

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT **C**

## CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

Constitutional Affairs

Justice, Freedom and Security

Gender Equality

Legal and Parliamentary Affairs

Petitions



### FRANCHISE AND ELECTORAL PARTICIPATION OF THIRD COUNTRY CITIZENS RESIDING IN THE EUROPEAN UNION AND OF EUROPEAN UNION CITIZENS RESIDING IN THIRD COUNTRIES

STUDY







8=F 97HCF 5H9'; 9B 9F 5@: CF '=BH9F B5@'DC@=7=9G  
DC@=7M8 9D5F HA 9BH'7. 7=H=N9BGfiF =; < HG'5B8  
7CBGH=HI H=CB5@'5: : 5=F G

7CBGH=HI H=CB5@'5: : 5=F G

: F 5B7< =G9'5B8 '9@97HCF 5@'D5F H=7=D5H=CB  
C: 'H< =F 8'7CI BHF M7=H=N9BG'F 9G=8=B; '=B  
H< 9'9I F CD95B 'I B=CB '5B8 'C: '9I '7=H=N9BG'F 9G=8=B;  
=B 'H< =F 8'7CI BHF =9G

GHI 8M

### 5VghfUVh

This Study analyses some key trans-border situations in which citizens may find difficulties in exercising their electoral rights – both to vote in elections, and to stand as candidates. It focuses on the electoral rights of EU citizens when resident outside the state where they are citizens, and on the electoral rights of third country citizens resident in the EU Member States. It also covers several complementary issues by examining the consular representation of EU citizens outside the territory of the Union, and also the restrictions placed by the Member States on the access of non-citizens to high public office.

This document was requested by the European Parliament's Committee on Constitutional Affairs.

## AUTHOR(S)

Jean-Thomas Arrighi  
Rainer Bauböck  
Michael Collyer  
Derek Hutcheson  
Madalina Moraru  
Lamin Khadar  
Jo Shaw

## RESPONSIBLE ADMINISTRATOR

Mr Petr Novak  
Policy Department C - Citizens' Rights and Constitutional Affairs  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

Editorial assistance : Sandrina MARCUZZO

## LINGUISTIC VERSIONS

Original: EN  
Executive summary: FR

## ABOUT THE EDITOR

To contact the Policy Department or to subscribe to its newsletter please write to: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

Manuscript completed in April 2013  
European Parliament © European Union, 2013

This document is available on the Internet at:  
<http://www.europarl.europa.eu/studies>

## DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

## CONTENTS

LIST OF ABBREVIATIONS	6
LIST OF TABLES	9
Executive SUMMARY	10
1 Introduction	16
2 The external voting rights of non-resident first country citizens	21
2.1 Electoral Rights: Voting and Candidacy Rights for EU Citizens residing in another Member State or in Third States	22
2.1.1 Active Voting Rights	22
2.1.2 Candidacy Rights	26
2.1.3 Temporary Absence	29
2.2.4 Compulsory Voting	30
2.2 Accessing Electoral Rights	30
2.2.1. Registration Requirements	30
2.2.2. Casting a Ballot	32
2.2.3. Other Requirements	34
2.3. Representation and Participation	34
2.3.1. General and Special Representation	34
2.3.2. Registration and Participation Rates Among Non-Resident FCCs	35
2.4. External Citizenship and the Franchise	38
3 practical and legal consequences of the absence of diplomatic and EU representation for Eu citizens residing in a country where their Member State is not represented	41
3.1 The pre-Lisbon Treaty Forms of Securing Protection of EU Citizens in third countries	44
3.2 The Added Value of the Treaty of Lisbon: Increased Powers for the EU to Secure Protection of EU Citizens Abroad	47
4 Franchise and electoral participation of third country citizens residing in the EU	51
4.1 Mapping Electoral Rights across Member States, Categories of Third Country Citizens and Types of Elections	53
4.1.1 Voting Rights	53
4.1.2 Candidacy Rights	56
4.2 Additional Restrictions on Enfranchisement	57
4.2.1 Durational Residency Requirements	58
4.2.2 Legal Status of Residence	58
4.2.3 Registration Procedure	59

4.2.4	Membership of an International Association of States other than the EU	60
4.2.5	Bilateral Agreements	61
4.2.6	Special Ties Based upon Cultural and Linguistic Affinity	61
4.3	Electoral Participation	62
4.4	Obstacles to the Enfranchisement of Third Country Citizens	63
4.4.1	Voting – A Citizen’s Privilege? Legal and Political Obstacles to the Enfranchisement of Third Country Citizens	63
4.4.2	Territorial Access to Citizenship and the Franchise	65
5	Eligibility of non-nationals for high public office in the EU	70
5.1	Existing EU Law Legal Framework	71
5.2	Head of State	73
5.3	Head of Government	74
5.4	Minister in the Executive Branch of Government	75
5.5	Civil Servant in the Executive Branch of Government	76
5.6	Judiciary	77
5.7	High Ranking Officer in the National Army	78
6	EU citizens residing in third countries and third country citizens residing in the EU: AN OVERVIEW OF electoral rights in ten third countries	80
6.1	Brazil	82
6.2	Canada	83
6.3	India	84
6.4	Morocco	85
6.5	New Zealand	86
6.6	Serbia	86
6.7	Switzerland	87
6.8	Turkey	88
6.9	Ukraine	89
6.10	USA	89
7	Policy recommendations	91
7.1	The External Franchise of EU Citizens in EP Elections	91
7.2	The External Franchise of EU Citizens in National and Sub-national Elections	92
7.3	Diplomatic and EU Representation in Third Countries	93
7.4	Electoral Rights of Third Country Citizens in EU Member States	94
7.5	Access to High Public Office	95

ANNEX I	97
ANNEX II	106
ANNEX III	132
ANNEX IV	135
ANNEX V	141
ANNEX VI	142
REFERENCES	143

## LIST OF ABBREVIATIONS

- AI RE L'Anagrafe degli Italiani Residenti all'Estero
- AT Austria
- BE Belgium
- BG Bulgaria
- CCME Conseil de la Communauté Marocaine a l'Etranger
- CFR Charter of Fundamental Rights of the European Union
- CH Switzerland
- CJEU Court of Justice of the European Union
- CPLC Community of Portuguese-language countries
- CY Cyprus
- CZ Czech Republic
- DE Germany
- DK Denmark
- ECHR European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
- ECtHR European Court of Human Rights
- EE Estonia
- EEA Members of the European Economic Area comprising the countries of the European Union, plus Iceland, Liechtenstein and Norway
- EEA/CH Iceland, Liechtenstein, Norway and Switzerland
- EEAS European External Action Service
- EL Greece



EP	European Parliament
ES	Spain
EU	European Union
EU 27	All 27 current member states of the European Union
EU/EEA	All 27 current member states of the European Union plus Iceland, Liechtenstein and Norway
EU/EEA/CH	All 27 member states of the European Union plus Iceland, Liechtenstein, Norway and Switzerland
EUDO	European Union Democracy Observatory
FCC	First Country Citizen
FI	Finland
FPTP	First past the post (election system)
FR	France
FRA	European Agency for Fundamental Rights
HR	Croatia
HU	Hungary
IDEA	International Institute for Democracy and Electoral Assistance
IE	Ireland
IJC	International Court of Justice
IS	Iceland
IT	Italy
LI	Liechtenstein
LT	Lithuania
LU	Luxembourg
LV	Latvia

MEP	Member of European Parliament
MOVE	Military Overseas Voters Empowerment Act (USA)
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland
PR	Proportional representation (election system)
PT	Portugal
RO	Romania
SCC	Second Country Citizen
SE	Sweden
SI	Slovenia
SK	Slovakia
TC	Third country
TCC	Third Country Citizen
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UNPD	United Nations Population Division
USA	United States of America
USSR	Union of Soviet Socialist Republics
VCCR	Vienna Convention on Consular Relations

## LIST OF TABLES

### LIST OF TABLES

Table 1: Voting Rights of non-resident FCCs in European, national, regional and local election	2&
Table 2: Candidacy rights of non-resident FCCs in European, national, regional and local elections	2*
Table 3: Methods of voting for resident FCCs temporarily abroad on polling day	&-
Table 4: Active or automatic registration for the franchise (European and national levels)	' %
Table 5: Voting methods available to non-resident FCCs, European and national elections	' &
Table 6: Counting and representation of non-resident FCCs	' (
Table 7: Counting and representing non-resident FCC votes (national parliamentary elections)	' )
Table 8: Turnout in Foreign Constituencies, 2008 Chamber of Deputies, Italy	' +
Table 9: Inclusiveness of extraterritorial citizenship and access to the franchise	' -
Table 10: Voting rights in EU MS plus Croatia by the level of enfranchisement and by election type	) (
Table 11: Registration and turnout in 2006 and 2006 Swedish elections by categories of voters	* &
Table 12: Inclusiveness of the local franchise and of territorially-based access to citizenship	* +
Table 13: key statistics: Brazil	, &
Table 14: key statistics: Canada	, '
Table 15: key statistics: India	, (
Table 16: key statistics: Morocco	, )
Table 17: key statistics: New Zealand	, *
Table 18: key statistics: Serbia	, *
Table 19: key statistics: Switzerland	, +
Table 20: key statistics: Turkey	, ,
Table 21: key statistics: Ukraine	, -
Table 22: key statistics: USA	, -

## EXECUTIVE SUMMARY

This Study analyses some key trans-border situations in which citizens may find difficulties in exercising their electoral rights – both to vote in elections, and to stand as candidates. It focuses on the electoral rights of EU citizens when resident outside the state where they are citizens, and on the electoral rights of third country citizens resident in the EU Member States. It also covers several complementary issues by examining the consular representation of EU citizens outside the territory of the Union, and also the restrictions placed by the Member States on the access of non-citizens to high public office.

