annotazioni sulla "Relazione della Commissione europea sui programmi di cittadinanza per investitori"* in *Ragion Pratica*, 2020, p. 513; D. KOCHENOV, *Genuine Purity of Blood: The 2019 Report on Investor Citizenship and Residence in the European Union and Its Litigious Progeny*, in *LSE Europe in Question Discussion Paper Series*, 2020, n. 164, p. 15; H.U. JESSURUN D'OLIVEIRA, *Union Citizenship and Beyond* in D. KOCHENOV, N. CAMBIEN and E. MUIR (eds), *European Citizenship Under Stress: Social Justice, Brexit and Other Challenges*, Brill–Nijhoff, The Hague, 2020; N. CAMBIEN, *Les programmes d'acquisition de la citoyenneté par investissement et les procédures d'infraction contre Chypre et Malte*, in *Journal de Droit Européen*, n. 9, 2021, p. 410; M. VAN DEN BRINK, *Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?*, in *German Law Journal*, n. 23, 2022, p. 79; D. SARMIENTO and M. VAN DEN BRINK, *EU competence and investor migration* in KOCHENOV and SURAK (eds), *Citizenship and Residence Sales, cit.*, p. 194.
[39] J. WEILER, *Citizenship for Sale (Commission v Malta). Who of the Two is Selling European Values?* (*Verfassungsblog*, 14 April 2024).
[40] J. LINDEBOOM and S. MEUNIER, *In the Shadow of the Euro Crisis. Foreign Direct Investment and Investment Migration Programmes in the European Union* in KOCHENOV and SURAK (eds), *Citizenship and Residence Sales, cit.*, p. 449.

exercised in compliance with obligations stemming from EU law.[41] Others also pointed to the negative impact on EU values as a potential basis the Commission's action.[42]

The requirement of a 'genuine link' also attracted attention.[43] Even before AG Collins delivered his Opinion, it was noted that the argument based on the lack of 'a genuine link' (a notion to be defined by the EU institutions and not by Member State), relating to the notion coined by the International Court of Justice in the *Nottebohm* case,[44] concerns, under international law, *recognition* rather than *acquisition* of citizenship.[45] The concept of 'genuine link' also appears in the case law of the CJEU, which recognises that a Member State may choose to require such a link both for the recognition and for the acquisition of citizenship.[46] Nonetheless, some have argued that EU law may require the existence of a 'genuine link', deriving it from the constitutional principles of solidarity and of democracy.[47] The precise meaning of a 'genuine link' remains a matter of debate.[48]

3.2. The Ruling of the Court of Justice in Commission v Malta: The Commodification of European Citizenship Is Incompatible with EU primary Law

Having recalled the rights enjoyed by European citizens, including those of political nature, the Court of Justice, departed from the Opinion of Advocate General Collins and upheld the Commission's action. Its conclusion rested on the principles of solidarity, mutual trust and sincere cooperation.

The Court began by rejecting the idea that only serious violations of the Union's values and objectives could constitute a breach of Union law when Member States exercise their competence to grant nationality. The Court held that recognising that the failure to comply with this obligation occurs in exceptional circumstances 'would amount to a limitation of the effects attaching to the primacy of EU law, which falls within the essential characteristics of EU law and, therefore, within the constitutional framework of the European Union […]'.[49]

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[41] M. CHAMON, *A Rejoinder to Citizenship for Sale (Commission v Malta). Some Remarks and Counterarguments* (Verfassungsblog, 15 April 2024)

[42] B. CORTESE, *Introduzione*, in *Rivista Quaderni AISDUE*, n. 1, 2024, p. 19; S. MARINAI, *Il ruolo dell'effettività nei rapporti tra cittadinanza statale e cittadinanza dell'Unione europea*, in *Rivista Quaderni AISDUE*, n. 1, 2024, p. 365.

[43] D. KOCHENOV *Commission Would Likely Be "Humiliated" If CIP-Matter Goes to Court Over "Genuine Links"* (IMI Daily, 23 October 2020).

[44] ICJ, *Liechtenstein v. Guatemala*, judgment of 6 April 1955, p. 4.

[45] M. VAN DEN BRINK, *Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?*, in *German Law Journal*, n. 23, 2022, p. 79. Case C-181/23 *Commission v Malta*, Opinion of AG Collins, para 56. See also P.J. SPIRO, *Nottebohm and "Genuine Link": Anatomy of a Jurisprudential Illusion*, in D. KOCHENOV, M. SUMPTION and M. VAN DEN BRINK (eds), *Investment Migration in Europe and the World: Current Issues,* Hart Publishing, Oxford, 2025.

[46] See e.g. Case C-221/17 *Tjebbes* para 35; Case C-689/21 *X (Udlændinge- og Integrationsministeriet)* ECLI:EU:C:2023:53 para 32.

[47] L.D. SPIEKER and F. WEBER, *Bonds without belonging? The genuine link in international, union, and nationality law*', in *Yearbook of European Law*, 2025.

[48] VAN DEN BRINK, *Revisiting Citizenship, cit.*

[49] Case C-181/23 *Commission v Malta* para 83.

The Court then elaborated on the principle of mutual trust – which underpins the area of freedom, security and justice – and on the catalogue of rights linked to EU citizenship.[50] Citing Opinion 2/2013, the Court recalled that the Treaty provisions governing these rights 'contribute to the implementation of the process of integration that is the raison d'être of the European Union itself and thus form an integral part of its constitutional framework .[51]'The Court reiterated that 'Union citizenship constitutes the fundamental status of nationals of the Member States,'[52] and that it represents one of the main expressions of solidarity, which lies at the very foundation of the European integration process.[53] By virtue of the principle of sincere cooperation, the power to grant and withdraw European citizenship is not unlimited.[54] The Court made no distinction between the obligations of Member States concerning the withdrawal or the granting of citizenship. And this, in our view, is already open to criticism.

