



«To be or not to be: that is the question». Notes on the Idea of European Union Citizenship in *Commission/Malta*

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SUMMARY: 1. Introduction. – 2. Towards a new orthodoxy for the idea of European citizenship? – 3. A contextual analysis of the *Commission/Malta* ruling. – 4. «To be or not to be: that is the question». The long road of European citizenship.

1. Introduction

The judgment in *Commission/Malta*,¹ handed down by the Grand Chamber of the Court of Justice in April 2025, highlights several points of interest. It is therefore not surprising that this judgment has been the subject of a considerable number of commentaries since the days immediately following its publication.² This contribution is intended

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¹ Court of Justice, Judgment of 29 April 2025, Case C-181/23, *Commission/Malta*.

² *Ex multis* G. BUGEDO MONTERO (ed.), *EU Citizenship's New Boundaries: Commission v. Malta*, in *ELL Symposium*, July 2025; D.V. KOCHENOV, G. ÍÑIGUEZ, *EU Citizenship's New Essentialism*, in *ELR*, Vol. 50, No. 4, 2025, pp. 455-474; M. CHAMON, *Commission v Malta (C-181/23) and the Trilemma of Citizenship*, *ivi*, Vol. 50, No. 4, pp. 475-486; L.D. SPIEKER, F. WEBER, *Commission v Malta (C-181/23): A*

solely to highlight the legal significance of the idea of EU citizenship that emerges from the judgment. In particular, taking into account the lines of reasoning set forth by the AG and the Court of Justice, respectively (Section 2), we focus on the implications of the Court's judgment for the redefinition of the notion of EU citizenship (Section 3). This redefinition is situated within the broader context of the EU practice on European citizenship to assess both its potential and its limitations. The final Section provides a conclusion.

2. *Towards a new orthodoxy for the idea of European citizenship?*

Before considering the line of argument developed by the Court of Justice, it is worth briefly recalling AG Collins' observations.³ In paragraphs 42–46 of his Opinion, Collins sets out an interpretation of European citizenship that might be described, so to speak, as “classical”. According to this interpretation, such citizenship is, first and foremost, a status additional to (and not replacing) national citizenship – as expressly clarified by Article 9 TEU⁴ – conferring «an array of rights on those who possess it»,⁵ and «destined to be the fundamental status of nationals of the Member States» – in accordance with a mantra consistently reiterated by the Court of Justice since the *Grzelczyk* case.⁶

“Miracle” of Union Citizenship?, *ivi*, Vol. 50, No. 4, 2025, pp. 487-501; E. SPAVENTA, *A Very Valuable Citizenship? European Values and Citizenship After Commission v Malta*, in *CMLR*, Vol. 62, No. 6, 2025, pp. 1791-1814; J. LEPOUTRE, *La citoyenneté n'a pas de prix*, in *Revue trimestrielle de droit européen*, No. 3, 2025, pp. 395-412; S. POLI, L. LONARDO, *The Attribution of National Citizenship by Member States and Its Impact on EU Values*, in *federalismi.it*, No. 1, 2026, pp. 135-161; G. VETTORETTO, *L'attribuzione della cittadinanza per investimento alla luce della sentenza Commission c. Malta*, in *RDI*, Vol. 108, No. 4, 2025, pp. 1117-1139; U. VILLANI, *La Corte di giustizia dinanzi alla “cittadinanza (di Malta) in vendita”*, in *RCE*, No. 2, 2025, pp. 563-575.

³ Opinion of AG Collins, delivered on 4 October 2024, Case C-181/23, *Commission/Malta*. For a comment to the Opinion, see S. COUTTS, *On Mutual Recognition and the Possibilities of a «Single European Polity»: The Opinion of AG Collins in Case C-181/23 Commission v Malta*, in *EP*, Vol. 9, No. 2, 2024, pp. 818-829.

⁴ Opinion of AG Collins, delivered on 4 October 2024, *cit.*, point 42.

⁵ *Ivi*, point 43.