The framework for the analysis is provided by a general review, in the Introduction, of the restrictions which states place on their own citizens' voting rights, especially conditions of age, mental capacity, and in relation to conviction for criminal offences.

The right to vote in European Parliament elections outside the territory of the Member States by the citizens of those states continues to be regulated by national law, and this poses a number of significant challenges to ensuring equality of access to the right to vote and to the right to stand as a candidate. Although the right to vote in European Parliament elections is supposed to be guaranteed for all EU citizens, this is only the case where they are resident in the territory of the Union. Even for EU citizens residing in other Member States, the right to choose between voting in their country of citizenship or country of residence depends on the former providing them with opportunities for voting from abroad. The high level of diversity in the rules applied by Member States in this respect, as well as the difficulties many face when accessing the electoral process from outside their country of citizenship or the territory of the Union are significant obstacles to the achievement of equality between all EU citizens.

Consular representation for EU citizens outside the territory of the Union is an important facilitator of the exercise of electoral rights, including in European Parliament elections, where Member States allow non-resident citizens to vote. Changes brought about by the Treaty of Lisbon offer the promise to bring about higher levels of co-operation between the Member States and with the EU representations to offset recent reductions in the number of external representations run by the states themselves.

In relation to restrictions on access to high office by non-citizens, the research did not find a trend towards liberalisation on the part of the Member States. Many of the restrictions imposed by Member States, which are, nonetheless, generally permitted by EU law, are constitutional in origin. Even so, some Member States continue to impose certain residual restrictions on access to high office by naturalised citizens and on dual citizens, instead of less restrictive measures such as oaths of loyalty.

From a survey of EU Member States provisions regarding the right to vote of resident third country citizens, it is clear that there is considerable variation in the approach in relation to both the right to vote and to the right to stand as a candidate. At the level of national and regional elections, very few examples of electoral rights exist, but, at the level of local elections, the majority of the 28 states surveyed do allow at least some categories of third country citizens to vote. Constitutional provisions reserving the right to vote only to citizens as well as lack of political consensus across party lines are the main impediments to further extension of the franchise to third country citizens.

The survey of electoral rights in ten selected non-European countries, identified upon the basis of their significance to European consideration of external voting issues, either due to direct migration links or because they offer important policy examples, revealed the expected high levels of diversity in relation to practices of non-resident voting and non-citizen resident voting. None of the countries surveyed placed restrictions on EU citizens exercising their European Parliament or national voting rights if these were granted by the state of citizenship. Only Canada has expressed opposition to territorially-defined foreign constituencies, which are currently established in national elections in France, Italy, Portugal and Romania.<sup>1</sup>

---

<sup>1</sup> Whereas in these four states, external constituencies are territorially subdivided, Croatia has a single special electoral district for all Croatian citizens voting from abroad.



DIRECTION GÉNÉRALE DES POLITIQUES INTERNES  
DÉPARTEMENT THÉMATIQUE C: DROITS DES CITOYENS ET  
AFFAIRES CONSTITUTIONNELLES

AFFAIRES CONSTITUTIONNELLES

DROIT DE VOTE ET PARTICIPATION ÉLECTORALE  
DES RESSORTISSANTS DE PAYS TIERS RÉSIDANT DANS  
L'UNION EUROPÉENNE ET DES CITOYENS DE L'UNION  
EUROPÉENNE RÉSIDANT DANS DES PAYS TIERS

ÉTUDE

Contenu

L'étude résumée ci-après analyse certaines situations transfrontalières importantes dans lesquelles les citoyens peuvent avoir du mal à exercer leurs droits électoraux, à la fois pour voter et se porter candidat à une élection. Elle traite plus particulièrement des droits électoraux des citoyens de l'Union européenne résidant hors de l'État dont ils sont ressortissants ainsi que des droits électoraux des ressortissants de pays tiers résidant dans les États membres de l'Union européenne. Elle examine également d'autres aspects complémentaires tels que la représentation consulaire des citoyens de l'Union européenne hors du territoire de l'Union et les restrictions appliquées par les États membres à l'accès des non-nationaux aux hautes fonctions publiques.

Ce document a été commandé par la commission des affaires constitutionnelles du Parlement européen.

## AUTEURS

Jean-Thomas Arrighi  
Rainer Bauböck  
Michael Collyer  
Derek Hutcheson  
Madalina Moraru  
Lamin Khadar  
Jo Shaw

## ADMINISTRATEUR RESPONSABLE

Petr Novak  
Département thématique C: Droits des citoyens et affaires constitutionnelles  
Parlement européen  
B-1047 Bruxelles  
Courriel: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

## VERSIONS LINGUISTIQUES

Original: EN  
Synthèse: FR

## À PROPOS DE L'ÉDITEUR

Pour contacter le département thématique ou pour vous abonner à sa lettre d'information, veuillez écrire à l'adresse suivante: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

Rédaction achevée en avril 2013  
Parlement européen © Union européenne, 2013

Ce document est disponible sur l'internet à l'adresse suivante:  
<http://www.europarl.europa.eu/committees/fr/studies.html>

## CLAUSE DE NON-RESPONSABILITÉ

Les opinions exprimées dans le présent document sont celles de l'auteur et ne reflètent pas nécessairement la position officielle du Parlement européen.

Reproduction et traduction autorisées, sauf à des fins commerciales, moyennant mention de la source, information préalable de l'éditeur et transmission d'un exemplaire à celui-ci.

## SYNTHÈSE

L'étude analyse certaines situations transfrontalières importantes dans lesquelles les citoyens peuvent avoir du mal à exercer leurs droits électoraux, à la fois pour voter et se porter candidat à une élection. Elle traite plus particulièrement des droits électoraux des citoyens de l'Union européenne résidant hors de l'État dont ils sont ressortissants ainsi que des droits électoraux des ressortissants de pays tiers résidant dans les États membres de l'Union européenne. Elle examine également d'autres aspects complémentaires tels que la représentation consulaire des citoyens de l'Union européenne hors du territoire de l'Union et les restrictions appliquées par les États membres à l'accès des non-nationaux aux hautes fonctions publiques.

L'analyse s'articule autour d'un examen global, dans l'introduction, des restrictions que des États appliquent au droit de vote de leurs citoyens et qui sont liées, en particulier, à l'âge, aux capacités mentales et aux condamnations pénales.

Le droit de vote aux élections du Parlement européen des citoyens résidant hors de leur État membre relève toujours du droit national, ce qui pose un certain nombre de problèmes importants pour garantir l'égalité d'accès au droit de vote et au droit à l'éligibilité. Le droit de vote aux élections du Parlement européen est censé être garanti pour tous les citoyens de l'Union européenne, mais uniquement si ces derniers résident sur le territoire de l'Union. Les citoyens de l'Union européenne qui résident dans un État membre autre que le leur ont la faculté de voter dans leur pays de résidence ou bien de voter dans leurs pays d'origine uniquement si celui-ci leur donne la possibilité de voter à partir de l'étranger. La grande diversité des réglementations appliquées par les États membres ainsi que les difficultés auxquelles se heurtent de nombreux électeurs souhaitant voter à partir d'un pays autre que leur État d'origine ou à partir d'un pays tiers sont un obstacle majeur au respect de l'égalité entre tous les citoyens de l'Union européenne.

La représentation consulaire des citoyens de l'Union européenne hors du territoire de l'Union est un élément qui facilite grandement l'exercice des droits électoraux, y compris lors des élections au Parlement européen, pour autant que l'État membre concerné permette à ses citoyens non résidents de voter. Les changements induits par le traité de Lisbonne offrent la perspective de parvenir à une meilleure coopération entre les États membres et les représentations de l'Union européenne en vue de compenser la réduction récente du nombre de représentations extérieures gérées par les États eux-mêmes.

En ce qui concerne les restrictions à l'accès des non-nationaux aux hautes fonctions, l'étude n'a pas montré que les États membres s'acheminaient vers un assouplissement des conditions. Bon nombre des restrictions imposées par les États membres, lesquelles sont de toute façon généralement autorisées par la législation de l'Union européenne, sont d'origine constitutionnelle. Quelques États membres continuent par ailleurs d'imposer aux citoyens naturalisés ou binationaux certaines restrictions à l'accès aux hautes fonctions au lieu d'avoir pris des mesures moins restrictives tels que le serment de fidélité.

L'examen des dispositions adoptées par les États membres de l'Union en ce qui concerne le droit de vote des résidents ressortissants de pays tiers montre clairement que le droit de vote et le droit à l'éligibilité font respectivement l'objet de traitements tout à fait différents.



Très peu de pays accordent des droits électoraux lors des élections nationales et régionales alors que la majorité des 28 États étudiés accordent, au moins à certaines catégories de ressortissants de pays tiers, le droit de vote lors des élections locales. L'existence de dispositions constitutionnelles qui confèrent le droit de vote uniquement aux ressortissants nationaux ainsi que l'absence de consensus politique entre les partis sont les principaux obstacles à un futur élargissement du droit de vote aux ressortissants de pays tiers.

L'examen des droits électoraux dans dix pays tiers, choisis en fonction de l'importance qu'ils ont du point de vue européen pour le vote à l'étranger, du fait de migrations directes ou parce qu'ils jouent, par leur politique, un rôle exemplaire, a montré une très grande diversité de pratiques en ce qui concerne le droit de vote des non-résidents et des résidents ressortissants de pays tiers. Aucun des pays étudiés n'applique de restrictions à l'encontre des citoyens de l'Union européenne souhaitant exercer leur droit de vote aux élections du Parlement européen ou aux élections nationales si un tel droit leur a été accordé par leur État d'origine. Seul le Canada s'oppose à la subdivision géographique par circonscriptions électorales pour les résidents à l'étranger, que la France, l'Italie, le Portugal et la Roumanie instaurent actuellement pour les élections nationales<sup>1</sup>.