The most prominent role in the reasoning of the Court is played by the principle of solidarity.[55] After emphasizing that the foundation of the citizenship bond with a Member State lies in the particular relationship of solidarity and loyalty between that State and its citizens, as well as in the reciprocity of rights and duties, the Court states: '[…] the special relationship of solidarity and good faith between each Member State and its nationals also forms the basis of the rights and obligations reserved to Union citizens by the Treaties.'[56]

Subsequently, the Court acknowledges that: 'As regards the establishment of such a particular relationship of solidarity and good faith, it follows from the case-law referred to in paragraph 81 of the present judgment that the definition of the conditions for granting the nationality of a Member State does not fall within the competence of the European Union, but within that of each Member State, which has a broad discretion in the choice of the criteria to be applied, provided that those criteria are applied in compliance with EU law.[57]'

In paragraph 99, which constitutes the most important part of the judgment, the Court sets out its position, invoking an additional principle: that of mutual trust. It is on this basis that an exception to the broad discretion enjoyed by Member States in attributing citizenship is defined by the Court. The mentioned paragraph states: '[…] A Member State manifestly disregards the requirement for such a special relationship of solidarity and good faith, characterised by the reciprocity of rights and duties

[50] Ibid from paras 84 to 91. For a short comment on the case see S. Poli, 'The end of the reserved domain on citizenship attribution?' in G. BUGEDO MONTERO, *Symposium. EU Citizenship's New Boundaries: Commission v. Malta* (*EU law live*, July 2025).
[51] Ibid para 91.
[52] C-184/99 *Grzelczyk* ECLI:EU:C:2001:458 para 93.
[53] C-181/23 *Commission v Malta* para 93.
[54] Ibid para 95.
[55] Ibid paras 96 and 97.
[56] Ibid para 97.
[57] Ibid para 98.

between the Member State and its nationals, and thus breaks the mutual trust on which Union citizenship is based, in breach of Article 20 TFEU and the principle of sincere cooperation enshrined in Article 4(3) TEU, when it establishes and implements a naturalisation scheme based on a transactional procedure between that Member State and persons submitting an application under that programme, at the end of which the nationality of that Member State and, therefore, the status of Union citizen, is essentially granted in exchange for predetermined payments or investments.'[58]

Starting from paragraph 102, the Court examines the Maltese investor citizenship program in detail and highlights its shortcomings. In particular, the attention is focused on the requirement of legal residence. The actual residence of 12 months is questioned, since the applicant's physical presence is required only at the time of biometric data collection for the residence permit and for taking the oath of allegiance.

By contrast, the 'ordinary' naturalization procedure, pursuant to Article 10(1) of the Maltese Citizenship Act, requires a significantly longer period of residence.[59] Nor do the checks on the applicant's situation—intended to ensure that the implementation of the 2020 citizenship-by-investment program does not compromise public order and national security in that Member State—suffice to refute the transactional nature of Malta's CBI program. It is precisely this aspect that makes the procedure comparable to a commercialization of the granting of citizenship of a Member State and, by extension, of Union citizenship status.

Commission v Malta is a ruling which will undoubtedly be remembered as a federalism-inspired judicial decision which, in the name of Union citizenship, restricts one of the most sensitive areas of competence reserved to the Member States: the granting of citizenship.

Having established that the Maltese CBI program is unlawful, similar schemes in other Member States will also have to be abolished. While the position of the Court of Justice is understandable and even commendable in light of the outcome – given that Malta is indeed abusing European citizenship[60] - the reasoning of the Union judge is not entirely convincing, as will be highlighted in the following paragraphs. In the next paragraphs, we shall see that the Court has resorted to a creative interpretation of primary law. The result is a ruling that is inspiring in its evocative language – reminding us of the goals of the European integration process – but lacking in persuasive legal force.

[58] Ibid para 99.
[59] Ibid para 110.
[60] This is clear from the way the benefits linked to acquiring citizenship through investment are presented on the websites of agencies authorized to manage the programs, as emphasized by the Court of Justice in the ruling which is commented. Ibid para 110.

3.3. A ruling that tackles the phenomenon of the abuse of European citizenship… without there being a prohibition against such abuse in the EU Treaties

The ruling in *Commission v Malta* was highly anticipated due to the potential consequences it could have on the power of Member States to decide who may be granted citizenship. The decision in question has sparked considerable interest in legal scholarship, resulting in a series of immediate commentaries, some of which have been positive,[61] while others have been particularly critical.[62]

This is the first time that a national law concerning the granting of citizenship has been censured in the context of an infringement procedure. The step taken by the Court of Justice in the ruling *Commission v. Malta* is not the logical extension of the case law concerning the constraints placed on national authorities when deciding to revoke citizenship. In fact, while in the cases decided by the Court such a decision automatically resulted in the loss of Union citizenship – and therefore fell within the scope of Union law – by contrast, a national measure granting citizenship to a foreign national is not subject to EU rules.[63]

Yet, since attributing citizenship has repercussions for all other Member States, the latter are obliged to respect EU law in exercising this competence. In particular, they cannot attribute citizenship in a way that undermines the objectives of the EU. This point will be revisited in paragraph 3.4.

It is the opinion of the authors that it was particularly difficult for the Court of Justice to argue that primary law affected the sovereign prerogative to grant national citizenship. The existence of Declaration No. 2 annexed to the Final Act of the Maastricht Treaty – which highlights that Member States wish to remain sovereign in determining to whom they grant *status civitatis* – was a useful but not decisive element for interpretation, as this act is merely political in nature.

The central argument leading to the conclusion that Malta violated Articles 20(1) and 4(3) of the TEU is the transactional nature of the legislation challenged in the infringement proceedings, and the resulting commercialization of the granting of Member State citizenship and, by extension, Union citizenship.[64]

Yet, the former provision mentioned above contains no indication that could lead the Court to conclude

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[61] E. DE FALCO, *Op-Ed: The End of Citizenship for sale? a legal turning Point in Commission v. Malta (C-181/23)* (EU Law Live, 30 April 2025). The author takes the view that the ruling elevates European citizenship beyond the market logic. See also L.D. SPIEKER, *It's solidarity, stupid! In defence of Commission v Malta* (Verfassungsblog, 7 May 2025), R. O'NEILL, *The Silent Engine of European Citizenship*, (Verfassungsblog, 7 May 2025), J. HOEKSMA, *Moral high Ground and legal Analysis: on Commission v. Malta (C-181/23)*, (*EU law live*, n. 70, week 12-18 May 2025) 11; S. COUTTS, *Citizenship as a Constitutional Status:* Commission v Malta (Globalcit, 14 May 2025).

[62] See, for example, C. BAUDENBACHER, *After Commission v. Malta – what are Switzerland's Prospects?* (*EU law live*, n. 70, week 12-18 May 2025) 5; G. ÍÑIGUEZ, *Op-Ed: On Genuine Links, Burdens of Proof, and Declaration No. 2: Some Musings on the Court's Reasoning in Commission v. Malta (C-181/23)* (*EU law Live*, 5 May 2025); S. PEERS, *Pirates of the Mediterranean meet judges of the Kirchberg: the CJEU rules on Malta's investor citizenship law* (*EU law Analysis*, 30 April 2025), https://eulawanalysis.blogspot.com/2025/04/pirates-of-mediterranean-meet-judges-of.html; M. VAN DE BRINK, *Why bother with legal reasoning? The CJEU Judgment in Commission v Malta (Citizenship by Investment)* (Globalcit, 2 May 2025).