⁶ *Ibidem*. See also Court of Justice, Judgment of 20 September 2001, Case C-184/99, *Grzelczyk*, para. 31.

Defining European citizenship in terms of status necessarily entails considering the rights and duties that arise from it and constitute its very essence. The rights recognised by European citizenship are enshrined in EU primary law, which also sets out, together with secondary legislation, the conditions and limits for their exercise.⁷ Whilst the latter have for some time now been subject to close scrutiny by the Court of Justice, guided by the principle of proportionality and aimed at emphasising the fundamental nature of citizenship rights,⁸ the Court's interpretation of the conditions for the exercise of citizenship rights (notably, the rights relating to the movement of European citizens) can be particularly restrictive and is, in any case, not indifferent to the economic and social context of the time.⁹

The issue of EU citizens' obligations is different but, in some respects, complementary to what has just been said about rights. Although EU primary law recognises that Union citizens are subject to the obligations laid down in the Treaties, this aspect has never received due consideration. It therefore remains, for the time being, unfulfilled. From this perspective, at least, the EU citizenship status still appears incomplete.

That said, it is also true that the establishment of a «citizenship common to nationals» of the EU Member States is itself an objective of the European Union set out in the Preamble to the Treaty on European Union.¹⁰ To put it another way, European citizenship is not only a status recognised in the Treaties but is also an objective to be achieved as part of the integration process as a whole. This last point is by no means minor, as it enables constraints to be imposed on Member States in the exercise of their prerogatives regarding the acquisition and loss of citizenship. Indeed, although, as Advocate General Collins points out, «the enjoyment of EU citizenship is entirely dependent upon the

⁷ Article 20(3) TFEU.

⁸ Court of Justice, Judgment of 29 April 2004, Joined Cases C-482/01 and C-493/01, *Orfanopoulos and Others*, para. 65, where the Court clarifies that a particularly restrictive interpretation of the derogations from the EU citizenship's rights is required by virtue of the person's status as a citizen of the Union. See also N. NIC SHUIBHNE, *EU Citizenship Law*, Oxford, 2023, pp. 499-553.

⁹ See Court of Justice, Judgment of 11 November 2014, Case C-333/13, *Dano*, and *infra*, Section 3.

¹⁰ And further elaborated in Article 3(2) TEU.

existence of Member State nationality»¹¹ and «[t]he European Union cannot arrogate competences in domains reserved exclusively to the Member States»,¹² this does not translate into absolute competence for the Member States.¹³ The “framing of powers” theory comes to the fore in this regard. By emphasising the negative obligations of sincere cooperation incumbent upon Member States under Article 4(3) TEU, this theory requires them to refrain from acting where such action might constitute an obstacle to the achievement of the Union’s objectives.¹⁴ Significantly, one of the most evident manifestations of this theory can be found in the *Micheletti* case concerning what were soon to become the rights of European citizens. In the famous formula coined by the Court in 1992, it is said that: «[u]nder international law, it is for each Member State, *having due regard to Community law*, to lay down the conditions for the acquisition and loss of nationality».¹⁵

Whilst referring to the “framing of powers” doctrine, AG Collins proposes a narrow application of it in the case in question, concluding that there are no specific obligations arising from EU law to be invoked against Malta and emphasising the obligation on Member States – specifically mentioned in *Micheletti* – to recognise citizenship granted by another EU State.¹⁶ According to the AG, «[t]o find otherwise would upset the carefully crafted balance between national and EU citizenship in the Treaties and constitute a wholly unlawful erosion of Member States’ competence in a highly sensitive field which they have clearly decided to retain under their exclusive control».¹⁷

In essence, AG Collins’ analysis contributes to interpreting the status and objective of European citizenship as a gradual process of

¹¹ Opinion of AG Collins, delivered on 4 October 2024, cit., point 44.

¹² *Ivi*, point 46.

¹³ *Ivi*, point 48.

