Minorities represent diversity within any given entity or group. The constitutional framing or at least the respect of their role is an important marker for a successful balance of diversity and unity. The acknowledgement of minorities is the litmus test of democracies.

The European Union is composed of minorities: none of its peoples or states holds a majority within the Union. Already for this reason, respect for and protection of minorities is part of the very nature of the Union. The mechanisms through which the resulting diversity of states and peoples is protected and balanced with unity have been discussed in previous chapters. However, another category of minority exists within and across peoples and EU Member States in the form of minorities within Member States. In this chapter we discuss the impact of recognition, protection, and integration of minorities at the level of Member States. The focus here is on national and ethnic minorities. One might also consider other minority groups, such as political, sexual, or religious minorities that share some features with national minorities: their protection is a defining feature of liberal democracies. Some minority categories are based on personal traits that are subject to little or no change, others might not be immutable but constitute an important feature of an individual’s political and social identity. National minorities are given central attention, as their self-identification is closely linked to nations and states and thus to the core categories of diversity and unity on which the European Union is founded.
Defining what constitutes national minorities has been elusive in scholarship and international law. The most commonly used definition was proposed by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1977: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (Capotorti 1977). While capturing much of the concept, even this definition is controversial and deficient in regard to minorities (Pentassuglia 2002; Jackson Preece 2005). As noted, it assumes the state as the unit of analysis. At the European level every citizen is a minority as no single majority exists. At the subnational level, local majorities might constitute national minorities. For example, Germans might constitute a local majority in Eupen or St Vith, but a small minority in Belgium; at the same time, however, they are part of the largest national group in the European Union. Being a minority is thus always relational. The EU as a polity creates an additional frame in which all are minorities of varying sizes. In addition, being a minority is based on voluntary identification with a nation. As many persons might be born to parentage from different countries, with multiple citizenship, languages, and national backgrounds, a mono-national self-identification might be simplifying social reality. Finally, the conventional understanding of minorities assumes citizenship. However, minorities can have a long-established residence in a country and still lack citizenship. This might be the result of exclusionary citizenship laws such as in Latvia or Estonia to exclude Russian speakers, or restrictive laws in immigrant societies such as Germany and Austria with the goal of preventing easy naturalization of immigrants and their decedents. Thus, national minorities are considerably more heterogeneous than often understood. The concept of what constitutes a minority has not been static: conventionally, national minorities are understood to be a traditionally settled group that is distinct from the majority population by identifying as belonging to a different nation or group. Some, like Hungarians in Central Europe, might have a kin state, whereas others might lack one, such as Catalans. It is these minorities that have been the focus of earlier minority rights protection and the main source of security concern in Central, Eastern, and Southeastern Europe in the 1990s. Another minority group often neglected in this understanding are the
Roma. Roma are not only the minority most widely subject to discrimination across the continent, but are also the largest transnational minority. With around 6 million members in the EU, the group is larger than 12 Member States in terms of inhabitants, and Roma live in nearly every EU Member State. Lacking a ‘homeland’ and some features of nationhood, Roma often have not qualified as a national minority, but are widely understood to be protected as minorities under European legal instruments. A further evolution in the understanding of national minorities can be found in regard to migrants. Established definitions of national minorities often require citizenship and long-standing ties to the country. While this might have been a possible criterion to set apart a national minority such as German speakers in South Tyrol from Turkish migrants to Germany in the past, the distinction has eroded. Millions of migrants have acquired citizenship across the EU and many have been long established for upwards of 50 years. As a result, the Framework Convention for the Protection of National Minorities (FCNM), through the work of the Advisory Committee, has included not only traditional minorities, but also migrants and individuals who might not fit the conventional understanding of national minorities (Ringelheim 2010, p. 99; ACFC 2016).

As outlined in Chap. 3, minorities can include EU citizens, their naturalized or bi-national descendants in other EU Member States, or those from third countries (Kochenov 2015). This does not mean that all those citizens who by background or citizenship are distinct from the majority population seek to enjoy specific minority rights. In fact, for most immigrant minorities, non-discrimination is critically more important than the use of language in education and media. At the same time, minorities often possess differentiated rights due to their citizenship, with Member State nationals advantaged in terms of political and other rights over nationals of another EU Member State and thus holders of European citizenship and with non-EU nationals generally further disadvantaged.

Conceptually, European integration has had an ambiguous effect on minorities. On the one hand, measures introduced at the level of the Union may strengthen minorities by offering stronger or additional protection against discrimination, thereby increasing diversity within the Union, even to the point of inadvertently encouraging separatist movements. On the other hand, the fact that such measures are common to minorities in most or all Member States may strengthen common values, and hence unity. This ambiguous effect explains (in part) why there are few explicit and clear protective mechanism adopted by the Union, as the
Union includes countries that offer extensive rights to national minorities and others who reject their very existence. The significance of the Union’s policies toward minorities is mostly indirect.

In general, there are three approaches through which the Union has promoted the protection of minorities and diversity among its citizens. First, it adopted a set of anti-discrimination policies that requires Member States to adopt policies and laws to prevent minorities being subject to discrimination. Second, it includes policies of promoting mobility, reducing the relevance of national borders; defusing power of nation-states reduces the often rigid and hierarchical relationship between minorities and nation-states, thus blunting the sharp edge of the nation-states. Third and finally, the EU has drawn on the emerging minority rights tools of the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) and incorporated them into the accession process. Thus, the Union’s use of international legal norms and soft law provisions helped significantly to bolster the post-1989 European minority rights system.