[63] See S. POLI, 'The End of the reserved Domain on Citizenship Attribution?' (EU Law Live, 13 May 2025).

[64] C-181/23 *Commission v Malta* paras 99-100.

that the power to grant national citizenship is subject to EU law. Naturally, it is not unusual for the literal interpretation of a legal basis in the Treaty to have not prevented the Court from interpreting primary law in a way that restricts the sovereign powers of the Member States.

A recent example is the ruling in *Commission v. Czech Republic*,[65] in which the Court of Justice held that the prohibition on a citizen of another Member State from joining a political party for the purpose of taking part in municipal elections, or to those of the European Parliament, is contrary to Article 22 TFEU. This ruling is remarkable since the latter does not explicitly grant such a right to citizens of other Member States. While a broad interpretation of a political right of a European citizen is entirely understandable in the light of '*effet utile*' of EU citizenship rights, it does not seem possible to disregard the wording of Article 20(1) TFEU when the Court of Justice is asked to determine whether a Member State has violated the Treaties in a situation where the primary law reserves to national authorities the power to determine who qualifies as their 'citizen.'

If primary law had included a clause prohibiting Member States from abusing Union citizenship, it would have been possible to declare Malta's CBI program unlawful. This may be seen as a gap in the current framework of the Treaties. The real issue with the CBI program challenged in the proceedings is that Malta is abusing the institution of Union citizenship, but Article 20 TFEU contains no prohibition against the abuse of the rights deriving from Union citizenship.

Neither a contextual nor a teleological interpretation[66] could have justified the conclusion reached by the EU Court. One might ask whether recourse to Article 54 of the Charter of Fundamental Rights of the European Union (CFR), which prohibits the abuse of rights, could have supported the Court's reasoning. However, the Court of Justice did not explore this possibility – despite a fleeting reference made by Advocate General Collins[67] - likely because that provision does not concern the conditions for acquiring EU citizenship. Rather, it merely requires that the rights and freedoms protected by the Charter, including those related to EU citizenship, are not exercised in an abusive manner. AG Collins had also referred to case law defining the conditions under which an abuse of EU rights can be identified.[68] In footnote 52

[65] In the ruling C-808/21, *Commission v. Czech Republic* ECLI:EU:C:2024:962, the Court of Justice found that the Czech legislation, prohibiting EU citizens without Czech nationality from joining a political party, violated Art. 22 TFEU. Although the latter provision is limited to guaranteeing the right to vote and to stand as a candidate in municipal and European Parliament elections and does not explicitly mention party membership, the Court's intepretation is convincing. Indeed, even if Art. 22 contains no reference to the conditions for acquiring the status of member of a political party or political movement (para 93), this provision was interpreted in light of the effective exercise of the rights it confers (para 103).The inability to join a political party would, in fact, undermine the practical enjoyment of the right to stand as a candidate, rendering the Czech legislation incompatible with EU law.

[66] Even arguing that the spirit of the Treaties obliges Malta to put an end to its abusive legislation appears to be a strained argument.

[67] C-181/23 *Commission v Malta* AG Opinion paras 50 and 51.

[68] Joined cases C-116/16 and C-117/16 *T Danmark and Y Denmark*, ECLI:EU:C:2019:135, paras 70 and 97.

of the Opinion, he states: 'Proof of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by EU law, the purpose of those rules has not been achieved and, second, a subjective element consisting in an intention to obtain an advantage from EU rules by artificially creating the conditions laid down for obtaining it.' While there is no doubt that the Maltese Programme of CBI artificially creates the condition to derive an advantage from the EU citizenship rights, it is not clear whether the first condition of the test referred to is met, that is to say, the purpose of those rules has not been achieved: Malta has observed EU rules by attributing citizenship under Article 20 TFEU but it cannot be claimed that by so doing it has defeated the purpose of the rule, which is to clarify that Member States have the power to identify who can be a citizen of the Union.

A further option that the Court could have explored is whether Malta has breached the general principle of abuse of EU rights. There is a commentator who has taken the view[69] that on the basis of *Cussens*[70] it is possible to argue that such a general principle exists. In this ruling, the Court of Justice stated that: «The prohibition of abusive pratices displays the general, comprehensive character which is naturally inherent in general principles of EU».[71] It is the opinion of the authors, that this statement cannot be taken to imply that the abuse of EU law amounts to a general principle of Union law. The prohibition of abuse of EU law does not apply to interstate relations; it refers to abusive practices of individuals or companies. Needless to say that the Court may still decide to overturn its case law.

Finally, it also seems difficult to us to use other provisions of the Treaty, including Article 2 TEU, to interpret Article 20(1) TFEU in such a way as to prohibit the Maltese CBI program. The next paragraph focus on this aspect.

3.4. Does Malta's CBI programme violate EU values? The ambiguous contours of invoking the principle of solidarity

In paragraphs 82 and 83, the Court emphasizes that Member States are required to respect the values and principles of the EU when granting the citizenship of a Member State of the Union. Failure to comply with these obligations would, in the view of the Union's judiciary, constitute a limitation of the principle of primacy of EU law. Thus, the Court rejects Malta's argument that, in order to safeguard the exclusive competence of Member States in matters of citizenship, a naturalization policy should be considered

[69] K. LAMPRINOUDIS, *Money Cannot Buy Everything! Catharsis Reached in the Commission v. Malta Tragedy?* In G. BUGEDO MONTERO (ed), *EU Citizenship's New Boundaries: Commission v. Malta*, p. 14 (EU Law Live)
[70] C-251/16 *Cussens* ECLI:EU:C:2017:881
[71] Ibid para 31.

unlawful only to the extent that violations of EU values and principles are serious and of a 'systematic and generalized'[72] nature.

In the opinion of the authors, the statement of principle made by the Court on this point of law is convincing. However, it is difficult to understand how the Maltese CBI programme would violate one of the EU's values. The Court appears to suggest that the concerned national legislation breaches common values, but then fails to specify which ones. The only value the Court might be referring to in the context of Article 2 TEU is solidarity – yet this is invoked ambiguously in the judgment.