## 1 INTRODUCTION

The EU provisions on free movement have contributed to large numbers of EU citizens living and working for protracted periods in Member States other than their own. There are, however, more third country citizens resident in EU Member States than EU citizens resident in other Member States (second country citizens) and only in Luxembourg, Ireland, Hungary, Cyprus and Malta do the latter outnumber the former. Moreover, significant numbers of EU citizens live in third countries, which reflects higher levels of global mobility, although there is no reliable single source of data for this group, but rather disparate sources which cover the main destination countries.<sup>2</sup>

With high rates of mobility come democratic challenges, as most elections are still organised by or administered within states upon a territorial basis, even though external voting of non-resident citizens has been an increasing trend in many democratic states in recent years. But such rights are by no means universal and can lead to EU citizens being disenfranchised from participating in any national elections as a result of exercising their rights of free movement. Within the EU, tensions arise because EU citizens can vote in certain elections (municipal, European) regardless of residence, but not in all elections, notably rarely in national elections.<sup>3</sup> In addition, there are uneven patterns of coverage of voting rights for third country citizens in the EU Member States, and they, in turn, will have different rights in relation to their states of origin. This gives rise to complex and sometimes confusing patterns of entitlement based upon variables of nationality and residence that citizens find hard to navigate. Even European Parliament elections are, to some extent, still 'national' in character because of the absence of a uniform procedure or a single set of rules on the franchise.<sup>4</sup> Other conditions governing equality of access to the political process, such as the right to found and join a political party, also continue to differ between Member States. This is clearly a barrier to candidacy in most cases, and is also likely to reduce the interest of political parties in engaging non-national voters in the political process if there are no non-national members alerting the parties to key issues of concern.

The rights of EU citizens to participate effectively in the democratic functioning of the Union's institutions is an ongoing concern of these institutions, as demonstrated by the Commission's regular reports on the effective exercise of EU citizenship<sup>5</sup> and its championing of the designation of 2013 as the European Year of Citizens,<sup>6</sup> and the work

---

<sup>2</sup> We provide such data, where available, for ten non-EU states selected for case studies in Chapter 6.

<sup>3</sup> In response to a written question by MEP Andrew Duff (E-9269/2011, 2 February 2011), Commissioner Viviane Reding stated that "... the Commission is aware that national provisions in a number of Member States disenfranchise their nationals due to their residence abroad. Consequently, EU citizens of the Member States concerned cannot participate in any national elections. The Commission announced in the EU Citizenship report 2010 report (COM(2010)603) that it would launch a discussion to identify political options to prevent EU citizens from losing their political rights, and namely the right to vote in national elections, as a consequence of exercising their right to free movement. The Commission has recently contacted the concerned Member States to launch this debate and to explore the possible political solutions. The Commission has raised at this occasion that, while organisation of national elections falls within the responsibilities of Member States, if citizens cannot participate in electing Member States government, nor in their Member State of origin or the Member State of residence, and thus are not represented in the Council of Ministers, these citizens cannot fully participate in the democratic life of the Union".

<sup>4</sup> Case C-300/04 *Eman en Sevinger* [2006] ECR I-8055 (Aruba) and Case C-145/04 *Spain v UK* [2006] ECR I-7917 (Gibraltar).

<sup>5</sup> The last report was in 2010 (EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights, COM(2010) 603) and 2013 will see the next one on the topic of "EU citizens - Your rights, your future".

<sup>6</sup> For details, see [http://ec.europa.eu/citizenship/european-year-of-citizens-2013/index\\_en.htm](http://ec.europa.eu/citizenship/european-year-of-citizens-2013/index_en.htm).

done within the European Parliament, especially the Committee on Constitutional Affairs, to explore new ways of opening up the European dimension of representative democracy, both through European political parties and transnational lists for European Parliament elections.

Concerns also extend to the treatment of third country citizens. The Council of Europe has endorsed local voting rights for non-national long-term residents in its Convention on the Participation of Foreigners in Public Life at Local Level and in several resolutions of its Parliamentary Assembly.<sup>7</sup> The European Commission and the European Parliament have also promoted a residence-based local franchise for third country nationals in several reports and recommendations, arguing that such rights contribute to the political integration of immigrants at the level of local government, where many competences in integration policies are concentrated. These documents support the view that access both to local voting rights through residence and to national and European citizenship through naturalisation should be regarded as complementary tools of immigrant integration.<sup>8</sup>

This report covers the cases of third country citizens voting in elections in the EU Member States as well as in their home-state elections, and of EU citizens exercising first country citizenship rights, i.e., exercising electoral rights in their home-state elections when outside their state of residence. It complements the study of these democratic processes with closely-related studies of trends in the diplomatic representation of the EU Member States in third countries (often highly significant for access to electoral rights) and of trends in national requirements in relation to high public offices, which include elective public offices, and remains (along with some areas of electoral rights such as voting in national elections) one of the most important areas in which EU Member States can legitimately reserve rights to their own citizens. The report shows, through systematic research based upon the collection of substantial amounts of primary data on electoral rights, laws and practices, and drawing upon the work of national experts, that uneven patterns of access to electoral rights give rise to inequalities in democratic representation, which, in turn, pose challenges to policy-makers at EU and subsequently at Member State levels.

The problem is not so much restrictions, per se, but rather the proliferation of different electoral authorities and electoral practices for EU citizens and third country citizens who find themselves in cross-border situations. Equality of electoral rights is a core principle of democratic legitimacy of representative public institutions. The relations of non-citizen residents and non-resident citizens to the polity differ in significant ways from those of resident citizens, and such difference warrants a corresponding differentiation in the franchise. What we find in this report, however, are pervasive differences in eligibility and conditions for exercising electoral rights not only between, but also within, these categories. While Member States clearly enjoy the competence to determine both the franchise of third country citizens residing in their territory and the external voting rights of

---

<sup>7</sup> Convention on the Participation of Foreigners in Public Life at Local Level, CETS No.: 144, 1992; Council of Europe, Parliamentary Assembly, Recommendation 1625 (2003), Policies for the Integration of Immigrants in Council of Europe Member States, 30 September 2003.

<sup>8</sup> European Parliament, Report on the Communication from the Commission on Immigration, Integration and Employment, A5-0445/2003; European Economic and Social Committee, Opinion on Immigration in the EU and Integration Policies: Co-operation between Regional and Local Governments and Civil Society Organisations, SOC/219, 13 September 2006; European Commission, Communication on a Community Immigration Policy, COM(2000) 757 final; European Commission, Communication on Immigration, Integration and Employment, COM(2003) 336 final, 3 June 2003; European Commission, Communication on Immigration, Integration and Employment, COM(2003) 336 final, European Commission, First Annual Report on Migration and Integration, COM(2004) 508 final.

their own citizens residing abroad, this does not prevent the promotion of common democratic standards in a politically integrated European Union.

With the adoption of the Charter of Fundamental Rights (CFR) as a legally binding document of the same value as the EU's founding treaties, the EU Member States and institutions have, arguably, enhanced the status of the guarantee of free and fair elections to legislative bodies, based on a principle of universal suffrage, contained in Article 3 of Protocol 1 of the ECHR to a new level, with the reference to universal suffrage in Article 39 CFR so far as concerns elections to the European Parliament. Moreover, with the mandated accession of the EU to the ECHR expected to happen in the short to medium term,<sup>9</sup> this may give further impetus to the challenge of ensuring that the principle of universal suffrage is observed in relation to all elections within the territory of the Union, although this accession will not change the scope of EU law. It is clear that franchise restrictions placed by Member States on their own citizens in any types of elections are liable to resonate more widely across all elections and in relation to all groups of eligible voters, however they are defined. Accordingly, the European Agency for Fundamental Rights (FRA) is now regularly surveying citizens' rights in relation to the political participation rights in its Annual Reports,<sup>10</sup> and, in this context, highlighting promising practices in relation to issues of the franchise at national level. It has also taken a particular interest in the issues raised by restrictions of the franchise for persons with disabilities, especially mental disabilities.<sup>11</sup>

Even the universal franchise for resident citizens has significantly different scope in the EU Member States. The three main restrictions for this category are those on grounds of age, mental disability and criminal punishment. We have summarised the current legal provisions in Annex I to this report.

All democratic states have age thresholds for the exercise of electoral rights.<sup>12</sup> Very often, these are higher for the right to stand as candidate than for the right to vote. For voting in national legislative elections, the age of eighteen is the European norm. Only Austria has a lower age condition of sixteen years of age, while Italy has a much higher age threshold of twenty-five for voting in elections to the Senate. The age for candidacy rights varies much more widely. It is eighteen in 14 Member States and Croatia and twenty-one in 8 others. The highest age conditions for candidates are imposed by Romania (23), Cyprus, Greece, Italy and Lithuania (25). 4 states (the Czech Republic, Italy, Poland and Romania) have even higher age thresholds between 30 and 40 years for candidates to the Senate.

A large majority of Member States can also deny voting rights to mentally disabled citizens. In most cases, such exclusions require a judicial decision or result from putting an adult person under guardianship or divesting the person of legal capacities. Only Austria, Cyprus, Ireland, Italy, the Netherlands, Sweden and the UK have no legal provisions that consider mental disability as sufficient reason for depriving a citizen of the franchise.

---

<sup>9</sup> For an overview of the accession negotiations, see <http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention>.