National minorities were not included in the initial conception of the European integration process. There were numerous reasons why minorities were not on the radar during the first four decades of European integration. At the level of international law and politics, minorities and their protection were a reminder of interwar Europe. The minority treaties in Central Europe—the product of the Paris peace treaties—offered little tangible protection and instead used by irredentist European states to advance their claims against neighbors. Meanwhile, nation-states saw minorities and the treaties that sought to protect them as a burden and an undue international imposition. Finally, Nazi Germany’s instrumentalization of German minorities to justify occupation and war in Czechoslovakia and Poland implicitly justified the expulsion of German and other minorities at the end of World War II. After the war, the focus on minority rights shifted to the paradigm of human rights. International law focused on protecting individual rights rather than collective rights. As noted in Chap. 3, European countries also became considerably more homogenous after the war, so national minorities were at best a local issue of post-war Europe.

The nature of European integration in its initial stages also offered few points of reference to minorities, as Member State cooperation focused on eliminating discrimination based on nationality, that is, citizenship, and was not concerned with intrastate minorities. Although among the original six Member States minority demands for greater rights began appearing in the 1950s and 1960s (e.g. the demands for self-government in South
Tyrol/Alto Adige and in Flanders, and the demands of the Danish minority in the northern German state of Schleswig Holstein), many of these claims were restricted to the domestic sphere and had limited cross-border implications. Where there were cross-border negotiations, they often involved Member States and non-Member States. For example, the Bonn-Copenhagen Declarations of 1955 guaranteed the rights of the German and Danish minorities in the border region 18 years before Denmark joined the European Community. Italy reformed the autonomy for South Tyrol in 1972, and after a 20-year implementation period Italy and Austria declared their bilateral dispute resolved in 1992, three years before Austria joined the Union.

Minority rights thus could be easily ignored by the (then) European Community. With the growth of the EC, new minorities and conflicts entered the European projects, including those of Catalonia, the Basque Country, and Northern Ireland, but they still had limited significance for the Union. However, in parallel to this ‘discovery’ of the need for protection of human rights at the level of the European Union, the awareness within EU institutions of protection of minorities grew. According to Gabriel Toggenburg, one can distinguish three phases of the development of minority rights in the European Union.

During the first phase in the 1980s, the European Parliament dominated with a number of idealistic initiatives aiming to create a European system of minority rights protection. However, in the face of limited EC competencies, even less for the European Parliament, and resistance from key Member States, such a far-reaching system could not emerge.

The second phase is characterized by minority rights during enlargement, that is, the use of minority rights as a condition for EU accession, represented by the Copenhagen Criteria. Finally, the third phase marks the internalization of minority rights following the 2004–2007 enlargement, reflected in the Lisbon Treaty (Toggenburg 2018, pp. 365f.). Thus over four decades, minority rights moved from being marginal to being the field of idealistic experimentation to being an important part of the enlargement process to finally cautiously constituting part of the core Union values.

By the 1980s, the EC included a great variety of Member States, from those with no substantial minorities, such as the Netherlands, to diverse members such as Spain. Some countries were willing to grant minority rights and develop sophisticated self-rule and autonomy, such as Italy and Spain, whereas others, including France and Greece, denied the existence
of any minorities. Among such a diversity of intra-state diversity and the range of state responses, minority rights were an unlikely field to become of concern for European integration.

The paradigmatic shift occurred after 1989. The Union successfully acquired new competences, and the dynamics of integration beginning with the Maastricht Treaty brought minorities into focus as well. The main catalyst was the end of the Cold War and the shift of integration toward Central and Eastern Europe that confronted the EU with new diversity.

The dissolution of multinational states like Czechoslovakia, Yugoslavia, and the Soviet Union and tensions between nation-states and minorities raised the awareness of minorities. The main advance in terms of minority rights in Europe occurred through the symbiotic relationship between the minority rights instruments developed by the Council of Europe and the politics of conditionality of the European Union. Whereas the Council of Europe began setting the legal standards for minority protection, the OSCE focused conflict management and diplomatic instruments to confront state-minority issues. Thus, within the span of a few years a new European framework emerged in the 1990s. In 1992, the European Charter for Regional or Minority Languages was adopted, and in 1994 the Committee of Ministers of the Council of Europe adopted the FCNM, both coming into effect in 1998. In 1992, the OSCE established the High Commissioner on National Minorities (HCNM) as a diplomatic tool to intervene in non-violent conflicts between minorities and states. Since then, the HCNM has also formulated numerous guidelines on minority rights and interethnic relations. These guidelines—a total of nine—were issued between 1996 and 2019, and highlight best practice in the OSCE area; they have made the High Commissioner a normative actor in articulating general principles of minority integration (Jackson-Preece 2013).

The relevance of the EU in protecting minority rights consists of four distinct fields traced in this chapter, namely the indirect effects on minorities of European integration (such as the reduction of borders or new institutional opportunities), the impact of EU participation in the emerging European minority rights regime in the context of enlargement (in particular toward Central and Eastern Europe), the emerging

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1 Adopted on 1 February 1995.
2 https://www.osce.org/hcnm
non-discrimination and minority rights standards within the EU since 2000, and the adverse effects of European integration on specific regimes toward minorities by some EU Member States.

8.1 Integration as a Tool to Accommodate Diversity

European integration as such has had a significant impact on addressing the position of minorities. To a large degree this could be described as not so much deliberate policy to improve minority rights, but rather a by-product of European integration. Of course, this outcome is not purely coincidental, but it is not primarily a policy for minorities. Integration, as a set of policies to diffuse tensions between minorities and nation-states, functions on several levels. The first dimension is that of reducing the importance of borders and thus reducing the relevance of living on the ‘wrong’ side of a border as a minority. The second dimension is reducing the symbolic monopoly of the nation-state and introducing symbolic pluralism that can incorporate minorities with greater ease. Finally, the EU has been diffusing minority—state tension by introducing another layer of decision-making, thus reducing potential contestation over decision-making and power at the level of the Member State. Finally, we also have to consider how integration and in particular the protection of unity in the European Union has at times come into conflict with minority rights. Thus, the indirect effects of European integration on minority rights are not exclusively positive.