Two meanings of the term "solidarity" can be identified in the decision under review: first, solidarity in the internal relations between Member States, which forms the basis of the European integration process[73] and is one of the values protected by Article 2 TEU; and second, solidarity between a citizen and the State that granted citizenship,[74] which the Court of Justice has referred to in the context of its case law on the revocation of citizenship.[75]

Neither the interpretation of solidarity as a value nor the notion of solidarity between a citizen and the state of citizenship is sufficient to support the conclusion that Malta has violated Article 20 TFEU.

The first interpretation (inter-state solidarity) is similar to the one invoked in paragraph 69 of the *Poland v. Commission (OPAL)* case.[76] In that ruling, the Court held that energy solidarity constitutes an expression of a general principle of EU law and subsequently annulled a Commission decision that violated that principle.

While invoking the general principle of inter-state solidarity is convincing for interpreting Article 194 TFEU – since the concept is explicitly mentioned in that provision—solidarity is not mentioned in Article 20 TFEU. Therefore, it is difficult to argue that a general principle of inter-state solidarity underpins Union citizenship.

The second meaning of solidarity, mentioned in three different parts of the judgment and also referenced in the context of case law on the revocation of citizenship, has nothing to do with the values of the EU. In paragraph 99, the Court focuses on this interpretation: when determining the criteria for granting citizenship, national authorities should not disregard the special relationship of solidarity and good faith between the Member State and its citizens, which forms the basis of the citizenship bond. Here, the Court seems to refer—without explicitly stating it—to the genuine link between the citizen and the state

[72] C-181/23 *Commission v Malta*, paras 82-83.
[73] Ibid, para 93.
[74] Ibid, paras 97, 99 e 101.
[75] C-135/08, *Rottmann*, para 51 and C-221/17, *Tjebbes*, para 33.
[76] T-883/16, *Polond v Commission* para 69.

that granted the citizenship.[77] In our opinion, the Court of Justice does not refer to the 'genuine link because, contrary to the Commission's position, the Court is not convinced that Union law can impose on Member States the requirement that there must be a genuine connection between the State and its citizens. Be that as it may, reference to solidarity appears artificial. It remains unclear how solidarity and good faith can function as principles capable of preventing national authorities from granting citizenship in exchange for investment, especially in the absence of a genuinely common definition of who qualifies as a citizen of a Member State—and, by extension, as a Union citizen.

Let us now turn to the other principles the Court relies on to support its position. It seems to us that appeal to the principle according to which Union citizenship is 'destined to be the fundamental status of nationals of the Member States'[78] - as well as to mutual trust and to loyal cooperation - is also unconvincing because it is arbitrary: art. 20(1) TFEU could well be construed as constituting an expression of the principle of conferral, thus limiting the Union's competence.[79] In the next section, further comments will be made on the principle of mutual trust and sincere cooperation.

3.5. The violation of the principles of mutual trust and sincere cooperation is not, in itself, sufficient to render Malta's CBI programme unlawful

The second principle underpinning the reasoning of the Court of Justice is that of mutual trust. Since Union citizenship automatically derives from the acquisition of the nationality of a Member State, the concept of mutual trust appears more appropriate than that of solidarity for determining whether Malta is managing a CBI programme in violation of EU law—especially considering that mutual trust is regarded as a structural principle of European constitutional law. [80] In the Court's case law, mutual trust is employed as a mechanism to ensure respect for EU values,[81] which are presumed to be shared by all Member States. As is well known, even in areas of exclusive national competence—such as the organization of judicial systems—these values must be upheld.[82]

However, the Court's claim that mutual trust among Member States is undermined by a transactional naturalization policy is only superficially convincing. While it is plausible to argue that Member States

[77] Along the same line, see K. LAMPRINOUDIS, *Money cannot buy Everything!, cit.,* 23. The Court does not refer to the 'genuine link' because, contrary to what the Commission argued, the Court itself does not find that EU law imposes such a link between state and citizen.

[80] S. PRECHAL, *Mutual Trust Before the Court of Justice of the European Union*, in *European Papers*, n. 2, 17, p. 75.

[81] As recognized by the Court of Justice, since each Member State shares with all the others—and acknowledges that they share with it—a set of common values on which the Union is founded, this implies and justifies the existence of mutual trust among the Member States with regard to the recognition of those values and, consequently, to compliance with the Union law that gives effect to them. Opinion 2/13 *(Accession of the European Union to the ECHR)* at para 168.

[82] C-619/18, *Commission* c *Poland* para 52.

breach mutual trust when, in exercising their competences, they violate the values enshrined in Article 2 TEU,[83] the same cannot be said when they offer the *status civitatis* in exchange for investment. This is because there is no common definition of what constitutes a citizen, nor is there a shared understanding that a genuine link between the individual and the state is a necessary condition for the acquisition of nationality.

The Court of Justice itself has acknowledged, in its case law on the revocation of citizenship, that emphasizing the existence of a genuine link with one's citizens, as well as the reciprocity of rights and duties that form the foundation of citizenship, is a faculty, not an obligation, for Member States.[84] Therefore, it seems untenable to claim that the genuine link constitutes the core of the principle of mutual trust.[85]

Let us turn to the principle of sincere cooperation. This principle occupies a rather limited space in the ruling. From this principle, the Court of Justice derives that Member States do not have unlimited powers in defining the requirements for granting the citizenship of a Member State.

As a sort of *petitio principii*, the principle is then invoked—together with those of solidarity and mutual trust—to support the claim that Malta violates Article 20 TFEU.[86] Beyond the uncertainty surrounding the possibility of invoking the principle of sincere cooperation as an autonomous standard in assessing the violation of obligations arising from the Treaties,[87] this principle is not capable of altering the areas of state sovereignty directly linked to the preservation of national identity. [88] Among these, in the authors' opinion, is the decision to grant citizenship. [89] In sum, none of the above-mentioned principles requires national authorities to prohibit CBI programmes.

The position taken by Advocate General Collins, namely that the award of national citizenship is the exclusive competence of Member States and that neither EU law nor international law imposes the requirement of a genuine link between State and citizen – is more consistent with the letter and the spirit of the Treaties.

This does not mean that CBI programmes can never violate EU law, as illustrated in the following section.