¹⁴ Opinion of AG Pikamäe, delivered on 11 December 2019, Case C-47/18, *Slovenia/Croatia*, point 138: «[a]ccording to that theory, exercise of the powers reserved to the Member States is restricted in the interests of attaining the objectives of the European Union». On this theory, see F. CASOLARI, *Inter Se Agreements between Member States, and the Outer Limits of the Court’s Jurisdiction in Infringement Proceedings: Slovenia v Croatia*, in G. BUTLER, R. A. WESSEL (eds.), *EU External Relations Law. The Cases in Context*, Oxford, 2022, pp. 981-990.

¹⁵ Court of Justice, Judgment of 7 July 1992, Case C-369/90, *Micheletti*, para. 10.

¹⁶ Opinion of AG Collins, delivered on 4 October 2024, cit., point 58.

¹⁷ *Ivi*, point 57.

asserting individuals' rights and duties, which may entail limitations on the sovereign prerogatives of Member States. The arguments put forward by the AG suggest that this process must be reconstructed with caution, while respecting the principle of mutual recognition – which does not require Member States to share the same concept of citizenship – and, consequently, the sovereign prerogatives they exercise in this area. This also explains the AG's emphasis on the EU principle of proportionality as a possible criterion for assessing the legitimacy of the exercise of state prerogatives.¹⁸

Characterised by a careful «constitutional balance between the Member States and the Union in the field of nationality»,¹⁹ Advocate General Collins' opinion does not fail to highlight a third dimension of the concept of European citizenship, which refers to the role of EU citizens as «constituent actors of the European Union in a single polity».²⁰ This third dimension, which clearly echoes the *Van Gend en Loos*' statement about the special nature of the supranational legal order,²¹ aims to contextualise European citizenship within the EU constitutional process. However, even this dimension – as reconstructed by AG Collins – is subject to the same balance referred to above. This is because its existence «does not, in any way, detract from the fact that the Member States have decided that it is for them alone to determine who is entitled to be one of their nationals and, as a consequence, who is an EU citizen».²²

¹⁸ Opinion of AG Collins, delivered on 4 October 2024, cit., point 53, where the AG refers to the use of this principle by the Court in the *Rottmann* case, concerning the legitimacy of the withdrawal of a naturalisation decision by a Member State, resulting in the loss of European citizenship status by the individual concerned. See Court of Justice, Judgment of 2 March 2010, Case C-135/08, *Rottmann*.

¹⁹ S. COUTTS, *op. cit.*, p. 822.

²⁰ Opinion of AG Collins, delivered on 4 October 2024, cit., point 46.

²¹ Court of Justice, Judgment of 5 February 1963, Case 26/62, *Van Gend en Loos*: «the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States *but also their nationals*. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them *rights which become part of their legal heritage*»; emphasis added. See also N. NIC SHUIBHNE, *op. cit.*, p. 1.

²² Opinion of AG Collins, delivered on 4 October 2024, cit., point 46.

In its judgment, the Court of Justice contrasts the “classical orthodoxy” of AG Collins with an “evolutionary orthodoxy” on EU citizenship, which leads to an outcome opposite to that envisaged by Collins. Significantly, the Court develops its reasoning along a trajectory that is, so to speak, the reverse of that of the Advocate General. As we have seen, for the latter, the affirmation of the constitutional dimension of European citizenship remains the outcome of an ongoing process that is still strongly characterised by the role of the Member States. The Court, on the other hand, takes that dimension as its starting point precisely. After referring to the rights that give substance to European citizenship and the value of democracy referred to in Article 2 TEU,²³ the Court cites a passage from its (second) Opinion on the European Union’s accession to the ECHR,²⁴ which reads as follows: «[t]he pursuit of the EU’s objectives, as set out in Article 3 TEU, is entrusted to a series of fundamental provisions, such as those providing for the free movement of goods, services, capital and persons, citizenship of the Union, the area of freedom, security and justice, and competition policy. Those provisions, which are part of the framework of a system that is specific to the EU, are structured in such a way as to contribute – each within its specific field and with its own particular characteristics – to the implementation of the process of integration that is the *raison d’être* of the EU itself».²⁵ This reference is clearly intended to highlight the fundamental importance of EU citizenship for the development of the Union’s legal system. Furthermore, drawing on the *Grzelczyk* formula,²⁶ the Court states that «Union citizenship *constitutes* the fundamental status of nationals of the Member States».²⁷ The foregoing enables the Court to conclude that «Union citizenship is thus one of the principal concrete expressions of the solidarity [...] which is an integral part of the identity of the

²³ *Commission/Malta*, cit., paras 86-90.