Border Elimination Strategy

An important aspect of the EU’s direct and indirect strategies for minority inclusion has been the reduction of national borders and in particular the Schengen system. Whereas the reduction of border controls served the purpose of ensuring the freedom of movement of people and goods, it also impacted minorities, in particular those minorities separated from their kin state by internal EU borders. This includes German speakers in South Tyrol, Danes and Germans in the Schleswig/Slesvig German-Danish border region, Nationalists in Northern Ireland, and Swedish-speakers in Finland, to name just a few. Even minorities without a kin
state, such as Basques in France and Spain, were disrupted in maintaining transnational ties by borders.

The creation of the Schengen Area and the elimination of border controls is not the only dimension in which the EU has shaped border regimes. In general, European integration has served to de-securitize borders within the Union. This has been particularly pertinent where cross-border minorities were viewed as a security concern by nation-states. A number of European initiatives instead promoted a variety of cross-border cooperation projects such as Euro-regions, INTERREG funds and the European Grouping of Territorial Cooperation. These highlighted the agency of subnational actors in engaging in cross-border cooperation (De Sousa 2013; Engl 2016). Even if many of these networks often remained limited in scope or weak, they still constituted one dimension in which borders were weakened, giving minorities a greater say in shaping these cross-border relations.3

The relevance of borders and EU integration for minorities became highly visible during the Brexit process in Northern Ireland. While neither the UK nor Ireland partake in the Schengen Area, EU membership for both countries allowed for the complete elimination of border controls. In the aftermath of the Good Friday Agreement, the border between Northern Ireland and Ireland became essentially invisible. Since the partition in 1920, there had been no formal immigration controls, but the border had become securitized in the context of the ‘Troubles,’ that is, the conflict between the supporters of Irish unification and those supporting Northern Ireland as part of the UK (Nash et al. 2013, pp. 109–140). A key concern during the Brexit negotiations was to ensure that border controls were not imposed between EU member Ireland and non-EU Northern Ireland, as such controls would undermine the freedom of movement in Ireland that constituted an important aspect of the Good Friday Agreement (Hayward and Murphy 2018). The conflicting goals of withdrawing from the EU and keeping the borders between Northern Ireland and Ireland open, emerged as the biggest difficulty in the Brexit negotiations.

Whereas European integration contributed to reducing the importance of borders among the Member States, the EU also reinforced the external borders of the EU and the borders of the Schengen Area. This has also affected minorities, as borders have become more rigid. For example, Hungarians living in Serbia or Ukraine or Russian speakers in the Baltic States have to cross an external EU border to maintain contact with their

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3 See for example in the case of the German-Danish border region, discussed in Malloy (2010).
kin state. This can make contacts more difficult, in particular when the bilateral relationship is volatile and antagonistic. Arguably these more rigid borders have encouraged kin states to offer easier access to citizenship to ethnic kin in neighboring countries to circumvent (or at least ease) any obstacles that the rigid division of the EU external borders creates (Tóth 2003). Croatia has been granting citizenship to Croats abroad, in particular in Bosnia and Herzegovina and Serbia, as has Hungary to Hungarians in Serbia and Ukraine. Bulgaria and Romania gave easy access to Macedonians and Moldovans respectively. While reducing the rigidity of external EU borders, they can also fuel tensions in minority—majority relations in those countries, as minorities are seen as having privileged EU citizenship; furthermore, the citizenship might facilitate outmigration into the EU.

The mitigation of minority-state tension through border elimination is fragile and reversible. Brexit brought risks to the foreground in regard to Northern Ireland, where after more than two decades of peace and an open border, the British departure from the EU now undermines the peace. Even without such a radical step as leaving the EU, these tools are vulnerable as they were not instituted to address minority rights and are easily reversed by unrelated considerations. This became apparent in the context of the so-called migration crisis after 2015, as intra-EU borders were subject to renewed controls and physical barriers, which made borders again visible. This was even more drastic in 2020, when the COVID-19 pandemic led to rigid border closures across the world and within the EU, limiting cross-border contacts.

**Symbolic Pluralism**

Besides the mitigation of borders, the shift of decision-making to the EU can impact minorities even in seemingly irrelevant matters. Take the euro: with the adoption of this currency, currencies of the participating states disappeared, and with them the symbolic reminders of the nation-state. Currencies prior to the introduction of the euro depicted many “national heroes,” for example Theodoros Kolokotronis, general and leader of the Greek war of independence on the 10,000 drachma note, or Douglas Hyde, the first president of Ireland and a key figure in the Celtic revival featured on the 50 Irish pound bill. Across the different currencies of the countries that joined the euro, national figures were featured in an example of banal nationalism (Billig 2005). By removing this daily reminder of
nation-state from citizens’ wallets, the new currency became less laden with national association (at least for minorities). The symbolic pluralism discussed previously in Chap. 5 also impacts the inclusion of minorities. With the use of the EU flag and symbols next to nation-state symbols, the symbolic monopoly of the nation-state is challenged. This might not mean that minority or regional symbols can be used without restrictions, but it does highlight that the nation-state is not the only authority able to display symbols traditionally associated with states. This symbolic pluralism once more diffuses the prevalence of the nation-state.

Institutional Diffusion and Inclusion

While the structures of the European Union focus little direct attention on minorities, the layer of European institutions has a clear impact on minorities. As supranational institutions and rules, they diffuse the monopolistic power of the nation-state. Scholars of multinational states and divided societies have noted that the diffusion of power can contribute to less contestation and greater distribution of access to power among different communities (Rothchild and Roeder 2005). In this sense, the EU constitutes another set of decision-making bodies that reduces the singular power of the state, in particular when the state is highly centralized and constituted as a nation-state.