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[83] L.S. ROSSI, *"Concretised", "flanked", or "standalone"? Some reflections on the application of article 2 TEU*, in *European Papers*, n.1, 2025, p. 8.
[84] C-221/17, *Tjebbes* para 35, and C-689/21 *X* para 32.
[85] On the object of mutual trust see L. BOHÁČEK, *Mutual trust in EU Law: trust "in what" and "between whom"?*, in *European Jorunal of Legal Studies*, n. 14, 2022, p. 103.
[86] C-181/23, *Commission v Malta* para 95.
[87] F. CASOLARI, *Il principio di leale cooperazione, Leale cooperazione tra Stati membri e Unione europea*, Editoriale Scientifica, Napoli, 2020, pp. 95-108.
[88] Ibid 203.
[89] See F. CASOLARI, *La cittadinanza europea: un Giano bifronte innanzi alla crisi* (*SIDI blog*, 10 March 2014).

3.6. The Granting of Citizenship and the Constraints Imposed by the CFSP in Relation to the Exercise of This National Prerogative

Although neither international law, nor EU law requires the existence of a genuine link between an individual applying for naturalization and the country to which the application is submitted, the absence of such a condition becomes relevant in certain circumstances for the EU.

In particular, when citizenship is granted on the basis of a CBI programme such as the one at issue in the *Commission v. Malta* case, the lack of a genuine link between the applicant and the country conferring the citizenship should oblige the latter to suspend the examination of the foreign investor's application for citizenship, where granting it hinders the achievement of an EU objective, including those related to the Common Foreign and Security Policy (CFSP).

This potential violation is not mentioned in the reasoned opinion of the Commission examined by the Court of Justice in the infringement proceedings against Malta.

Therefore, the Union court was unable to assess whether Malta had breached EU law.

It is submitted that, should Malta grant citizenship to foreign nationals subject to individual restrictive measures, such as asset freezes and visa bans, it would be exercising its competences in breach of obligations incumbent upon Member States under Articles 29 TEU and 215 TFEU, which form the legal basis for such measures.

Following the outbreak of the conflict in Ukraine, the European Commission recommended[90] that Member States abolish CBI programmes.[91] The EU institution stated that individuals who are (or become) subject to EU restrictive measures in the context of that conflict should be subject to citizenship revocation. It further added that such a measure could be adopted against individuals 'who significantly support, by any means, the war in Ukraine or other related activities of the Russian government or the Lukashenko regime that violate international law,'[92] as well as against family members of a main applicant. Finally, the Commission emphasized that in making such assessments, the Member States concerned must take into account the principles established by the Court of Justice of the European Union regarding the loss of EU citizenship, particularly the principle of proportionality and the protection of fundamental rights.

The European Parliament had also broadly aligned itself with the Commission's position.[93]

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[90] Commission Recommendation of 28.03.2022 on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes, C(2022) 2028 final, , par. 7.

[91] During the same period, several countries issued a joint declaration in which they committed to limiting the sale of citizenship through so-called 'golden passports,' as access to European citizenship also granted access to the European Union's financial system.

[92] Recommendation of 28.3.2022, cit., par. 13.

[93] European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes (2021/2026(INL)).

In the authors' opinion, if investors applying for Maltese citizenship are nationals of a third country against which the EU Council has adopted (unanimously) decisions establishing restrictive measures – both against the country and individuals falling within the Council's designation criteria – national authorities should refrain from approving the naturalization applications of such individuals.

In the field of CFSP, Member States are bound to respect the decisions or common positions adopted by the Council under Article 29 TEU and are obliged to ensure that their *national policies* (emphasis added) are consistent with the Union's positions.

It can be argued that this provision refers not only to national foreign policies but to all areas of national competence.

Therefore, if a Russian or Belarusian citizen submits a citizenship-by-investment application to Malta, the application should at least be suspended, given that the granting of citizenship constitutes a national measure incompatible with the EU's position toward the Russian government and negatively affects the implementation of such measures.

While it is true that holding national (and thus European) citizenship does not prevent the imposition of sanctions on dual nationals—those holding both Russian/Belarusian and EU Member State citizenship[94]—if Malta were allowed to continue accepting naturalization applications from Russian citizens, it would be acting in a way that undermines the EU's objective in adopting individual restrictive measures.

Indeed, granting citizenship to an applicant who is on an EU blacklist confers a series of advantages – clearly outlined by the Court of Justice in the infringement proceedings against Malta – that are incompatible with the individual's inclusion on the sanctions list, which was established to pursue foreign policy objectives.

Member States are bound on the one hand, by a duty of sincere cooperation with the institutions under Article 4(3) TEU, and on the other, by an obligation to actively and unreservedly support the position adopted by the Council towards Russia, as derived from Article 24(3) TEU. This latter provision represents a concrete expression of the principle of sincere cooperation within the framework of the CFSP.[95]

[94] It is noteworthy that under art. 5 g)1(b) of Regulation 833/2014 Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine as amended, credit institutions have an obligation to verify whether a deposit holder is a Russian national or natural person residing in Russia who has acquired the citizenship of a Member State or residence rights in a Member State through an investor citizenship scheme or an investor residence scheme. National competent authorities should be informed.

[95] P. DI PASQUALE, *Competenze proprie degli Stati e principio di leale cooperazione,* in *AAVV. Temi e questioni di diritto dell'Unione europea*, Cacucci, Bari, 2019, pp. 9-10.

Article 4(3) TEU requires Member States to refrain from adopting measures that could hinder or jeopardize the achievement of the Treaties' objectives—more specifically, the development of common policies and the functioning of the institutions—and it applies even in the exercise of reserved competences. Art. 24(3) TEU imposes positive support obligations on Member States, as is evident from the wording of the provision,[96] but it also includes a prohibition to engage in actions that could harm the interests of the Union or undermine its effectiveness as a cohesive actor in international relations.[97]

Therefore, even when Member States exercise national competences – such as deciding to whom they grant their citizenship – they remain bound by obligations arising from the Treaties, in particular not only Articles 29 TEU and 215 TFEU, but also the principle of sincere cooperation and Article 24(3) TEU.

Having sketched out this legal context, it is considered that Russian and Belarusian nationals subject to restrictive measures should not be eligible for citizenship-by-investment programs, as the Council has determined that such individuals contribute directly or indirectly to the international wrongdoing committed by Russia or facilitate the circumvention of sanctions.

Thus, if sanctioned individuals—although subject to temporary measures—submit citizenship applications in Malta, the country should not reward these persons by attributing its citizenship.