<sup>10</sup> Available at: <http://fra.europa.eu/en>.

<sup>11</sup> Fundamental Rights Agency, The right to political participation of persons with mental health problems and persons with intellectual disabilities, Report, October 2010, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1216-Report-vote-disability\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1216-Report-vote-disability_EN.pdf).

<sup>12</sup> The ECtHR has asserted that "the imposition of a minimum age may be envisaged with a view to ensuring the maturity of those participating in the electoral process" (Hirst v United Kingdom (No. 2), N° 74025/01 (2006) at § 62). It has not yet decided on whether Article 3, Protocol 1 ECHR sets a limit to how high this minimum age may be set.

Member State practice with regard to the disenfranchisement of persons convicted of criminal offences also varies greatly. At one end of the spectrum, Ireland, Croatia, Finland, Slovenia and Sweden do not impose any legal constraints on prisoners' electoral rights. At the other end, the United Kingdom and Luxembourg disenfranchise all serving prisoners. It should be recalled that in 2005 the European Court of Human Rights ruled, in the case of *Hirst v the United Kingdom*<sup>13</sup>, that a blanket ban on prisoners voting rights, as maintained in the UK, constituted "a general, automatic and indiscriminate restriction" on the right to vote and should be construed as "falling outside any acceptable margin of appreciation [accorded to states under the ECHR] and as being incompatible with Article 3 of Protocol No. 1 [of the ECHR]." The majority of member states comply with this guidance of the Court and apply a disenfranchisement to specific categories of prisoners according to the nature of the crime or the duration of the prison sentence. Finally, Denmark, Spain, Latvia and Lithuania do not apply provisions restricting prisoners' voting rights; however, they do apply restrictions on their candidacy rights.

The question of restrictions becomes even more complex when the interface with mobility is considered. For example, a person disenfranchised by virtue of a criminal offence or because of mental disability in the EU Member State of which he or she is a citizen will be unlikely to be able to escape the disenfranchisement by moving to a second EU Member State. In many cases, the restriction is recognized by other Member States. Article 6 of Directive 93/109/EC,<sup>14</sup> as amended by Directive 2013/1/EU<sup>15</sup> specifically precludes a person who has been deprived of the right to stand as a candidate by virtue of a decision under the criminal law or the civil law under the law of one Member State from standing as a candidate in another Member State. The amendments introduced by the 2013 Directive have attempted, however, to make the procedural aspects somewhat simpler by seeking to avoid the situation of all candidates having to prove a negative – i.e. that they have not been disbarred from standing as a candidate in their home state. Article 5 of the Local Elections Directive,<sup>16</sup> opening up the right for EU citizens to vote and stand in local elections under the same conditions, also allows the possibility for Member States to deprive such persons of their right to stand as a candidate. Meanwhile, Article 7 of Directive 93/109/EC also permits Member States to check whether resident non-national EU citizens who wish to vote in European Parliament elections have been disenfranchised by virtue of a criminal offence or civil law decision in their home EU state and to preclude such persons from voting. This provision was not amended by the recent Directive despite the concerns of the Commission that this can represent an obstacle to citizens to exercise their right to vote because of the challenge of proving a negative, which is the manner in which some Member States have proceeded.

---

<sup>13</sup> *Hirst v United Kingdom* (No. 2), N° 74025/01 (2006). In November 2012, by way of the Voting Eligibility (Prisoners) Draft Bill, the UK Government put forward three options for parliamentary scrutiny: a) a ban for prisoners sentenced to 4 years or more; b) a ban for prisoners sentenced to more than 6 months; and c) a ban for all convicted prisoners (i.e. a restatement of the UK's existing ban). It remains to be seen which of the legislative proposals will ultimately be pursued. In 2010, the Court confirmed this position in *Frodl v Austria* (*Frodl v Austria* N° 20201/04 (2010)). In response to the *Frodl* judgment, in 2011 Austria abandoned legislation which provided for the automatic loss of voting rights for persons convicted of severe crimes (see *Austria*, Modification law on the electoral law, BGBl. I Nr. 43/2011). In 2012, this position was again confirmed by the Court in *Scoppola v Italy* (No 3) N° 126/05 (2012), although the Grand Chamber made clear that "the intervention of a judge [was not] among the essential criteria for determining the proportionality of a disenfranchisement measure" at §99. The Grand Chamber emphasised that states were free to decide whether to "leave it to [national] courts to determine the proportionality of a measure restricting convicted prisoners' voting rights or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied" (see §102). This has granted some flexibility to states in this regard.

<sup>14</sup> Directive 93/109/EC of 6 December 1993, OJ 1993 L329/34.

<sup>15</sup> Council Directive 2013/1/EU of 20 December 2012, Official Journal of the European Union L26/27, 26 January 2013, pp.26-28.

<sup>16</sup> Directive 94/80/EC of 19 December 1994, OJ 1994 L368/38.

Restrictions on grounds of age threshold, mental disability or criminal record are sometimes contested because they are seen as remnants of earlier qualifications for active citizenship on grounds of gender, economic dependency or lack of education. By contrast, the exclusion of foreign residents and citizens residing abroad has, until recently in most countries, been regarded as nearly self-evident and unproblematic. This report will document how electoral rights in Europe have been significantly extended across both territorial and citizenship boundaries. At the same time, our data show that these extensions cannot be interpreted as a trend towards an equal and universal franchise of all citizens and all residents in all elections. The political participation and representation of non-resident citizens and non-citizen residents remains strongly qualified with regard to eligible categories, conditions for voter registration and voting methods, and/or distinctions between voting and candidacy rights.

## 2 THE EXTERNAL VOTING RIGHTS OF NON-RESIDENT FIRST COUNTRY CITIZENS

### KEY FINDINGS

- EU citizens may vote only once in European Parliament elections – in their country of residence or in their country of origin – but, in the absence of a single European voter registry, it remains unclear whether double voting can be effectively prevented.
- All EU Member States have external voting rights for at least some of their citizens residing abroad at some level, but these rights differ strongly, depending upon from which country they originate.
- Beyond variations in the categories of eligible voters, there is a wide variety of methods of accessing the ballot, and the level of inclusiveness varies greatly.
- Voting rights are most frequently offered by Member States in national legislative elections and least frequently in local elections.
- In European Parliament elections, votes cast by non-resident FCCs in the state of which they are nationals are, without exception, assimilated into the voting totals for that state. At national level, four EU states (plus Croatia) offer separate representation for non-resident citizens in the national parliament.
- Available evidence indicates that turnout amongst enfranchised non-resident citizens is significantly lower than amongst the resident populations. This may result from lower interest among external citizens in legislation that will not affect them, as well as from less exposure to political debates, but barriers to accessing the ballot may also play a role reducing electoral turnout.

The Treaty provisions that confer upon EU citizens living in another Member State ‘the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State’<sup>17</sup> are given substance by Directives 93/109/EC and 94/80/EC.<sup>18</sup> These, however, only concern the top and bottom electoral levels – European and municipal. They also focus on the intra-EU movement of Second Country Citizens (SCCs) exclusively – making no explicit provision for Third Country Citizens (TCCs), or for external citizens. Moreover, they only focus on electoral rights in the voter’s country of residence.

The anomalies created by this, in respect of the differential rights that such external citizens enjoy in their native countries, are the focus of this section. We term these people ‘non-resident First Country Citizens (FCCs)’, but the widely-used nomenclature of ‘expatriates’ or ‘external voters’ can be used interchangeably.

---

<sup>17</sup> Treaty on the Functioning of the European Union, Art. 20.2(b); Charter of Fundamental Rights (2000/C), Official Journal of the European Communities C364/1, 18 December 2000, Art. 39.

<sup>18</sup> Directive 93/109/EC of 6 December 1993, OJ 1993 L329/34; Directive 94/80/EC of 19 December 1994, OJ 1994 L368/38.

## 2.1 Electoral Rights: Voting and Candidacy Rights for EU Citizens residing in another Member State or in Third States

Article 4 of Directive 93/109/EC states that 'Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State', whilst making it clear that each citizen can only vote once.<sup>19</sup> Furthermore, it specifically states that 'nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate of its nationals who reside outside its electoral territory' (Art. 1.2). Consequently, the electoral rights of non-national EU citizens depend on the specific countries from which they originate<sup>20</sup>.

First, we examine the legal eligibility of external citizens to vote and stand for each level of election in their country of origin, before comparing the ease with which these rights can be accessed.<sup>21</sup>

### 2.1.1 Active Voting Rights

Table 1 shows the voting rights of non-resident FCCs across the EU.

Table 1: Voting Rights of non-resident FCCs in European, national, regional and local elections

Country	(1a) EP (in EU)	(1b) EP (in TC)	(2) Nat. Leg.	(3) Nat. Exec.	(4) Nat. Ref.	(5) Reg. Leg.	(6) Reg. Exec.	(7) Reg. Ref.	(8) Local Leg.	(9) Local Exec.	(10) Local Ref.
AT	1	1	1	1	1	1 <sup>g</sup> +3	X	1 <sup>g</sup> +3	2 <sup>h</sup> /3	2 <sup>h</sup> /3	2 <sup>h</sup> /3
BE	1	3	1	X	X	3	X	X	3	X	3
BG	1	1	1	1	1	X	X	X	3	3	3
CY	2	2	2	2	2	X	X	X	2	2	2
CZ	1	1	1	1	X <sup>d</sup>	3	X	3	3	X	3
DE <sup>c</sup>	1	1	1	X	3	3	X	3	3	3	3
DK	1	2	2	X	2	2	X	2	2	X	2
EE	1	1	1	X	1	X	X	X	1	X	X
EL	1	3	3a	X	3a	3	X	X	3	3	X
ES	1	1	1	X	1	1	X	1	3	X	3
FI	1	1	1	1	1	X	X	X	3	X	3
FR	1	1	1	1	1	1 <sup>i</sup>	X	1 <sup>i</sup>	1 <sup>i</sup>	X	1 <sup>i</sup>
HU	3	3	1	X	3	3	X	3	3	3	3
IE	2	2	2	2	2	X	X	X	2	X	X
IT	1	2	1	X	1	3a	3a	3a	3a	3a	3a
LT	1	1	1	1	1	X	X	X	3	X	3

<sup>19</sup> The problem of preventing double voting currently relies on suitable information exchange between national electoral authorities. One solution would be the integration of national electoral registers for European Parliament elections into a single register, but the bureaucratic obstacles to this are considerable. Proposals for other reforms have been mooted on several occasions (see, e.g., COM(2006) 791 final), but the recent reforms in Directive 2013/1/EU only affect candidate procedures, not voting procedures.