Even more so, the EU is not another national layer of governance, but constitutes a level of decision-making that is multinational and, as a result, able to moderate different national perspectives in its decision-making. The impact is thus not just the diffusion and extension of centers of decision-making, but also the way in which Member State decision-making is co-shaped (Keating 2004). The European Union has been transforming the Member States. As discussed throughout this book, the Union is not just the institutions and the rules associated with the European Union conventionally, but also the ways in which the different levels of government of Member States are transformed by them. This process has often been described as Europeanization, although in recent decades, the term has been applied more in regard to the accession process in Central and Southeastern Europe.

New regionalism, promoting cooperation among subnational units and decentralization—including through such consultative bodies as the Committee of the Regions—has empowered regions. In addition, minority demands are often associated with particular territories and minority
movements (whether they are secessionist or autonomist) and have often focused on claims based on a particular territory (Keating 2004). It is not clear-cut whether European integration moderates or potentially radicalizes minority party demands. On one hand, it offers new venues for addressing minority demands and reducing the power of the nation-state. On the other hand, regional parties have been using the EU to argue for independence while seeking to remain in the EU. The existence of an alternative polity might reduce the apparent cost of secession, as Catalan and Scottish parties and movements have argued.

Institutionally, the EU also provides new opportunities for minorities to organize transnationally, either to cooperate beyond national borders or to circumvent nation-state restrictions. For example, minority parties have been able to achieve representation and pursue their agenda at the European level. There are three relevant structures, namely, the political groups in the European Parliament, political parties at European level (Treaty establishing the European Union [TEU], 2007, art. 10[4]), and transnational NGOs or alliances of NGOs. These different mechanisms have enabled minorities to organize, more effectively pursue their agenda, and at times also circumvent a more restrictive environment within Member States. The main political party of minority representation is the European Free Alliance.4 It was established first in 1981 to bring together minority and regional groups. As of 2020 it brings together some 46 nationalist, autonomist, and regionalist movements and parties, from the New Flemish Alliance (N-VA) or the Republican Left of Catalonia to the more obscure, such as the Venetian Republic League. It also includes members from non-EU countries such as the Scottish National Party (SNP) and the League of Social Democrats of Vojvodina (LSV) in Serbia. The EFA was registered in 2017 as a European Political Party.5 The main challenge of the party has been its cohesion, as member parties cover an ideological spectrum from the left to the far right.

Within the European Parliament they have formed a common political group with the Greens.6 Overall, the representation of minority and regionalist parties in the European Parliament is marginal and further weakened by the fragmentation across multiple parliamentary groups, as not all are aligned with the Greens. For example, the more conservative

4 https://www.e-f-a.org/
5 See the Register of Members, Official Journal of the European Union 2017, C 362/18.
6 https://www.greens-efa.eu/en/
N-VA, while a member party of the EFA, belongs to the parliamentary group of European Conservatives and Reformists. As of February 2020, a total of twelve minority party MEPs (out of 705) consisted of four MEPs in the group of the Greens, four MEPs with the European Conservatives and Reformists, three MEPs who are unaffiliated, and one MEP who is in the European People’s Party.\footnote{The departure of the UK reduced the number of minority party MEPs. In 2019, 6 of 73 MEPs were from minority and regional parties.}

The main European organization of minority non-governmental organizations, other than parties, is the Federal Union of European Nationalities (FUEN), established in 1949 as an international network of NGOs in the context of the formation of the Council of Europe.\footnote{https://www.fuen.org/} It brings together 107 minority organizations in 35 countries. Although FUEN cannot be attributed to European integration, it is part of the larger development of global governance and civil society. Furthermore, it has used the instruments of the EU to advance minority rights, as will be discussed later in this chapter.

### 8.2 Externalizing Minority Protection

In addition to the indirect effects and institutions of integration that facilitated the improvement of minority–state relations in Member States, the EU adopted its first tentative steps to protect minority rights explicitly in the Copenhagen Criteria for accession to EU. This occurred in the early 1990s as part of a wider concern of international organizations with minority rights. The overlap with instruments of the OSCE and the Council of Europe resulted in a shared European minority regime with different international organizations mutually reinforcing each other (Galbreath and McEvoy 2012, pp. 112–141). In this emerging minority rights regime, the EU essentially externalized minority rights in two dimensions. First, externalization occurred by shifting the standard setting and monitoring to other organizations. The EU sought adherence to minority rights as a criterion among future members, but drew on the emerging legal standards and tools of others, in particular the FCNM. Second, it externalized minority rights by demanding them from aspiring members and also evoking minority rights in its nascent foreign policy, in particular in regard to the former Yugoslavia. However, this
externalization meant that the Member States that had joined the EU earlier would not be subject to international minority standards. In particular, countries such as Greece and France that rejected the notion of national minorities were under no pressure to advance minority rights. These countries, together with Belgium and Luxembourg, are the only EU members not party to the Framework Convention and thus not subject to any reporting on minority rights.

As the EU lacked the legal and political framework for minority protection, not only because key members reject the existence of national minorities in their own countries (including Greece and France), the EU instead left minority rights protection to the Council of Europe and the OSCE and incorporated these only indirectly through the policy of conditionality during the EU accession process. This allowed the EU to require future members to safeguard minority rights, while avoiding opposition from Member States skeptical about this topic. It also reflected an East/West bias, as the urgency of advancing minority rights was triggered by repressive policies of late communist and early post-communist governments and tensions between majorities and minorities in Central and Eastern Europe. However, minority—state relations were not without friction in Western Europe either, and the level of violence was greater in several older EU Member States. In Spain a violent conflict in the Basque Country had continued after the end of the Franco regime; in France, Breton, Basque, and Corsican groups had demanded greater autonomy—including some using violence—and a low-level conflict persisted in Northern Ireland. In addition, non-violent yet politically potent tensions existed in Belgium as well. Thus, minority rights were not only on the agenda in new democracies in Central and Eastern Europe. However, the unique moment of large-scale enlargement shifted debates and norms on minority rights toward future members.