As previously mentioned, Malta has suspended the processing of both citizenship and residence applications from Russian and Belarusian nationals since 2 March 2022. Therefore, it has not violated EU law. On the contrary, the decision to suspend may indicate a willingness to comply with the position adopted by the Council under Article 29 TEU regarding Russia and Belarus. Yet, this is not entirely certain; in fact, the justification offered by the Maltese authorities is not linked to the CFSP measures adopted by the EU against Russia, but rather to the inability to effectively carry out 'the necessary due diligence checks.[98]'

It is likely that these checks refer to those required before granting citizenship, particularly in relation to anti-money laundering regulations or, more broadly, to measures aimed at preventing other forms of criminal activity.

In March 2022, Malta's foreign minister stated that none of the beneficiaries of the citizenship acquisition law were included in the list of sanctioned individuals, thereby seeking to reassure EU institutions that

[96] The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.

[97] '[…]. They [Member States] shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.' See on this topic A. PAU, *The Solidarity Principle in the Context of the CFSP: The Adoption of Restrictive Measures as an Expression of Solidarity?* in E. KASSOTI and N. IDRIZ (eds), *The Principle of Solidarity: International and EU Law Perspectives*, Asser/Springer, The Hague, 2023, p. 249.

[98] See 'Malta Suspends Golden Passport Scheme for Russian and Belarusian Applicants' (*Times of Malta*, 2 March 2022).

Malta's decisions on citizenship were not in conflict with the EU's CFSP position toward Russia and Belarus. He also emphasized that many of the applicants were individuals seeking to escape from Putin.[99]
A final issue concerns whether the decision to revoke the citizenship of Russian or Belarusian nationals who have naturalized as Maltese citizens could be incompatible with EU law.
A national judge faced with assessing the validity of a citizenship revocation measure would need to apply the guidance developed in the case law concerning the withdrawal of citizenship.[100]
It is considered that such case law does not impose an obligation to revoke citizenship.
It will therefore be up to the judge to determine whether the ties between the Russian or Belarusian investor and the country granting citizenship are such that the consequences of a revocation would disproportionately interfere with the right to private and family life—as is the case for a European citizen who acquires the citizenship of another EU country—or whether the individual's threat to national security is serious enough to justify the revocation decision.

3.7. Unresolved issues on citizenship attribution and future Treaty amendments

The Court of Justice will certainly have the opportunity in future cases to examine other unresolved issues on the limits that EU law places on Member States's prerogatives. For example, whether other CBI programmes that allow for residence by investment are also prohibited; whether it is necessary to revoke the citizenship of those who obtained it under the Maltese program; or whether the *Micheletti*[101] case law will be upheld, according to which each Member State is required to recognize as a citizen any person to whom another Member State has granted citizenship.
There is no doubt that Malta's CBI program improperly exploits the benefits that EU citizenship offers to nationals of each Member State, amounting to a commodification of Union citizenship.
In the future, it would be desirable to amend Article 20 TFEU to include a prohibition on the abuse of EU citizenship, thereby transforming the Court of Justice's ban on CBI programs—established in the ruling of 29 April 2025 discussed here—into a specific obligation under primary law.
The same provision could also explicitly state the obligation to reject naturalization applications from foreign nationals who become subject to individual restrictive measures.
This would allow Member States to exercise their national competence in a manner consistent with their obligations under the CFSP. Naturally, since it is politically difficult to resort to Article 48 TEU, it would still be desirable for Member States to adopt common minimum standards establishing when it is not permissible to grant citizenship to a foreign national. It is likely that Art. 352 TFEU would have to be

[99] Ibid.
[100] C-221/17 *Tjebbes* para 40 and following.
[101] C-369/90 *Micheletti.*

relied upon by the Commission, should this institution consider it appropriate to put forward a proposal for legislation in this area. At the moment, it is unlikely that an initiative of this kind will be taken.

4. When citizenship attribution is not subject to conditions under EU law: the redrawing of constituencies in Hungary

This section provides an overview of the Hungarian political and legal context concerning the attribution of citizenship for political gains and then turns to the EU and ECHR law profiles. Unlike the Maltese scheme analysed above, the Hungarian policy does not create new Union citizens and therefore does not fall within the remit of EU law on that ground alone, although it can no longer be excluded that, in the hypothesis that the legislation was challenged before the Court, it would be found to be contrary to EU law. In the light of the precedent established in *Commission v Malta*, the Court might indeed find that the obligations incumbent on Member States stemming from EU values cover situations such as that at issue in the Hungarian legislation, which would thus be attracted within the scope of EU law, considering its 'consequences for the functioning of the European Union as a common legal order'[102] as explained below in this section, and in particular representative democracy, 'which gives concrete expression to democracy as a value, which is, under Article 2 TEU, one of the values on which the European Union is founded'.[103] In 2010, Hungary adopted a new law that granted citizenship to ethnic Hungarians who live outside the country's territory.[104] More specifically, the law offers the opportunity to apply for citizenship to non-Hungarian citizens whose ascendant was a Hungarian national or whose origin from Hungary is probable, and whose Hungarian language knowledge is proved.[105] In the absence of firm recognition of current state borders, this legislation may amount to an irridentist claim,[106] to regain influence over lost territories. This is because the 1920 Treaty of Trianon, which is still a major reference in Hungarian political discourse, 'resulted in the loss of two-thirds of the territory of the former kingdom, half of its population, and one-third of its ethnic Hungarian population'.[107] On the centenary of its signing, Hungary's Prime Minister Orbán described the Treaty as 'a death sentence', further commenting that 'Count Apponyi,

[102] *Commission v Malta*, para 98.
[103] Ibid.
[104] Act No. XLIV of 2010 amending Act LV of 1993 on the Hungarian Nationality. Although the distinction between the 'new' Hungarians who were already EU citizens and those who were not is immaterial here, it can be noted for completeness that most of those who got Hungarian citizenship since 2011 live in a neighbouring EU Member State, and were therefore already EU citizens, since they held the nationality of, for example, Romania, Slovakia, etc. Others live in third countries (Serbia and Ukraine).
[105] Article 4(3) of the Act. Unlike what happens for other applicants, for the above-mentioned categories neither residence or subsistence in Hungary, nor a test on knowledge of the constitution is required
[106] J. KIS, *Introduction: From the 1989 Constitution to the 2011 Fundamental Law*, in G.A. TÓTH (ed), *Constitution for a disunited nation: on Hungary's 2011 fundamental law*, Central European University Press, Budapest, 2014, pp. 1–21.
[107] Z. KÖRTVÉLYESI, *Nation, Nationality, and National Identity: Uses, Misuses, and the Hungarian Case of External Ethnic Citizenship* in *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique*, n. 33, 2020, p. 781.