²⁴ *Ivi*, para. 91.

²⁵ Court of Justice, 14 December 2014, Opinion 2/13, *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, para. 172.

²⁶ *Grzelczyk*, cit.

²⁷ *Commission/Malta*, cit., para. 92. Emphasis added.

European Union as a specific legal system, accepted by the Member States on a basis of reciprocity».²⁸

In other words, the Court of Justice appears to assume that the fact that the process of establishing European citizenship as a fundamental status has now come to fruition implies the existence of a structural and direct connection to the value of solidarity, which – the Court clarifies – constitutes «the very basis of the process of integration».²⁹ The Court does not fully explain the reasons for its inference:³⁰ they remain, so to speak, in the background, in the transition from paragraph 92 to paragraph 93 of the judgment. It seems reasonable to conclude that identifying solidarity as the underlying value of the integration process as a whole contributes to viewing the «fundamental provisions of the Treaties»³¹ as concrete instruments for affirming that value. Among these provisions are, as seen, those concerning citizenship. To put it even more clearly, the Court observes that «Union citizenship is based on the common values contained in Article 2 TEU».³² It is this value-based interpretation of European citizenship that underpins the Court's entire reasoning.

In particular, such an interpretation leads to a very different understanding of the impact of the “framing of powers” doctrine than the one that emerges in AG Collins' Opinion. We move from a cautious affirmation of constraints on state prerogatives to a far more significant limitation of those prerogatives. According to the Court, in fact, the need to respect the Union's values also implies the «mutual trust among the Member States regarding the fact that none of them is to exercise its power in a manner that is manifestly incompatible with *the very nature of Union citizenship*».³³ This last passage is extremely interesting. Indeed, it echoes the statement – contained in the aforementioned Opinion on accession to the ECHR – according to

²⁸ *Ivi*, para. 93.

²⁹ *Ibidem*. See also M. CHAMON, *op. cit.*, p. 484, arguing that «it rather seems that the Court did not have a specific value in mind but rather the ethos reflected in the values listed in art. 2 TEU».

³⁰ L. D. SPIEKER, F. WEBER, *op. cit.*, p. 491.

³¹ *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, cit., para. 172.

³² *Commission/Malta*, cit., para. 95.

³³ *Ibidem*, emphasis added.

which European integration is based «on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust among the Member States that those values will be recognised».³⁴ Given this implicit similarity, an even stronger notion of European citizenship seems to emerge from the Court's ruling. From being an element that gives concrete form to the Union's values, it seems in some way to be becoming a structural component of those values. This also explains why the mutual recognition of the prerogatives exercised by Member States in defining and shaping the contours of their own citizenship – emphasised by AG Collins in his conclusions – leaves room for mutual trust regarding the fact that each Member State must safeguard the very nature of EU citizenship.

Against this background, it becomes understandable that the ruling identifies significant constraints on Member States' actions in defining the methods for acquiring citizenship, leading to the condemnation of the Republic of Malta for establishing and operating the citizenship investment scheme.

3. *A contextual analysis of the Commission/Malta ruling*

The Court of Justice's ruling in *Commission/Malta* is consistent with the line of case law that developed primarily to affirm respect for the rule of law by Member States – a line of reasoning that, beginning with the *Associação Sindical dos Juizes Portugueses*' case,³⁵ has led the Luxembourg judges to highlight the obligations that adherence to the Union's foundational values imposes on its Member States. The most recent and significant development, as is well known, occurred in the *Commission/Hungary* case, decided in April 2026, which led the Full Court to recognize the direct enforceability of Article 2 TEU.³⁶

³⁴ *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, cit., para. 168.