The enlargements after 1995 followed a different logic than the earlier wave of EU expansion. Unlike Austria, Finland, and Sweden that joined in 1995, the new applicants were recent democracies and engaged in multiple transformations simultaneously—political, economic, and social. While Spain, Portugal, and Greece had also undergone the transition from dictatorship to democracy prior to joining the European Community between 1981 and 1986, they did not need to fundamentally restructure their economic systems and joined the European Community before the major reforms of the early and mid-1990s.
The difference and the scale of the enlargement of the EU toward Central and Eastern Europe gave rise to a policy of EU conditionality during the accession process that focused not exclusively on the *Acquis Communautaire*, but also on democracy, human and minority rights, and, later in the case of the post-Yugoslav countries, cooperation with the International War Crimes Tribunal for former Yugoslavia as well. This package, which included minority rights, was advanced to prevent countries with serious internal problems from entering the EU and also used the leverage of EU membership to promote issues that were seen by many international actors as crucial from a position of both security and democracy. Countries that joined under the 1993 Copenhagen Criteria had to demonstrate their compliance with minority rights during the accession process. However, the EU also only held them to the minority rights standards of the Council of Europe as long as they were not members. Some critics have argued that this policy for imposing requirements on future EU Member States that earlier ones did not have to adhere to amounts to “do as I say, don’t do as I do” (Johns 2003). However, this argument is only partially convincing. As membership is voluntary, the EU can set its criteria for membership without regard to whether current members adhere to the same criteria. While this might be perceived as unfair, in the case of minority rights there were a variety of reasons that justified them. Whereas some were based on East—West biases (Central and East European states are a greater threat to minorities), others were pragmatic (minority rights can either be promoted in Central and Eastern Europe or nowhere). Furthermore, the argument neglects that the accession process is always one-sided as the Union sets the criteria and measures compliance, and thus it is not a process of negotiation among equals. The inequality is thus not caused by the inclusion of minority rights requirements, but lies in the structural foundation of accession. Finally, countries achieve equality once they join the EU with earlier members, and the power asymmetry does not persist (Hillion 2004). Once Estonia, Croatia, and Bulgaria joined the EU, the new Member States were no longer bound by different criteria towards minority protection than old Member States, such as Greece or France.

Minority rights conditionality generally required aspiring EU members to join the FCNM.9 The instruments of the Framework Convention entail regular state reports and monitoring. While countries are able to withdraw

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9 Not all Member States that joined in 2004 were party to the FCNM. Latvia signed in 1995, but only ratified the FCNM in 2005, that is, one year after joining the EU.
from the convention and there are no enforcement mechanisms, lowering standards drastically or withdrawing from the FCNM would draw the spotlight of international attention.

Moreover, the European Commission assessed the degree to which governments protected minority rights based on the Copenhagen Criteria, the implementation of the 2000 non-discrimination directive, and a Roma strategy, in countries where Roma were a sizable minority (Rechel 2008, p. 174).

Even during the accession process, when the EU was the most forceful in ensuring minority-friendly policies in the future Member States, the impact was limited. Whereas in many countries minority parties began participating in governing coalitions and comprehensive minority rights laws were passed, not everywhere was EU conditionality applied. In the Baltic states, many Russian speakers remained without citizenship of their country of residence and Roma remained marginalized and discriminated against in most of Central and Eastern Europe. The omissions were in part due to the fact that monitoring of minority rights conditionality was left to other organizations. Thus, the EU could use their assessments, but was not bound by them. As minority rights could not be assessed with firm criteria, but rather were subject to political judgment by the Commission, other criteria often trumped minority rights (Rechel 2008). Nevertheless, minority protection was considerably better-established in 2004–2007, when these countries joined, than it was a decade earlier. Most importantly, new Member States did not use the end of conditionality after joining to dismantle their minority rights regimes. While there were no firm legal safeguards, there were reputational costs. Severely curtailing previously established minority rights regimes might be possible, but would come at a cost, as it would draw international attention.

The course of events after the countries of Central, Southeastern, and Eastern Europe joined between 2004 and 2013 appears to confirm the “locking in” effect achieved through EU conditionality (Pridham 2008). Overall there has been no significant backsliding in terms of minority protection, despite the absence of both the scrutiny of the EU institutions and conditionality. This is not to deny some country-specific problems.\(^\text{10}\)

\(^{10}\)See, for example, in the case of Croatia, where the most important minority is the Serb minority, closely associated with the war. As the Advisory Committee of the FCNM notes in its 2015 report, “observers accredit this deterioration to a relaxation in external pressure following EU accession,” ACFC (2015).
but overall the system has withstood the test of accession. Nevertheless, the stagnation in terms of minority rights also highlights that EU membership did not result in further advances in minority rights protection.

Considering the backsliding in other fields, such as democracy and rule of law in some countries that joined the EU in 2004 (such as Hungary and Poland), the preservation of the minority rights regime is not inevitable. The persistence of the minority rights regimes post-accession could be best explained by the reduced political polarization of majority—minority relations. Minority rights and the inclusion of minority parties in governments across the region meant that minorities were incorporated and at times co-opted into the existing political system and could no longer be credibly portrayed as a threat by nationalist majority parties. The main sites of political competition and contestations have shifted from national minorities to other ‘threats’ in the narratives of conservative and nationalist parties, including LGBT communities, migrants, and supposed liberal threats to the nation. It could thus be argued that the EU adoption of minority rights as an accession criterion and the delegation of standard-setting to the Council of Europe contributed to the emergence of a modest minority rights regime in Central, Eastern, and Southeastern Europe that, with all its limitations, became sufficiently accepted and robust to persist after accession.