<sup>20</sup> For internal documentation available at the Library of the European Parliament, see Potcheva, E., (2013) "Disenfranchisement of EU Citizens" Library Briefing 130459REV1.

<sup>21</sup> Certain aspects of external voting rights are currently unregulated in Germany and Hungary, following recent Constitutional Court judgments that have found existing legislation to be partly unconstitutional. Past precedents and future intentions are noted where relevant.



Country	(1a) EP (in EU)	(1b) EP (in TC)	(2) Nat. Leg.	(3) Nat. Exec.	(4) Nat. Ref.	(5) Reg. Leg.	(6) Reg. Exec.	(7) Reg. Ref.	(8) Local Leg.	(9) Local Exec.	(10) Local Ref.
LU	1	1	1	X	1	X	X	X	3	X	X
LV	1	1	1	X	1	X	X	X	3a	X	X
MT	2 <sup>a</sup>	2 <sup>a</sup>	2 <sup>a</sup>	X	3	X	X	X	2	X	X
NL	1	1	1	X	N/A <sup>e</sup>	3	X	3	3	X	3
PL	1	1	1	1	1	X	X	X	3	3	3
PT	1	1	1	1	2 <sup>f</sup>	2 <sup>h</sup>	X	X	3	X	3
RO	1	1	1	1	1	X	X	X	3	3	3
SE	1	1	1	X	1	3	X	3	3	X	3
SI	1	1	1	1	1	X	X	X	3	3	3
SK	3a	3a	1	3	3	3	3	3	3	3	3
UK	1 <sup>b</sup>	1 <sup>b</sup>	1 <sup>b</sup>	X	N/A <sup>e</sup>	2 <sup>h</sup> /3	X	N/A <sup>e</sup>	3	3	3

Source: Electoral Legislation of 27 EU states at 4 levels (see Annex II).

Key to voting rights categories:

1 = all non-resident FCCs enfranchised (subject to other standard conditions)

2 = voting rights for selected categories of non-resident FCCs only

3a = in-country voting only; no access to ballot from outside country

3 = no external enfranchisement

X = no elections

Notes:

<sup>a</sup> = In Malta, voting rights exist only for those who are abroad on public service, who are required to return to the country to vote.

<sup>b</sup> = In the UK, the right to vote expires after 15 years of non-residence.

<sup>c</sup> = In Germany, external voting rights are currently unregulated and thus technically there are none until new legislation is passed. These data are based on the most recent practices prior to the Constitutional Court's ruling.

<sup>d</sup> = In the Czech Republic, there has only been one national referendum (2003).

<sup>e</sup> = In the Netherlands and the UK, referendum legislation is not standardised: it is consultative only in the Netherlands at national level, and is ad hoc for each referendum in the UK.

<sup>f</sup> = Non-resident voters in Portugal can only vote in referendums in which the issue is of particular relevance.

<sup>g</sup> = External voting rights in 3 of 9 provinces only: Lower Austria, Tyrol and Vorarlberg, and for a maximum of 10 years.

<sup>h</sup> = Applies to selected categories of voters in certain regions only. In Austria, non-resident voters with a non-principal domicile (Zweitwohnsitz) can vote in 2 of the 9 provinces (Burgenland and Lower Austria). In Portugal, a limited list of eligible voters can vote early in the Azores and Madeira only. In UK, service personnel serving overseas can vote in elections to the Scottish parliament, but there is no equivalent right for the National Assembly for Wales or the Northern Ireland Assembly.

<sup>i</sup> = in France, voting rights at municipal level can only be accessed through a resident proxy.

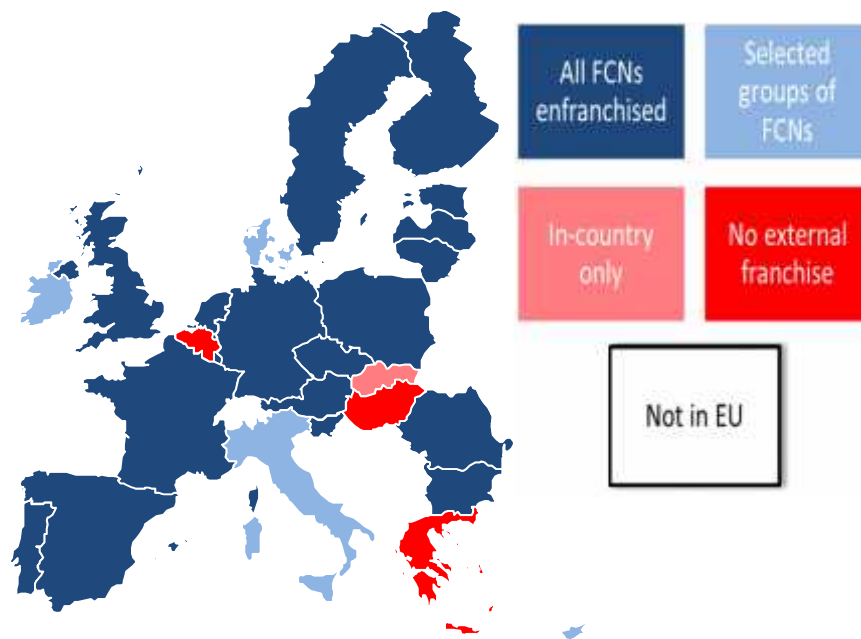
## European Parliament Elections

In European Parliament elections, 22 EU Member States provide voting rights in principle to all non-resident FCCs who are resident in another EU Member State (i.e., SCCs in respect of their country of residence). Other requirements qualify this in certain cases: in Bulgaria, three months' effective residence in an EU state is required immediately prior to the

election, while Sweden and the UK requires past residence in the state.<sup>22</sup> The UK is the only country with a term limit (15 years) on the right to vote, although periodic re-registrations are required in some countries (Austria, Sweden and the UK).

Only 18 of these 22 states give the same voting rights to external citizens living in third countries. Two – Belgium and Greece – disenfranchise their citizens altogether beyond the EU's borders, and two – Denmark and Italy – restrict the vote to selected groups outside the EU. In Denmark, the selected groups that retain their voting rights while temporarily in third countries do not retain them if they move temporarily to Greenland or the Faroe Islands (which are part of the Kingdom of Denmark, but not of the EU).<sup>23</sup>

Map 1: External voting rights in third countries in European Parliament elections (EU 27)



Source: Electoral Legislation of 27 EU states at 4 levels (see Annex II)

Three more states - Cyprus, Ireland and Malta – only enfranchise certain groups, mainly diplomatic and military personnel, whose public duties are the main reason for their activity abroad.

Of the remaining two states, Slovakia does not make provision for any external citizens to vote outside the country in European Parliament elections (although it does allow those who fulfil all other eligibility criteria except permanent residence, and are present in the country on polling day, to vote in a particular district of Bratislava). Hungary does not enfranchise its external citizens at all in European Parliament elections. Both these countries have recently introduced external voting rights in national elections. This anomaly between the levels is particularly interesting as legislation passed by the European

<sup>22</sup> Germany has hitherto required past residence (most recently, the requirement was for 3 months' residence in Germany at some point, since 1949) but this was nullified by a decision of the Federal Constitutional Court of 4 July 2012, BVerfG, 2 BvC 1/11. Available at: [http://www.bverfg.de/entscheidungen/cs20120704\\_2bvc000111.html](http://www.bverfg.de/entscheidungen/cs20120704_2bvc000111.html), last accessed 4 February 2013.

<sup>23</sup> The Danish interpretation differs from a comparable one between the Netherlands and Aruba [cf. European Court of Justice, Judgment of the Court (Grand Chamber) of 12 September 2006. Case C-300/04, M.G. Eman and O.B. Sevinger v College van burgemeester en wethouders van Den Haag, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004CJ0300:EN:HTML>, last accessed 2 February 2013).