³⁵ Court of Justice, Judgment of 27 February 2018, Case C-64/16, *Associação Sindical dos Juizes Portugueses*.

³⁶ Court of Justice, Judgment of 21 April 2026, Case C-769/22, *Commission/Hungary*.

Although it developed in exceptional circumstances, this case law has, over time, given rise to a real constitutional doctrine that, from a top-down perspective, elaborates the meaning of membership to the Union.³⁷ In this sense, it is not surprising that Siniša Rodin, the reporting judge in *Commission/Malta*, recognises that the Court's judgment in this case is, first and foremost, an «exercise of competences ruling».³⁸ In other words, the affirmation of the constraints that Member States face in light of the “framing of powers” theory (and thus by virtue of the principle of sincere cooperation) about defining the methods of acquiring national citizenship must be interpreted with a view to ensuring the primacy of Union law and, consequently, to quote an expression coined by the Luxembourg judges that has since become famous, the affirmation of the «European Union as a common legal order» to the Member States.³⁹

In concluding a first analysis of the Court's ruling in *Commission/Malta*, Lorin-Johannes Wagner noted that «to argue that the [... Member States' neoliberal policy of passportisation] must be preferred over the [... Court's] policy [emerging from the case] on a principled point of liberal values and the rule of law does indeed require some Chutzpa».⁴⁰ Although this may be considered entirely reasonable in the abstract, it is also necessary to take a broader view of the implications arising from the Court of Justice's ruling. More specifically, we must examine the consequences for the idea of European citizenship within the broader context in which it is situated.

As noted in the previous Section, the Court's ruling appears to herald a fundamental shift in the reconstruction of the nature of European citizenship. This is particularly evident in relation to the Court's well-known definition of European citizenship in *Grzelczyk* –

³⁷ See K. LENAERTS, J.A. GUTIÉRREZ-FONS, *Epilogue: Autonomy and the Identity of the EU*, in *EP*, Vol. 8, No. 3, 2023, pp. 1495-1511; F. CASOLARI, *Il processo di europeizzazione delle identità nazionali degli Stati membri: riflessioni sulle traiettorie del costituzionalismo europeo*, in this *Journal*, 2024, pp. 267-299.

³⁸ See S. RODIN, *Citizenship, Identity and Values – Reflections on Commission/Malta*, in this *Journal*, 2026.

³⁹ Court of Justice, Judgment of 16 February 2022, Case C-156/21, *Hungary/European Parliament and Council*, para. 127.

⁴⁰ L.-J. WAGNER, *Fury and Surprise Anchored in Dogmas and Myths: Reflections on Commission v. Malta and its Discontents*, in *VBlog*, 26 May 2025.

namely, a status «destined to be the fundamental status of nationals of the Member States». In *Commission/Malta*, the Court, citing «to that effect» *Grzelczyk*,⁴¹ states that European citizenship has become the fundamental status of Member States' citizens. In short, according to the Court, the process foreshadowed in its previous case law has finally been completed. Even more significantly, European citizenship has now taken on a structural significance, becoming substantively intertwined with the Union's value framework through the value of solidarity. This would enable the Court to identify – from a top-down perspective – significant constraints that Member States must observe when granting their own citizenship, even to the point of pinpointing a fundamental characteristic that national citizenship must possess. According to the Court, in fact, «the bedrock of the bond of nationality of a Member State is formed by the special relationship of solidarity and good faith between that State and its nationals and the reciprocity of rights and duties».⁴²

The systemic implications of the Court's ruling, however, do not appear to take due account of several contextual issues that merit further examination by the Court. First and foremost, the definitive affirmation of EU citizenship as the fundamental status of Member State citizens warrants clarification. Setting aside the not entirely consistent use of precedents (we refer, in particular, to the use of the formula coined in the *Grzelczyk* ruling)⁴³ – which is, however, not new in case-law practice⁴⁴ – one cannot fail to note the various aspects of incompleteness that still characterise this status. It has already been noted that, at present, no obligations attributable to EU citizenship have yet been identified.⁴⁵ About citizenship's rights, moreover, both the case law on derogations and that on the conditions governing their exercise still demonstrate a significant capacity on the part of Member States to

⁴¹ *Commission/Malta*, cit., para. 92.