Furthermore, the adoption of a minority rights system in new Member States shifted the balance of minority rights within the EU itself. Prior to the 2004–2007 enlargement, 4 of the 15 EU member states (27%) either did not ratify or did not sign the FCNM (France, Belgium, Luxembourg, and Greece). By 2020, the number of countries not participating in the FCNM stayed the same, yet membership nearly doubled. Thus, only 15% of Member States are not party to the FCNM. It could thus be argued that through the pre-accession conditionality in regard to minority rights, the overwhelming majority of EU Member States have become party to the FCNM and adhere to a European set of minority rights standards. One could therefore speak of a European minority rights consensus based on the FCNM, with few exceptions. This marks a fundamental shift from the early 1990s, when there were not only no Europe-wide instruments, but also not such a widely held position regarding the protection of minorities. The inclusion of minority rights in the Lisbon Treaty is not the only result of this process (Ringelheim 2010). As the next section will outline, the emergence of minority rights standards within the EU is
largely a consequence of the Copenhagen Criteria and minority rights conditionality.

8.3 **Increased Protection of Diversity Through EU Instruments**

If the EU was long silent on minority rights and initially only indirectly acknowledged their importance during the 2004–2013 enlargement, over time they became more important. The accession of 13 countries meant that the balance shifted decisively toward minority rights in the EU as a large majority of EU Member States recognized minority rights, even if implementation was uneven. The evolution of international human rights also meant that minority rights were no longer marginal but gained prominence. The result has been a number of steps that introduced the protection of minorities into the core of the EU.

The first important step was the 2000 Race Equality Directive. The Council Directive 2000/43 is directed against racial and ethnic discrimination and became one important pillar of the EU *acquis* in the field of minority protection.\(^\text{11}\) It does not envisage a state obligation to offer positive measures to protect and promote minorities, as the Council of Europe’s Framework Convention does, but it prohibits direct and indirect discrimination. Indirect discrimination is particularly important, as this also includes “apparently neutral provision, criterion or practice [that] would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons....”\(^\text{12}\) However, the directive explicitly excludes different treatment on the grounds of citizenship.\(^\text{13}\)

The Directive had important symbolic significance when it was passed. It was less aimed at protecting national minorities, and more at avoiding discrimination against EU citizens (and non-EU citizens) in the EU who hailed from a migrant background and had long been disadvantaged. The entry of the far-right Freedom Party (FPÖ) into the Austrian government that year highlighted the dangers of xenophobic policies and accelerated the adoption of the Race Equality Directive. It was also a great equalizer

\(^\text{11}\) European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal* 2000, L180, 19 July, pp. 22–26.

\(^\text{12}\) Art. 2[2][b], Ibid.

\(^\text{13}\) Art. 3[2], Ibid.
as it highlighted that discrimination is an issue both in the West and the East of the EU. However, implementation initially lagged behind, and it appeared that the Directive was mostly of symbolic significance (Howard 2004). The provisions delegated much detail to the Member States and domestic processes that weakened the provision and reduced its effectiveness (Mason 2010; Lantschner 2019).

The Race Directive became part of the effort of the EU and its Member States to define notions of equality that reflect not just the greater concern at the level of the EU and other European instruments, such as those of the Council of Europe, but also reflect a changing understanding of what constitutes equality (De Witte 2010). Crucially, the Race Directive is limited by the competencies of the EU and is thus not applicable to all fields in which discrimination might take place (Watson 2012); however, it has a wider scope of application than other grounds for discrimination.

In terms of languages of minorities, the EU has been promoting diversity in terms of official languages, which has put languages of small EU members on equal footing with large languages. Thus, documents would be translated into Estonian or Maltese as much as English, French, or German. There is not complete equality, as working documents are generally available in fewer languages, usually English, French, and German. Non-state languages on the other hand do not enjoy official status, and Irish and Luxembourgish are also not treated equally to other Member State languages.

While not enjoying equal status, EU institutions have promoted minority and regional languages prior to even engaging with minority rights as such. This has led to multiple declarations of the European Parliament regarding the matter and the establishment of the European Bureau for Lesser Used Languages, a non-governmental organization initially funded by the EU and regional or local government organizations. In 2010 it was discontinued, and the European Language Equality Network took up its activities.14

The paradox of the EU and minority rights is that the EU lacks competences in the field and in the areas typically linked to minority rights, such as education, language policies, and political representation in the Member States. Yet more than 50 legislative acts of the EU refer to minorities, as Gabriel Toggenburg points out (Toggenburg 2018). In practice, minority

14 https://elen.ngo/information/
protection in the EU has been mostly indirect and not universal (Ahmed 2011).

The EU lacks both the competences and definition of what constitutes a national minority. The latter is not unique to the EU, as there is no clear definition in international law of national minorities and even the Framework Convention does not offer a binding definition. However, this is less of an obstacle, as the work of the Advisory Committee shows, than the lack of competences (Kochenov 2015).

Even when it comes to monitoring, the means and mandate of the EU are limited. The Fundamental Rights Agency (FRA), established in 2007, is able to report on larger trends, but is not able to engage in the systematic monitoring and reporting the Advisory Committee of the FCNM has the mandate to conduct at regular intervals.15

A major turning point has been the Treaty of Lisbon (2007), which recognized and protected minority rights for the first time in the EU in numerous ways. The Treaty integrates minority rights into primary law by making the Charter of Fundamental Rights16 a legally binding document and by authorizing the EU to accede to the European Convention on Human Rights the protection of minorities, which became integrated into the EU’s DNA (Barten 2015).