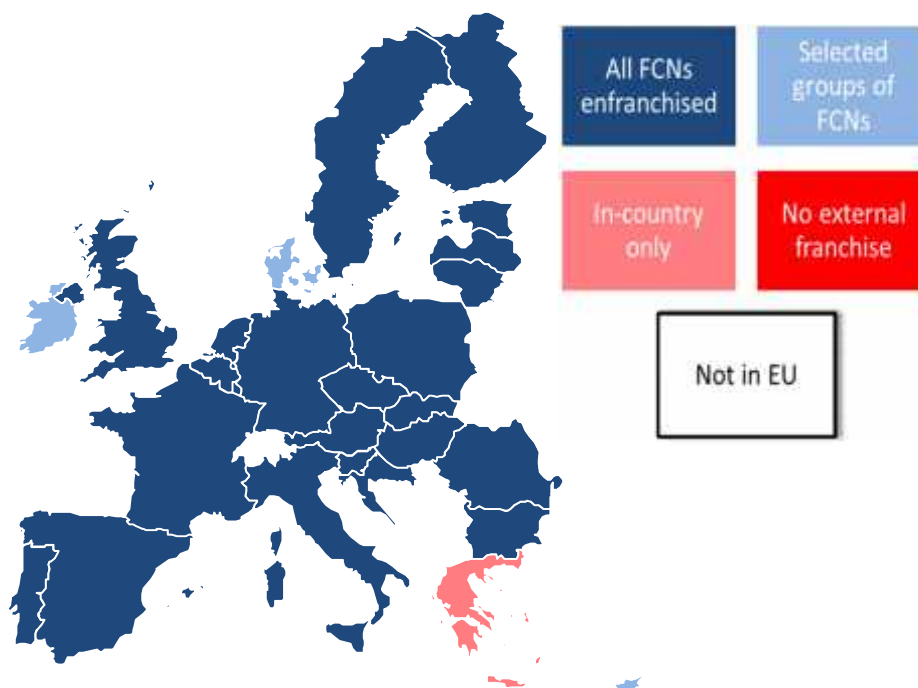
Parliament has a direct bearing on non-resident FCCs in their (EU) countries of residence (as EU legislation affects all Member States), whereas the actions of the national parliament affect those not living in the country only indirectly.

### National level elections

Member State governments are free to define external voting rights in respect of elections within the national jurisdiction. National legislative elections are held in every state. Direct presidential elections take place only in 13 EU states (and Croatia, which will join the Union in July 2013). National referenda exist in most states, but in some states (Belgium, the Czech Republic, the Netherlands and the UK) they are not legislated for in a uniform manner.

Most states offer voting rights to their external citizens without differentiation. Like elections to the European Parliament, Cyprus, Ireland and Malta allow only diplomats, military personnel and a very selected few other expatriates to vote. In addition, a Danish constitutional requirement of permanent residence means that the franchise in Folketing (and other sub-national) elections is much narrower than in European elections,<sup>24</sup> restricted to the same temporary and diplomatic absentees that have third-country voting rights at European level. Greece makes no provision for external voting, but does allow its external citizens to return to the country on polling day.

Map 2: External voting rights in national legislative elections (EU 27 plus Croatia)



Source: Electoral Legislation of 27 EU states at 4 levels (see Annex II)

By contrast with European Parliament elections, no state differentiates in national parliamentary elections between the rights of non-resident FCCs in second or third

<sup>24</sup> Constitution of Denmark, Art. 29(1).

countries.<sup>25</sup> Most have the same rules for presidential as for legislative elections (where applicable), with the exception of Slovakia. However, three countries (Hungary, Malta and Slovakia) that allow voting in parliamentary elections do not extend this to national referendums, and Portuguese non-resident FCCs can only vote in referendums that specifically relate to issues relevant to them.

### Sub-national elections

Few EU states grant full voting rights to non-resident FCCs at sub-national level. This is unsurprising, as local citizenship is usually residence-based (*ius domicilii*), whereas, at higher levels, the franchise is more frequently associated with the national demos and thus derived from the principles of birthright (*ius sanguinis* or *ius soli*) and naturalisation. A consistently residence-based franchise at sub-national elections excludes, on the one hand, non-resident citizens, while including, on the other, non-citizen residents (see Section 4). 15 EU states elect regional legislative bodies, as does Croatia. Very few afford voting rights to non-resident citizens, the main exception being Spain. Beyond this, two countries – Austria and Portugal – have asymmetrical regional enfranchisement, in which rights are different in some regions from others.

Only Italy and Slovakia directly elect regional executive leaders, but in the latter, non-resident FCCs are disenfranchised. Only Estonia and (albeit with limitations on voting methods) France enfranchise external voters in local elections. In addition, in Bulgaria, externally resident citizens do not have any voting rights in local elections, but the distinction between residents and non-residents is blurred by those who maintain continued connections to the country.

#### 2.1.2 Candidacy Rights

Table 2 summarises the rights of non-resident FCCs to stand for election in their country of origin at different electoral levels (excluding referendums, in which – by definition – there are no candidates).

Table 2: Candidacy rights of non-resident FCCs in European, national, regional and local elections

Country	(1a) EP (in EU)	(1b) EP (in TC)	(2) Nat Leg.	(3) Nat. Exec.	(5) Reg. Leg.	(6) Reg. Exec.	(8) Local Leg.	(9) Local Exec.
AT	1	1	1	1	1 <sup>c</sup> +3	X	1 <sup>c</sup> +3	1 <sup>c</sup> +3
BE	1	3	3	X	3	X	3	X
BG	1 <sup>a</sup>	3	1 <sup>a</sup>	3	X	X	3	3
CY	1	1	1	1	X	X	2	2
CZ	3	3	1	1	3	X	3	X
DE	3	3	3	X	3	X	3	3
DK	1	2	2	X	2	X	2	X
EE	1	1	1	X	X	X	1	X
EL	1	1	1	X	3	X	3	3
ES	1	1	1	X	1	X	1	X
FI	1	1	1	1	X	X	3	X

<sup>25</sup> Hitherto, Germany has been an exception to this rule, but the matter is currently unregulated following the aforementioned Constitutional Court ruling.

Country	(1a) EP (in EU)	(1b) EP (in TC)	(2) Nat Leg.	(3) Nat. Exec.	(5) Reg. Leg.	(6) Reg. Exec.	(8) Local Leg.	(9) Local Exec.
FR	1	1	1	1	2	X	2	X
HU	3	3	1	X	3	X	3	3
IE	1	1	1	1	X	X	1	X
IT	1	1	1	X	1	1	1	1
LT	3	3	3	3	X	X	3	X
LU	3	3	3	X	X	X	3	X
LV	1	1	1	X	X	X	3	X
MT	3	3	3	X	X	X	3	X
NL	1	1	1	X	3	X	3	X
PL	1 <sup>b</sup>	3	1	1	X	X	3	1
PT	1	1	1	1	2 <sup>d</sup>	X	3	X
RO	3	3	3	3	X	X	3	3
SE	1	1	1	X	3	X	3	X
SI	1	1	1	1	X	X	3	3
SK	3	3	3	3	3	3	3	3
UK	1	1	1	X	3	X	3	3

Source: Electoral Legislation of 27 EU states at 4 levels (see Annex II)

Key:

1= Candidacy right for non-resident FCCs (subject to universally-applied restrictions)

2= Candidacy right for selected non-resident FCCs only

3= No right to candidacy for non-resident FCCs

X= No elections

Notes:

<sup>a</sup>= in Bulgaria, dual nationality (national level) or a supplementary non-EU citizenship (European Parliament level) makes Bulgarian citizens ineligible to stand as candidates.

<sup>b</sup> = in Poland, non-resident FCCs must have lived in Poland or another EU state for five years prior to the elections in order to stand as candidates.

<sup>c</sup> = In 3 of 9 provinces only: Lower Austria, Tyrol and Vorarlberg, and for a maximum of 10 years.

<sup>d</sup> = In the Azores and Madeira only, selected non-resident citizens (mainly military personnel, medical staff on humanitarian missions, researchers, exchange students and diplomats, and their families) can stand for election.

<sup>e</sup> = Only non-resident voters with a non-principal domicile ('Zweitwohnsitz') in the province, in 2 of the 9 provinces (Burgenland and Lower Austria).

### European Parliament elections

Candidacy rights for external citizens are more restrictive than voting rights. Eight states (the Czech Republic, Germany, Hungary, Lithuania, Luxembourg, Malta, Romania and Slovakia) prevent their external citizens from standing for election to the European Parliament, while four more – Belgium, Bulgaria, Denmark and Poland – only allow this for external citizens living within the EU. Additionally, Denmark makes the narrower group of external citizens who have voting rights in third countries eligible to stand for election too.

Candidacy rights are granted in the other 15 states. As with voting, each citizen can only stand in one Member State. The practical difficulties of checking this have been noted in successive Commission Reports.<sup>26</sup> Recent modifications to Directive 93/109/EC have simplified the procedure for cross-referencing with the candidate's home authorities that they are not ineligible. With effect from 2014, candidates must now provide only a written declaration to this effect, rather than a formal attestation, and the onus is on the state electoral authorities to confirm this with their foreign counterparts.<sup>27</sup>

12 Member States (Austria, the Czech Republic, Estonia, Spain, Finland, France, Latvia, the Netherlands, Portugal, Sweden, Slovenia, and, for the first 15 years of absence, the UK) offer both voting and candidacy rights with relatively few restrictions. Five (Lithuania, Luxembourg, Romania and, albeit with significant eligibility and in-country voting restrictions, Malta and Slovakia) enfranchise their non-resident FCCs, but do allow them to stand for election. Two more (Bulgaria and Poland) place restrictions on candidacy (in respect of dual citizenship and long-term residence respectively) that do not apply to voting rights. Hungary offers neither voting nor candidacy rights to its external citizens in European Parliament elections.

Conversely, there are some states in which candidacy rights are slightly more extensive than voting rights. In Greece, citizens can cast their ballots from abroad only within the EU (though in-country voting is also possible), but there is no residence requirement for candidacy. This is the also case in Italy. Similarly, Cyprus and Ireland restrict the franchise to selected groups of citizens (mainly diplomats and military staff), but allow all non-resident FCCs to stand for election (a provision mirrored at national level).