⁴² *Ivi*, para. 96.

⁴³ D.V. KOCHENOV, G. ÍÑIGUEZ, *op. cit.*, pp. 464-465.

⁴⁴ See G. BECK, *The Legal Reasoning of the Court of Justice of the EU*, Oxford-Portland, 2012, p. 9, highlighting that, «[i]n EU law, [...] the ECJ commonly employs at least one [...] technique of dealing with its own relevant previous decisions: the gradual extension of precedent through the use of building blocks and their application to new material facts».

⁴⁵ *Supra*, Section 2.

influence the actual application of the EU rules. As for the derogations, in her seminal work on EU citizenship law Niamh Nic Shuibhne notes that «[t]he very possibility of expelling and excluding Union citizens [...] highlights, above all, fundamental and unresolved questions about Union citizenship itself and about the Union as the place within which that citizenship is determined and experienced; about identity, values, integration, and responsibility – about, most fundamentally, *home*».⁴⁶ The shift in case law brought about by the Court in the well-known *Dano* case⁴⁷ – aimed at establishing an interpretation of the condition regarding the possession of sufficient economic resources so as not to become a burden on the host State⁴⁸ that is more favourable to Member States – not only downplays the reference to «a certain degree of financial solidarity» found in previous case law on the same subject,⁴⁹ thereby marking a process of divergence from the value of solidarity, but also demonstrates a certain fluidity in the case law dealing with the conditions for the exercise of citizens' rights that is difficult to reconcile with the idea of a European citizenship rooted in the Union's foundational values.⁵⁰ Nor should we forget that the requirements and conditions for exercising citizenship rights depend largely on the will of the EU legislature, a fact that does not allow us to rule out a priori a mismatch between the political circumstances driving the legislative process and the full realization of European citizenship.⁵¹

⁴⁶ N. NIC SHUIBHNE, *op. cit.*, p. 553.

⁴⁷ *Dano*, cit. See M. HAAG, *The Court of Justice's Shift in Interpreting Directive 2004/38 and Union Citizenship: An Illusion of Legislative Intention and Legal Certainty*, in *Maastricht Journal of European and Comparative Law*, Vol. 32, No. 1, 2025, pp. 8-27. See also, more recently, Court of Justice, Judgment of 15 July 2021, Case C-709/20, *CG*, paras. 75-79.

⁴⁸ 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 7(1)(c).

⁴⁹ *Grzelczyk*, cit., para. 44; Court of Justice, Judgment of 19 September 2013, Case C-140/12, *Brey*, para. 72. See A. McDONNELL, *Equality for Citizens in the EU: Where Did All the Flowers Go?*, in L. S. ROSSI, F. CASOLARI (eds.), *The Principle of Equality in EU Law*, Cham, 2017, pp. 199-228.

⁵⁰ E. SPAVENTA, *op. cit.*, pp. 1808-1810.

⁵¹ For some interesting developments aimed at strengthening the (political) rights of European citizens through legislation, see C. TOVO, *Political Rights and EU Identity: The Limits and Potential of a Value-oriented Approach*, in this *Journal*, 2026.

The second element worth noting concerns the structural link between EU citizenship and the value of solidarity. As we have seen, this link not only transforms European citizenship – which takes on an undeniable value-based significance – but also imposes a shared minimum definition of national citizenship (that is, «a special relation of solidarity and good faith») that all Member States must recognize, and that subsequently becomes a defining feature of European citizenship as well.⁵² As rightly noted, however, the exact significance of the legal notion of solidarity remains shrouded in interpretive uncertainty, making it difficult to determine with clarity which obligations concretely express the value of solidarity.⁵³ Not to mention that the assertion that the value of solidarity constitutes «the very basis of the process of integration» seems to give rise to the idea that there is a hierarchy of the Union’s fundamental values – a circumstance that is not, however, reflected in other aspects of practice.