Article 2 of the Lisbon Treaty mentions minority rights as a foundational value of the EU: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”17

With the explicit reference to minorities, or rather persons belonging to minorities—avoiding any reference to collective rights—as well as pluralism and non-discrimination, the protection of minorities is inscribed as a fundamental value of the Union, de facto eliminating the divide between current and aspiring Member States.

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15 See, for example, the FRA European Union Minorities and Discrimination Survey, available at https://fra.europa.eu/en/publication/2012/european-union-minorities-and-discrimination-survey-main-results-report

16 Charter of Fundamental Rights of the European Union (2007). Official Journal C83, 30 March 2010 pp. 389–403.

17 Emphasis by the authors. Treaty of Lisbon (2007).
Furthermore, the Treaty places an emphasis on protecting diversity, which can also be seen as protecting minorities: it shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced (TEU, 2007, art. 3[3], par. 4).

It is important to note that none of these constitute collective rights, as only persons belonging to minorities and diversity in the abstract are protected, but not national minorities. Furthermore, Art. 2 emphasizes the respect for rights, including those persons belonging to minorities, but that does not mean that states have to institute minority rights; rather they must not breach the rights of minorities, in particular in regard to discrimination (Barten 2015, p. 79).

The inclusion of minority rights in the basic values of the EU also means that a breach by a Member State could trigger an Article 7 procedure, namely the suspension of voting rights and other sanctions. As highlighted by the efforts to evoke Article 7 in the case of Hungary and Poland over rule of law abuses, the threshold for this mechanism is high, and with several Member States currently not supporting the notion of minority rights, it is unlikely to be used for minority rights violations.

Although discrimination on the basis of language and membership in a minority group is prohibited in the EU due to the Lisbon Treaty and the Charter of Fundamental Rights, the Union lacks the competences in key areas to propose legislation to implement these fields, as noted earlier. As a result, the European Parliament has remained active in trying to advance minority rights at the level of the EU by adopting non-binding instruments, such as resolutions. In 2018, the European Parliament passed a resolution outlining “minimum standards for minorities in the EU” and calling on the European Commission to draft binding standards that build on the various hard and soft laws that emerged in the EU, during the accession process and by other European Organizations.

While non-binding, the large majority that supported it (489 to 112 and 73 abstentions) reflects that there is broad support in the parliament for EU-wide standards for minorities. The resolution emphasizes that 8% of EU citizens belong to national minorities and 10% speak minority languages, and it argues for EU-wide minimum standards of minority protection. These rights are outlined in the resolution, which also draws on existing legal standards including the FCNM. While it reflects the more

18 European Parliament Resolution of 13 November 2018 on minimum standards for minorities in the EU (2018). Document P8_TA(2018)0447.
idealistic approach of the European Parliament in advancing minority rights, it is also grounded in the existing minority rights system of the EU. It is unlikely to result in new EU-wide minority rights laws, but it does suggest that minority rights have become a central concern of the European Parliament. Furthermore, the resolution was a response to the EU-wide initiative “Minority Safe Pack” launched by FUEN with the support of a range of minority organizations and regional governments. This European citizens’ initiative gathered more than 1.1 million valid signatures,\(^19\) enough to trigger consideration by the European Commission, which declared it a valid initiative in January 2020.\(^20\)

The proposal included nine measures—in particular focused on minority media—dealing with statelessness among Roma and some EU funding for minority cultures. More robust aspects, such as revising EU directives to take minority concerns into account and strengthening minority inclusion (in the European Parliament as well), were struck down by the European Commission ahead of the signature collections. Initially, the European Commission had refused the entire citizens’ initiative on the grounds that it overreached by extending beyond EU competencies. However, following an appeal by the initiators at the European Court of Justice, the initiative could proceed (Bürgerausschuss für die Bürgerinitiative Minority SafePack—one million signatures for diversity in Europe vs. European Commission 2017). The decision of the ECJ in this case helped to advance the notion that the EU is able to take initiatives in the field that affect minority rights (Toggenburg 2018, pp. 379–383). The initiative only became possible through the European Citizens’ Initiative, established in the Lisbon Treaty to encourage transnational grassroots activism at the European level. In this sense, the Minority SafePack is an example of bottom-up Europeanization, that is, the effort to create joint European rules and policies in the field of minority rights not based on a top-down, government-led initiative, but driven by minority organizations (Crepaz 2020, p. 29). However, it would be simplistic to ignore the involvement of Member States. The strong support by Hungary under the authoritarian government of Viktor Orbán tainted the initiative. Since he came to power in 2010, Orbán has strongly supported the rights of Hungarians in

\(^{19}\) In total 1,215,879 signatures of support were gathered and the necessary threshold was crossed in 11 EU Member States; 1,128,385 were considered valid.

\(^{20}\) For details see Minority SafePack – one million signatures for diversity in Europe, https://europa.eu/citizens-initiative/initiatives/details/2017/000004_en
neighboring countries, but has also instrumentalized them for his nationalist political rhetoric. Slovakia and Romania were thus reserved about the initiative and supported the EC’s initial rejection at the European Court of Justice (Crepaz 2020, pp. 44–45).

Another similar citizens’ initiative,21 the “Cohesion policy for the equality of the regions and sustainability of the regional cultures,” was submitted to the Commission in 2013 seeking to advance minority rights at the EU level by requiring cohesion policies of the EU to consider minorities in the distribution of cohesion funds.22 The Commission similarly rejected it initially, due to lack of competencies. The decision was initially upheld by the ECJ, and the Commission was once more supported by Slovakia and Romania (as well as Greece), whereas Hungary supported the initiators, themselves members of the Hungarian minority in Romania.23 However, upon appeal, the ECJ annulled the decision24 of the Commission and paved the way for the initiative to gather signatures.25

Both initiatives highlight the restrictive approach of the Commission in permitting such efforts to expand minority rights protection at the European level, and how advancing minority rights pits Member States that are reserved about minority rights on the side of the Commission against each other, in particular Hungary, which has sought to promote the rights of ethnic kin in neighboring states. This demonstrates how the support for minority rights (or alternatively their rejection) is based on the particular country’s position toward minorities, and essentially bilateral minority conflicts have become Europeanized. This is not inherently negative, as the citizens’ initiatives had to be framed in a larger European context and the ECJ has given space for the initiatives to take place, despite Commission skepticism.