### National elections

Seven states – Belgium, Germany (to date), Lithuania, Luxembourg, Malta, Romania and Slovakia – do not allow external citizens to stand for election. Candidacy rights in national elections are generally similar to those in European elections. In Denmark, the constitutional requirement of permanent residence narrows the list of those eligible to stand at national level to the same groups as can vote. In Hungary (from 2014) and Slovakia, external citizens have the right to stand for the national parliament, but not to represent these countries in the European Parliament. In the Hungarian case, this is a recent innovation, building upon amendments to its citizenship legislation, and non-resident citizens can only stand on party lists.<sup>28</sup>

Most states give the same candidacy rights for national legislative and presidential elections (where applicable), but non-resident FCCs only have voting rights for the national legislature in Slovakia.

### Sub-national elections

Candidacy rights at sub-national level are generally tied to residence, rather than citizenship, and thus are not widely afforded. However, expatriates who pay taxes in the region,<sup>29</sup> and those who are registered on the 'registre des Français de l'Étranger' (register of French citizens abroad) can stand as candidates in French regional and local elections. Non-resident FCCs in Italy can stand for election upon the basis of registration with the Registry Office of

---

<sup>26</sup> Most recently, COM(2010)605 final of 27 October 2010.

<sup>27</sup> Council Directive 2013/1/EU of 20 December 2012, Official Journal of the European Union L26/27, 26 January 2013, pp.26-28.

<sup>28</sup> Act XLIV of 26 May 2010, amending Act LV of 1993 on the Hungarian Nationality; The Fundamental Law of Hungary, 2011; Act 2011 - CCIII. Law on Electoral Procedure.

<sup>29</sup> Code électoral (Electoral Law of France), Art.194.

the Italians Abroad (AIRE), which puts them on a special electoral register in the municipality in which they had their last residence in Italy - or in Rome, if they have never resided in the country.

Estonia is exceptional in providing voting and candidacy rights to all national citizens in all elections independently of residence. Cyprus and Denmark also give candidacy rights to the same narrow strata of diplomats, military personnel and other restricted groups that can vote, and those with a non-principal domicile (Zweitwohnsitz) in two of the nine Austrian provinces also have electoral rights.

### 2.1.3 Temporary Absence

A distinction can be made between those who are temporarily absent on polling day and those who are permanently resident outside the country. Table 3 shows a number of methods that are potentially available to the former: voting at a specified consular location in the country of their temporary stay; voting via a resident proxy; voting by post; internet-based electronic voting; and other methods.

Table 3: Methods of voting for resident FCCs temporarily abroad on polling day

Country	Embassy	Proxy	E-vote	Postal	Other
AT	NO	NO	NO	YES	NO
BE	NO	YES	NO	NO	NO
BG	YES	NO	NO	NO	NO
CY	YES	NO	NO	NO	NO
CZ	YES	NO	NO	NO	NO
DE	NO	NO	NO	YES	NO
DK	YES	NO	NO	YES	YES <sup>b</sup>
EE	YES	NO	YES	YES	NO
EL	NO	NO	NO	NO	NO
ES	NO	NO	NO	YES	NO
FI	YES	NO	NO	NO	NO
FR	YES	YES <sup>a</sup>	NO	NO	NO
HU	YES <sup>d</sup>	NO	NO	NO	NO
IE	NO	NO	NO	YES	NO
IT	NO	NO	NO	YES <sup>c</sup>	NO
LT	YES	NO	NO	YES	YES <sup>b</sup>
LU	NO	NO	NO	YES	NO
LV	YES	NO	NO	YES	NO
MT	NO	NO	NO	NO	YES <sup>b</sup>
NL	NO	NO	NO	YES <sup>d</sup>	NO
PL	YES	NO	NO	YES	NO
PT	NO	NO	NO	NO	YES <sup>b</sup>
RO	NO	NO	NO	NO	NO
SE	YES	NO	NO	YES	YES <sup>b</sup>
SI	YES	NO	NO	YES	YES <sup>b</sup>
SK	NO	NO	NO	YES	NO
UK	NO	YES	NO	YES	NO

Source: Electoral Legislation of 27 EU states at 4 levels (see Annex 2)

Notes:

<sup>a</sup> = Embassy serves as 'post office' or proxy; not possible to vote in-person.

<sup>b</sup> = early voting (certain categories only in Portugal)

<sup>c</sup> = certain categories of voter only

<sup>d</sup> = only those abroad for work purposes

<sup>e</sup> = registration necessary with foreign representation

Thirteen states make provision for voters to vote in the embassy or at a specified polling station in the country that they are visiting. Of the states that do not, most allow postal voting and two allow voting through a proxy (in addition to France, where the embassy official acts as a proxy). A few countries allow early voting for those who will be absent on polling day, while Cyprus and Greece make no provision for temporary absence abroad.

In Italy, only certain categories of temporarily absent voter can vote by post, and the requirement of registration with the Registry Office of the Italians Abroad (AIRE) by 31 December of the year preceding the election inhibits the registration of temporary absentees.<sup>30</sup> This led to protests before the February 2013 national election by Italian ERASMUS exchange students, who were disenfranchised (Tintori, 2013).<sup>31</sup>

#### 2.2.4. Compulsory Voting

In three countries – Belgium, Greece and Luxembourg (for those aged under 70) – voting in national elections is compulsory. Enforcement of this varies. In Belgium, failure to exercise voting rights is theoretically punishable by a fine from €27.50 to €137.50.<sup>32</sup> Since 2002, Belgians living abroad who have voluntarily registered with the consular registry are compelled, like resident FCCs, to vote. In Greece, this is a largely symbolic constitutional provision, and between a quarter and a third of the electorate has failed to vote in the last four national elections.

## 2.2 Accessing Electoral Rights

Even in those states where electoral rights are provided by the law, the ease of access to these rights differs.

### 2.2.1. Registration Requirements

A distinction can be made between automatic registration (where a voter is automatically included in the electoral roll from other civil registration information) and active registration (in which the voter must apply to the relevant authorities for inclusion in the electoral roll).

Table 4 shows the distinctions between resident and non-resident FCCs in this regard.

---

<sup>30</sup> Act no. 459 of 27 December 2001, Gazzetta Ufficiale No. 4, 5 January 2002, and Decree n. 104 of 2 April 2003.

<sup>31</sup> 'Niente voto all'estero per gli studenti Erasmus' [No voting abroad for Erasmus Students], Corriere della Sera [Daily Newspaper], 22 January 2013. Available online: [http://www.corriere.it/politica/13\\_gennaio\\_22/studenti-erasmus-no-voto\\_f931caca-64c9-11e2-8ba8-1b7b190862db.shtml](http://www.corriere.it/politica/13_gennaio_22/studenti-erasmus-no-voto_f931caca-64c9-11e2-8ba8-1b7b190862db.shtml), last accessed 3 February 2013.

<sup>32</sup> Constitution of Belgium, Art.62 and Art. 68; Code électoral [Electoral Law of Belgium], Arts. 208-210; 'L'obligation de vote' [The obligation to vote], Director of Elections, available online: <http://www.ibz.rn.fgov.be/index.php?id=1197&L=0>, last accessed 3 February 2013.



Table 4: Active or automatic registration for the franchise (European and national levels)

Country	Resident FCC	Non-Resident FCC
AT	AUTOMATIC	ACTIVE/AUTOMATIC <sup>a</sup>
BE	AUTOMATIC	ACTIVE
BG	AUTOMATIC	AUTOMATIC <sup>b</sup>
CY	AUTOMATIC	ACTIVE
CZ	AUTOMATIC	ACTIVE
DE	AUTOMATIC	ACTIVE
DK	AUTOMATIC	ACTIVE <sup>c</sup>
EE	AUTOMATIC	AUTOMATIC
EL	AUTOMATIC	ACTIVE
ES	AUTOMATIC	AUTOMATIC <sup>d</sup>
FI	AUTOMATIC	AUTOMATIC
FR	ACTIVE	ACTIVE <sup>e</sup>
HU	AUTOMATIC	ACTIVE
IE	AUTOMATIC	ACTIVE
IT	AUTOMATIC	ACTIVE (1st gen.); AUTOMATIC (2nd gen.)
LT	AUTOMATIC	AUTOMATIC
LU	AUTOMATIC	ACTIVE
LV	AUTOMATIC	AUTOMATIC
MT	AUTOMATIC	AUTOMATIC
NL	AUTOMATIC	ACTIVE
PL	AUTOMATIC	ACTIVE
PT	AUTOMATIC	ACTIVE
RO	AUTOMATIC	AUTOMATIC
SE	AUTOMATIC	AUTOMATIC/ACTIVE <sup>f</sup>
SI	AUTOMATIC	AUTOMATIC
SK	AUTOMATIC	ACTIVE
UK	ACTIVE	ACTIVE

Source: Electoral Legislation of 27 EU states at 4 levels (see Annex II)

Notes:

<sup>a</sup> = Once registered, automatically included in the electoral register for subsequent elections.

<sup>b</sup> = Automatic for in-country voting only; otherwise, active.

<sup>c</sup> = In Denmark, those who are deemed 'permanent residents' while de facto living abroad continue to be registered automatically.

<sup>d</sup> = Automatic once they have registered in the Consulate, but they have to apply for voting in each election.

<sup>f</sup> = In Hungary, a recent Constitutional Court ruling overturned the planned introduction of active registration for resident FCCs. <sup>33</sup>

<sup>33</sup> Constitutional Court of Hungary, 'Közlemény a választási eljárási törvény előzetes alkotmányossági vizsgálatáról', 4 January 2013. Available online: <http://www.mkab.hu/sajto/kozlemenyek/kozlemeny-a-valasztasi-eljarasi-torveny-elozetes-alkotmanyossagi-vizsgalatarol>, last accessed 3 February 2013.

<sup>e</sup> = In Sweden, registration is automatic for the first ten years, but must thereafter be actively renewed.