Furthermore, it is not insignificant that a clear contrast has emerged between the position taken by the Court of Justice and that of AG Collins. As correctly pointed out in legal scholarship, this divergence is particularly illustrative of the uncertainty that still characterizes the definition of supranational constraints with respect to Member States’ prerogatives regarding the acquisition and loss of citizenship.⁵⁴ In this regard, it must be emphasised that the Court’s affirmation of a shared concept of national citizenship – effectively inspired by the value-based reconstruction of European citizenship – calls into question the division of competences between Member States and the European Union that underlies the well-known formula according to which EU citizenship

⁵² L. D. SPIEKER, F. WEBER, *op. cit.*, p. 491, refer in this regard to a sort of «autonomous interpretation of the notion of “nationality”» elaborated by the Court according to Article 20(1) TFEU.

⁵³ S. POLI, L. LONARDO, *op. cit.*, pp. 148-150.

⁵⁴ See D. KOCHENOV, *Never Mind the Law, Again: Commission v Malta (C-181/23)*, in G. BUGEDO MONTERO (ed.), *op. cit.*, pp. 21-25, (arguing that «[t]he divergence of views between the AG and the Court hints at the particularly poor state of EU law on the matter, where legality and legal certainty apparently are not guaranteed and the rules are non-obvious, [...] and where a high degree of politicization prevails»), and A. ADINOLFI, *The Concept of Citizenship after Commission v Malta: Towards a New Narrative on the Abuse of Law?*, in this *Journal*, 2026.

«shall be additional to and not replace national citizenship», to the detriment of the principle of conferral.⁵⁵

There is one final point worth mentioning, concerning the possible spillover effect of the approach adopted by the Court in the *Commission/Malta* case. In fact, the reasoning underlying the Court's ruling could logically be applied to the other fundamental EU provisions mentioned in Opinion 2/13 (namely, those providing for the free movement of goods, services, capital, the area of freedom, security and justice, and competition policy), further expanding the value-based interpretation of EU law and the scope of the constraints arising from the “framing of powers” theory. Clearly, the effects of such an expansion would bring about a structural change in the EU legal system, moving it toward more distinctly federal solutions, which do not currently appear to be in line with either the framework established in the Treaties or the will of the Member States. On the other hand, it should not be forgotten that, in a case concerning another element inherent to statehood (namely, the Member States' prerogatives regarding territorial delimitation)⁵⁶, the Court of Justice declined to exercise its jurisdiction and, consequently, to apply the “framing of powers” theory, not least in light of the Member States' reserved powers. This was even though the exercise of Member States' sovereign prerogatives at stake was clearly at odds with the pursuit of compliance with EU obligations and, therefore, with the value of the rule of law. The lack of consistency between the two rulings suggests a certain fluidity in the Court's approach to enforcing the Union's foundational values in situations involving statehood elements, warranting greater caution.

⁵⁵ See G. DI FEDERICO, *Union Citizenship and National Identity. The Constitutional Conundrums Raised by Commission v Malta*, in this *Journal*, 2026, who also stresses that in the Court's ruling no reference is made to the Identity Clause enshrined in Article 4(2) TEU.

⁵⁶ Court of Justice, Judgment of 31 January 2020, Case C-457/18, *Slovenia/Croatia*.