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21 https://eci.ec.europa.eu/010/public/#/initiative
22 http://www.nationalregions.eu/index.php
23 ECJ Case T-529/13 (Izsák and Dabi), Judgement, ECLI:EU:T:2016:282.
24 ECJ Case C-420/16 Appeal (Izsák and Dabi), ECLI:EU:C:2019:177.
25 Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens’ initiative entitled “Cohesion policy for the equality of the regions and sustainability of the regional cultures” (notified under document C(2019) 3304), C/2019/3304, Official Journal, L122, 10 May 2019, p. 55–56.
8.4 Negotiating Between European Integration and Minority Rights

The ECJ has also been confronted with cases pertaining to minority rights. In particular, several cases have dealt with restrictions on EU nationals due to specific minority rights regimes and regional autonomies.\(^{26}\) It has sought to reconcile the protection of minorities with the general principles of equality (Pentassuglia 2009, p. 132).

While overall the efforts to reduce the rigidity of the nation-state have provided minorities more space to maintain contact with their kin state or organize transnationally, they have also conflicted with minority rights. In particular, as the EU is focused on creating common rules within the Union, these can clash with specific arrangements negotiated between states and minorities (Kochenov 2015).

For example, the freedom of movement enshrined as one of the four freedoms might be restricted for the sake of minority rights. This was a central concern during the peace talks for Cyprus prior to accession as particularly the Turkish Cypriot side worried about free settlement of non-Turkish Cypriots in their region of control. The Annan Plan restricted the number of Greek and Turkish Cypriots who could settle in the other (respective) region to preserve the self-rule of the two communities. However, freedom of movement would have allowed Greek citizens, just like other EU citizens, to settle unrestricted in either part of the island. A similar concern emerged when Finland joined the EU, as the Swedish-speaking Åland Islands enjoy extensive autonomy and restricted settlement by Finns from Finland to preserve the minority culture on the island. On the other hand, for the EU, freedom of movement is central and generally only restricted by a transition period when a new country joins. Loosening the universality of freedom of movement would risk its undoing. As a result, the islands were granted a special status in the membership agreement to maintain the minority protection system.\(^{27}\)

The European Union itself, with its aim to protect the internal market, thus might come into conflict with long-established minority rights. When

\(^{26}\) See ECJ Case C-274/96 (Bickel and Franz), ECLI:EU:C:1998:563 and ECJ Case C-281/98 (Angonese v Cassa di Risparmio di Bolzano) ECLI:EU:C:2000:296.

\(^{27}\) ACT concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, Protocol No 2—on the Åland islands, *Official Journal* C241, 29 August 1994, p. 352.
these two principles of the EU come into conflict, minority rights might be disadvantaged. As Kochenov has argued, “the ECJ applies a strict proportionality test to any such deviations, which means there is no guarantee that minority protection, however highly cherished, will actually prevail” (Kochenov 2015).

Diversity is a central value for the European Union, yet it has struggled to find a path to protection within Member States and in regard to national minorities. National minorities acquired the attention of the European Communities in the 1980s, but remained at the periphery as minority issues were not a central concern, but effect numerous (but territorially, clearly-defined) regions of old Member States. The new regional nationalisms, including Catalonia and Northern Ireland, were sometimes peaceful, at times violent, and often challenged the nation-state. This made the Member States of the (then) European Community reluctant to consider minority rights a topic to be protected at the EU level. Little attention was given in general to minority rights. Accommodating (or not accommodating) minority claims was mostly a matter of sui generis solutions. Only the end of the Cold War and the prospect of a great expansion of the Union eastward changed awareness of minority rights. The inclusion of minority rights in the Copenhagen Criteria was a product of its time, the concern about minority discrimination, and nationalist polarization and violence. With the parallel instruments of minority rights emerging in other European regional organizations, minority rights shifted from a marginal field to the center of EU expansion. This did raise the risk that minority rights would be the domain of Central and Eastern Europe, as had been the case in interwar Europe. The lack of universality contributed to their failure, as they were seen as being imposed by Great Powers on the weak and reluctant new states in Central Europe.

With the Lisbon Treaty (2007), minority rights have become part of the European Union legal framework, and thus now constitute a universal value of the Union. However, this legal status is not evidenced in clear and substantive rights in the EU, a reflection of the lack of competences in key areas and the resistance toward minority rights in principle by key Member States such as France. As outlined in this chapter, one needs to look beyond the formal minority rights framework of the EU in order to understand the much wider impact of the EU on minority rights in the Member States, as well as the improvement of majority—minority relations. The prevalence of the FCNM is largely due to EU conditionality during the accession process. Furthermore, a number of other strategies of the EU,
in particular in terms of blunting the sharp edges of the nation-state, have eased the position of minorities in Europe.

Keeping in mind its doubtlessly positive impact on this level on the balance between diversity and unity, the EU remains a reluctant promoter of minority rights. The relationship between diversity and unity in regard to minorities in the Union results from three pillars: a) a symbolic commitment to diversity, b) accommodating specific policies and rules within Member States, and c) ensuring Union-wide non-discrimination of both migrant (from EU and non-EU states) and traditional national minorities, including transnational European minorities such as Roma (Kochenov 2015). Many of these commitments are largely declaratory as Member States are not always fully committed to minority rights and the EU itself is often blind to racial, national, and ethnic diversity.

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