who led the Hungarian delegation in negotiations, was right to say that Hungary's grave had been dug. The loss was devastating in itself, but even more traumatic – if that were possible – was the fact that state formations such as Czechoslovakia and Yugoslavia were being constructed around us'.[108]

In addition, in the Hungarian law on Electoral Procedure there is a provision that enhances the practical impact of the attribution of citizenship described above.[109] Given that those with no registered address in Hungary are entitled to vote by mail ballot,[110] there is a difference, as a matter of fact, in voting method between the two main 'groups' of Hungarians abroad:[111] Hungarians who live in neighbouring countries (who mostly vote by mail ballot) and Hungarians who emigrated abroad in the rest of the world (who must travel to vote in Hungary, or, abroad, at embassies or consulates).[112] The Hungarian minority in the neighbouring countries is much more supportive of the government who introduced the legislation than the other Hungarians abroad.[113] The asymmetry in voting methods between Hungarians residing in neighbouring countries and those living elsewhere may be normatively troubling from the perspective of democratic fairness. However, such arrangements remain a matter of national constitutional design and, most likely lie outside the reach of EU law, as they do not affect the composition of the body of Union citizens.

It was calculated that the opportunity afforded by the 2010 legislation resulted in around one million new nationals, that is, about 10% of Hungary's population at the time.[114] This takes on added significance when one considers that the Hungarian Constitution is worded in a way as to permit a plausible reading that the 'members of the Hungarian nation' (i.e., wherever they are) are sovereign in Hungary, thus, in this interpretation, the Constitution itself separates neatly between nationhood and statehood,[115] possibly to the deliberate exclusion of minorities within Hungary,[116] but including ethnic Hungarians outside the

[108] Prime Minister Viktor Orbán's "State of the Nation" Address (18 February 2020).
[109] V Z. KAZAI, Expanding the Franchise – another Sleight of Hand by the Hungarian Government? *(VerfBlog,* 26 October 2018).
[110] Section 266 of Act XXXVI of 2013 on Electoral Procedure.
[111] See text accompanying fn 104.
[112] S. POGONYI, *Extra-Territorial Ethnic Politics, Discourses and Identities in Hungary*, Springer, Cham, 2017; M.A WATERBURY, *Competing External Demoi and Differential Enfranchisement: The Case of the 2022 Hungarian Election*' in *Ethnicities*, 2023.
[113] S. UMPIERREZ DE REGUERO, R. BAUBÖCK and K. WEGSCHAIDER, *Evaluating Special Representation of Non-resident Citizens: Eligibility, Constituency and Proportionality* in *International Migration*, 2023; V. MAKSZIMOV, *Hungarians Abroad Forced to Make Tough Choices to Vote* (*Euractive*, 1 April 2022).
[114] KÖRTVÉLYESI, *Nation*, *cit.*, p. 772.
[115] For this interpretation see ibid, p. 777.
[116] See, in this sense, N. CHRONOWSKI, *A Nation Torn Apart by Its Constitution?* in M. FEISCHMIDT and B. MAJTÉNYI (eds), *The rise of populist nationalism: social resentments and capturing the constitution in Hungary*,Central European University Press, Budapest, 2019.

borders.[117] This has led a commentator to say that the Hungarian constitution is both underinclusive and overinclusive.[118]

Albeit not unique,[119] the case of Hungary deserves close attention because it arose in the context of an illiberal drift in the country, which gained political and academic attention at EU level. Democratic choices in one Member States can have systemic repercussions on the EU (by virtue of free movement rights, or of political rights exercised by EU citizens): in sum, Hungarian legislation affected the EU as a whole.[120]

The practice sits uneasily with the value of democracy (Article 2 TEU), and in particular electoral fairness as 'characteristic principle of an effective democracy'.[121] It threatens to hollow out the idea of representative government by reconfiguring the constituencies, or by making it more difficult for a group of voters to participate, in ways that serve partisan objectives of an incumbent political majority, against the principles of representative democracy, ECHR law, and, more generally, the democratic *ethos*. When it comes to citizenship attribution to ethnic nationals abroad, the literature has mostly highlighted its perils and paradox. The perils are that it can affect someone's right to self-determination.[122] In addition, there is the 'oppression' felt by citizens or by other states,[123] which is the case, for example, when the attribution of citizenship is accompanied by irredentist claims. The paradox is that ethnonationalist attribution of citizenship may end up watering down the ethnic homogeneity of a polity if the new citizens have only weak cultural or linguistic ties to that polity. [124]

Nonetheless, the 2010 law on Hungarian citizenship is not contrary to EU law. It is a matter of national law to decide who is a citizen, and who can vote in national elections. This is subject to the limitations discussed in the previous section, which appear hardly as prominent in the Hungarian case – especially since many of the new Hungarian citizens already held EU citizenship. Further, the reconfiguration of electoral constituencies, as well as voting methods, are left to national law. Although EU law remains

[117] See Article D of the Hungarian constitution, first sentence: 'Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, and shall facilitate the survival and development of their communities'.
[118] KÖRTVÉLYESI, *Nation*, *cit.*, p. 778.
[119] J.-T. ARRIGHI and others, *Franchise and Electoral Participation of Third Country Citizens Residing in the European Union and of EU Citizens Residing in Third Countries* (European Parliament 2013) PE 474.441.
[120] KÖRTVÉLYESI, *Nation*, *cit.*, p. 772.
[121] ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no 113
[122] L. EREZ and A. BANAI, *Self-Determination and the Limits on the Right to Include,* in *Political Studies*, n. 73, 2024, p. 753.
[123] N. JAIN and R. BAUBÖCK, *Weaponised Citizenship : Should International Law Restrict Oppressive Nationality Attribution?* (European University Institute Working Paper 2023).
[124] S. POGONYI, *The Right of Blood: "Ethnically" Selective Citizenship Policies in Europe*, in *National Identities*, n. 24, 2022, p. 523.

formally agnostic on the matter, this case pushes the outer boundaries of what the Union should tolerate from its Member States.[125]

Given its practical effect, the Hungarian legislation in question may violate the right to free and fair elections protected by Article 3 of Protocol 1 of the European Convention on the Protection of Human Rights, as understood by the European Court for Human Rights. The right to *fair* elections 'enshrines a characteristic principle of an effective democracy'.[126] The ECtHR takes the view that States enjoy a wide margin of discretion when conferring a vote to non-resident citizens.[127] It is not the attribution of citizenship per se, but the practical consequences, that is, the difference in voting method among Hungarians abroad, cumulated with other measures affecting the electoral process,[128] that may amount to a violation of the right of every Hungarian to free and fair elections.