4. «To be or not to be: that is the question». *The long road of European citizenship*

There is no doubt that the establishment of European citizenship constitutes one of the most significant achievements of European integration, aimed at strengthening the individual dimension of the supranational legal order. It has contributed tremendously to giving substance to what the Court had foreshadowed in *Van Gend en Loos*, by recognizing a legal and political status for the citizens of the Member States. From this perspective, it is not surprising that the Court of Justice seeks to further strengthen this status by inextricably linking it to the European Union's values. This intention, while understandable, nevertheless requires great caution. As we have sought to highlight in the preceding Sections, European citizenship straddles the line between the sovereign prerogatives of the Member States and the constitutional dimension of the integration process. This uncomfortable position is illustrated by the well-known definition of EU citizenship enshrined in Article 9 TEU, resulting in a delicate balance that does not deny the national dimension but rather builds upon it to establish the rights (and perhaps, in the future, the duties) of EU citizens. The solution offered by the Court in *Commission/Malta* appears to shift the existing demarcation in favor of the integration process by requiring Member States to achieve constitutional alignment with a legal reconstruction of European citizenship that, however, remains incomplete and is not without contradictions at both the legislative and judicial levels.⁵⁷

There is also another element worth mentioning. As Lucia Serena Rossi rightly points out, referring to the Union's value-based dimension, «[i]ndividuals should become aware of belonging to a community of values, not just to the Union as a legal entity».⁵⁸ When it comes to European citizenship, it would appear – according to the latest

⁵⁷ It has been pointed out that, in recent times, European citizenship has also been subject to significant stress tests that have called its full effectiveness into question, N. CAMBIEN, D. KOCHENOV, E. MUIR (eds.), *European Citizenship under Stress. Social Justice, Brexit and Other Challenges*, Leiden-Boston, 2020.

⁵⁸ L. S. ROSSI, *European Values, European Identity, European Society: Connecting the Dots*, in this *Journal*, 2026.

Eurobarometer report on Citizenship and Democracy⁵⁹ – that awareness is growing but remains incomplete. While it is true that 87% of respondents agree that they feel they are citizens of the EU – with more than six in ten strongly agreeing – it is also true that somewhat smaller majorities are aware that citizens of Member States do not need to apply to become EU citizens (74%) or that they cannot opt out of being EU citizens (67%). Furthermore, exactly half of respondents (50%) say they feel well informed about their rights as EU citizens, while one-third (33%) say they do not feel very well informed, and 16% do not feel informed at all. At the Member State level, the proportion of those who feel well informed ranges from 26% in France to 64% in Poland. These figures are important, as they demonstrate that European citizenship still has a long way to go. To prevent the buildings in Kirchberg from becoming ivory towers, the top-down approach set out in *Commission/Malta* should be further refined (and perhaps nuanced) by the Luxembourg judges and complemented by a bottom-up process at a distinctly political level.

⁵⁹ Flash Eurobarometer 528, Citizenship and Democracy, Report, December 2023.

ABSTRACT (ITA)

La sentenza nella causa *Commissione/Malta*, pronunciata dalla Grande Camera della Corte di giustizia nell'aprile 2025, mette in luce diversi punti di interesse. Non sorprende, quindi, che tale sentenza sia stata oggetto di un numero considerevole di commenti sin dai giorni immediatamente successivi alla sua pubblicazione. Questo contributo si propone di evidenziare il significato giuridico dell'idea di cittadinanza europea che emerge dalla pronuncia. In particolare, tenendo conto delle linee di ragionamento esposte rispettivamente dall'Avvocato generale e dalla Corte di giustizia (sezione 2), ci si concentra sulle implicazioni della sentenza della Corte per la ridefinizione del concetto di cittadinanza dell'Unione (sezione 3). Tale ridefinizione è collocata nel contesto più ampio della prassi dell'Unione in materia di cittadinanza europea, al fine di valutarne sia le potenzialità che i limiti.

ABSTRACT (ENG)

The judgment in *Commission/Malta*, handed down by the Grand Chamber of the Court of Justice in April 2025, highlights several points of interest. It is therefore not surprising that this judgment has been the subject of a considerable number of commentaries since the days immediately following its publication. In this contribution, the aim is to highlight the legal significance of the idea of EU citizenship that emerges from the judgment. In particular, taking into account the lines of reasoning set forth by the AG and the Court of Justice, respectively (Section 2), we focus on the implications of the Court's judgment for the redefinition of the concept of EU citizenship (Section 3). This redefinition is situated within the broader context of the EU practice on European citizenship to assess both its potential and its limitations.