Even if the Hungarian legislation does not violate the letter of any law, it is in tension with the spirit of a liberal democracy. The tension arises from the fact that, in a liberal democracy, '[e]lectoral constituencies must be determined on an equitable, fair, and objective basis', and that '[a]mendments to electoral laws must be subject to sufficient constraints to prevent abuse by the incumbent Government or the parliamentary majority'.[129] It was argued, for example, that 'it is necessary to ensure that all groups of citizens are treated equitably and fairly and the rules which define eligibility to vote *are not manipulated in such a way as to give an advantage to the incumbent Government or a specific political party* […]', forbidding legislation that entails that 'in practice, the arrangements applicable place certain groups of citizens at a disadvantage vis-à-vis others in respect of the exercise of their electoral rights'.[130] The legal solution is a bit extreme, but, conceivably, this kind of citizenship attribution that directly affects electoral practices could be considered lawful only when it does not serve the interests of the (simple) majority that adopts the

[125] It was argued, for example, that 'gerrymandering is such a clear violation of the essence of democracy that art. 2 TEU could be invoked directly against this violation': Y. BOUZORAA, *The Value of Democracy in EU Law and Its Enforcement: A Legal Analysis, in European Papers - A Journal on Law and Integration, n. 8, 2023, p. 842.*

[126] ECtHR, *Mathieu-Mohin and Clerfayt v Belgum*

[127] ECtHR, *Schindler v United Kingdom*, Application No 19840/09, 7 May 2013.

[128] See, among others, Act LXXXVIII on the Protection of National Sovereignty of 2023, modifying inter alia Act XXXVI on Election Procedure of 2013, on which see OPINION ON ACT LXXXVIII OF 2023 on the Protection of National Sovereignty Adopted by the Venice Commission at its 138th Plenary Session. Or Act LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad, imposing obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and providing for the possibility of applying penalties to organisations that do not comply with those obligations. The latter piece of legislation was found in breach of EU law by the European Court of Justice in Case C-78/18 *Commission v Hungary* ECLI:EU:C:2020:476. The legislation was not compatible with free movement of capital (Article 63 TFEU), with the right to the freedom of association guaranteed in Article 12(1) of the Charter and with the right to respect for private and family life and the right to protection of personal data, which are the subjects of, respectively, Article 7 and Article 8(1) of the Charter. See, on other measures, K. LANE SCHEPPELE, *Hungary, An Election in Question, Part 4* New York Times (28 February 2014).

[129] Principles 3.4 and 3.6 of TRIDIMAS and MUIR, *Charter, cit.*.

[130] Ibid 31 (empahsis added).

legislation (i.e., when the procedure foresees adoption by a qualified majority, or when it can be demonstrated that it will not result in an immediate political advantage in upcoming elections).

5. Conclusion

In 1995, a scholar wrote of the 'the unlimited capacity of Member States to determine nationality'.[131] It is no longer the case that the Masters of the Treaties have such unfettered discretion. This article has explored the extent to which EU law imposes constraints on the attribution of national citizenship by Member States. While the competence to define who is a national remains a national sovereign prerogative, it must be exercised in accordance with EU Treaties obligations. We have considered two legal instruments: the so-called Maltese 'golden passport' schemes, and the Hungarian extension of citizenship to ethnic nationals abroad. These case studies illustrate that the attribution of citizenship may create tensions with EU values. In the former case, the Court of Justice held that the commodification of European citizenship by Maltese authorities undermines solidarity and erodes mutual trust between Member States. In the latter case, the use of nationality and the manipulation of constituencies to serve domestic political objectives potentially undermining democratic principles.

The ruling *Commission v Malta* shows that EU law affects the national prerogative of citizenship attribution but can be criticised since it is difficult to argue that the EU Treaties, along with the principles of solidarity, mutual trust, and sincere cooperation, allow for the conclusion that the Maltese CBI scheme is incompatible with Treaty obligations in the absence of an anti-abuse clause under Article 20 TFEU and of certainty that the prohibition of abuse of EU rights is a general principle of law. At the same time, it was argued that the provisions of CFSP limit the Member States' powers to attribute citizenship when individuals applying for citizenship are placed on the black lists of individual restrictive measures. One could also say that Member States should suspend the decision on applications for citizenship submitted by nationals of a third country when the latter has committed serious breaches of international law.

The Hungarian case exemplifies a different, though equally problematic, form of leveraging national citizenship: one that is not transactional, but strategic. Unlike Malta's CBI programme, Hungary's attribution of citizenship to ethnic kin abroad escapes formal censure under EU law. This is because it does not lead to the creation of new Union citizens *ex nihilo*, and because voting rights in national elections are not governed by EU rules.[132] Yet, this practice raises even more serious concerns that EU values are breached than in the Maltese case. Indeed, the extension of citizenship has been used to redraw the

[131] C. CLOSA, *Citizenship of the Union and Nationality of Member States*, in *Common Market Law Review*, n. 32, 1995, p. 509.
[132] For a situation in which EU law applies to elections of the European Parliament and to regional elections (but not to national elections) see Case C-808/21, *Commission v Czech Republic* (fn 65).

boundaries of the Hungarian electorate, enhancing the governing party's electoral prospects through the enfranchisement of a demographically favourable external constituency. This is compounded by differential voting modalities that have the effect, in practice, of privileging certain diaspora groups over others.

In conclusion, what the Maltese and the Hungarian case have in common is that they may undermine EU values, but while the Court of Justice has found that EU law imposes limits on the Maltese legislator, relying (in an unconvincing manner) on the value of solidarity, in contrast, EU law does not constrain the Hungarian legislator. Indeed, the redrafting of constituency and the extension of Hungarian nationality to ethnic Hungarians does not come within the scope of EU law, if the creation of new *Hungarian* citizens does not lead to the creation of new *EU* citizens. As of today, EU law is capable of imposing limits on Malta for the commercialisation of EU citizenship, but it does not have legal instruments to address the extension of the Hungarian nationality to ethnic Hungarians in other EU Member States for electoral gains, in breach of the EU value of democracy. Yet, it may be wondered if after the ruling in *Commission v Malta*, the Court could stretch the obligations stemming from Art. 2 TEU to cover the Hungarian legislation, allowing for a finding that such a legislation amounts to a serious breach of common values.