Electoral registration generally requires more initiative on the part of non-resident citizens than for natives. Only 9 of 25 states that have automatic registration for resident FCCs also have it for non-resident citizens. There are additional indirect barriers, such as the UK's requirement for external voters to have their registration applications countersigned by another non-resident British citizen – presupposing that the prospective British voter knows a compatriot in their country of residence.

### 2.2.1 Casting a Ballot

For those categories of voters who are eligible to vote in the first place (as elucidated in Table 1), the following methods of voting are available:

Table 5: Voting methods available to non-resident FCCs, European and national elections

Country	In-country	Embassy	Proxy	Postal	E-voting
AT	YES	NO	NO	YES	NO
BE	NO/YES	NO/YES	NO/YES	YES	NO
BG	YES	YES	NO	NO	NO
CY	YES	YES	NO	NO	NO
CZ	YES	YES	NO	NO	NO
DE <sup>a</sup>	YES <sup>b</sup> /TBA	NO/TBA	NO/TBA	YES/TBA	NO/TBA
DK	YES	YES	NO	YES	NO
EE	YES	YES	NO	YES	YES
EL	YES	NO	NO	NO	NO
ES	NO	YES	NO	YES	NO
FI	YES	YES	NO	NO	NO
FR	YES	YES	YES	YES	NO/YES
HU <sup>a</sup>	X/TBA	X/TBA	X/TBA	X/TBA	X/TBA
IE	NO	NO	NO	YES	NO
IT	YES	YES/NO	NO	YES <sup>d</sup>	NO
LT	NO	YES	NO	YES	NO
LU	NO	NO	NO	YES	NO
LV	YES	NO/YES	NO	YES	NO
MT	YES	NO	NO	NO	NO
NL	YES	YES	YES	YES	NO
PL	YES	YES	YES <sup>c</sup>	YES	NO
PT	NO	YES	NO	NO	NO
RO	YES	YES	NO	NO	NO
SE	YES	YES	NO	YES	NO
SI	YES	YES	NO	YES	NO
SK <sup>a</sup>	YES/YES	NO/NO	NO/NO	NO/YES	NO/NO
UK	YES	NO	YES	YES	NO

Source: Electoral Legislation of 27 EU states for European Parliament and National Parliamentary elections (see Annex II)

Key: Boxes show presence or absence of voting method. Cells with bold borders denote a difference between European Parliament and national elections. The first entry in such cases refers to the methods available in European Parliament elections; the second, to national legislative elections. Colour codings refer by default to European Parliament election methods.

Notes:

<sup>a</sup> = New legislation pending in Germany and Hungary. Reference is made to 2009 European Parliament elections in these cases. In Hungary and Slovakia, there is no external voting for European Parliament elections.

<sup>b</sup> = in Germany, voters cannot vote 'on the spot' inside the country, but generally they can bring the postal vote to their community of previous residence and hand it in in person.

<sup>c</sup> = in Poland, proxy voting is only possible for over-75 voters using the option of in-country voting.

<sup>d</sup> = in Italy, postal voting is only possible for certain categories of voters.

In addition to the methods of voting listed in Table 3 for temporary absentees, another option available to non-resident FCCs is to return to their native country to vote. As Table 5 shows, this is permitted by 20 Member States in European Parliament elections, but it involves a trip that may require considerable expense and effort. In Greece, Malta and Slovakia (European Parliament elections), this is the only method available (but the transport costs of returning home are subsidised for the small number of Maltese citizens who qualify).<sup>34</sup> Voting through the local embassy or consular location is an option offered by 16 states, but this may still involve a cross-country trip of hundreds of kilometres. This is the only option for Portuguese external citizens. Five more states (Bulgaria, Cyprus, the Czech Republic, Finland and Romania) offer both these methods in combination, but no opportunity to vote by post, by proxy or electronically.

Postal and proxy voting can be considered more inclusive as they involve less time and cost on the part of the voter, but these methods have been rejected in some countries because of concerns about the secrecy of the vote. Postal voting is offered by 16 states, mostly together with other options. A small number of states (France, the Netherlands, Poland and the UK) offer proxy voting as well. The only country that has, to date, offered the opportunity of electronic voting from abroad in European Parliament elections is Estonia, where a ballot can be cast via the internet between the tenth and fourth days prior to polling day – though this can be over-ridden by voting in person on polling day.

Most countries use the same methods at European Parliament and national levels, but Belgium offers more methods of voting in the latter, and France has recently introduced the option of internet voting in national elections. Italy allows voting at its diplomatic missions only for elections to the European Parliament. In Slovakia, non-resident FCCs can vote by post (an option not available to them in European Parliament elections). Croatia, which will join the EU in July 2013, only allows external voting through its embassies.

In the few states that afford voting rights in local elections to non-resident FCCs, the main means of exercising this right is by in-country voting. Only Cyprus and Denmark – for the limited number of eligible voters – allow voting at embassies and diplomatic

<sup>34</sup> In the 2009 European Parliament election, 1,377 voters availed of a subsidized airfare of €35 return, at a cost to the state of €442,000 [Maltese Parliamentary Question, 'Kummissjoni Elettorali - votazzjoni tal-MEPs – las' [Electoral Commission – voting for MEPs – payment], Question no. 13091, Legislature XI, 23 November 2009, available at:

<http://www.pq.gov.mt/PQWeb.nsf/10491c99ee75af51c12568730034d5ee/c1256e7b003e1c2dc1257685004a68b4?OpenDocument>].

representations. France allows eligible non-resident voters to nominate a local proxy to vote on their behalf, while Denmark and Ireland both allow postal voting (indeed, it is the only means for Irish diplomats and other electors to cast their ballots). Estonia is again unique in offering internet voting at local level.

### 2.2.3. Other Requirements

The overwhelming majority of states that offer voting rights to non-resident FCCs do not require previous residence in the country. The exceptions are Denmark, Ireland, Italy (in the case of local elections only), the Netherlands (for citizens in Aruba, Curaçao and Bonaire, who must have had previous residence in the Netherlands for at least 10 years; be employed in the Dutch civil service in these locations; or be Dutch family members living with these civil servants), Sweden and the UK.

Aside from these past residency requirements, no state places restrictions on citizens born abroad as such, even with regard to candidacy rights (unlike, for instance, the United States' requirement that the president be a 'natural-born citizen'). Only the UK places a time limit on how long voting rights are retained after leaving (15 years). The UK also requires annual re-registration. Sweden and Austria require re-registration every 10 years, but do not place time limits on the duration of the franchise as long as this condition is met.

## 2.3. Representation and Participation

### 2.3.1. General and Special Representation

Once ballots are cast, the counting and incorporation of external voters' ballots into the overall election results can be done in a number of ways. Without prejudice to the manner in which the votes are eventually incorporated into the results, the ballot papers of non-resident FCCs can be counted separately from in-country votes, or incorporated into the broader voting totals without distinction.

The votes can then be included in the overall results by combining them with those from within the country (general representation), either into a local voting district with which the voter has a biographical connection or by another method; or through reserved seats (special representation), divided into sub-regions of the world or a general foreign constituency.

Schematically, this creates six possible combinations for tracking the non-resident FCC vote, as shown in Tables 6 and 7. Because of the different electoral systems (and the absence of special representation in any country for European Parliament elections), there is considerable variation between European and national levels in respect of how these modes of representation are distributed.

Table 6: Counting and representation of non-resident FCCs (Elections to the European Parliament)

	General biographical –	General other –	Special subdivided –	Special no division –
Separate counting	FR, EL	BE, CZ <sup>b</sup> , ES <sup>b</sup> , LT <sup>a</sup> , NL <sup>a</sup> ,	N/A	N/A
Incorporated counting	DK, EE, IT, LU, MT, SE, SI <sup>c</sup> , UK	AT, BG <sup>b</sup> , CY, DE, FI <sup>b</sup> , IE, LV <sup>b</sup> , PL <sup>a</sup> , PT <sup>a</sup> , RO <sup>b</sup> , SI <sup>c</sup>	N/A	N/A

Notes: Hungary and Slovakia omitted as no external voting takes place.

<sup>a</sup> = all non-resident votes assimilated into a particular voting district (often the capital).

<sup>b</sup> = all non-resident votes assimilated centrally at national level.

<sup>c</sup> = if biographical connections cannot be ascertained, votes are allocated to the electoral district that is the declared choice of the voter.

Table 7: Counting and representing non-resident FCC votes (national parliamentary elections)

	General biographical –	General other –	Special subdivided –	Special no division –
Separate counting	BE, ES	CZ (lottery)	FR, IT, PT, RO	HR
Incorporated counting	AT, CY, DK, DE, EE, EL, FI, IE, LU, MT, SE, SI <sup>c</sup> , UK	HU, LT <sup>a</sup> , LV <sup>a</sup> , NL <sup>a</sup> , PL <sup>a</sup> , SI <sup>c</sup> , SK	N/A	N/A

Notes: as Table 6.

Amongst the states that assimilate the votes of external citizens, the Czech Republic uses a lottery system to decide in advance towards which constituency the votes should count,<sup>35</sup> and four states (the Netherlands, Lithuania, Latvia and Poland) allocate votes from abroad into the totals for a particular voting district in their national capitals.

Four current EU Member States, in addition to Croatia, give discrete representation to non-resident FCCs in their national legislatures. These are examined in the next section. In all cases except Croatia, these seats represent different geographical sub-regions of external voters, according to their locations of residence.

Without exception, there is no special representation for non-resident FCCs at regional or local level.

### 2.3.2. Registration and Participation Rates Among Non-Resident FCCs

Data on the uptake and voting patterns of non-resident FCCs are difficult to establish and the level of available detail varies by country. As such, a comparative table for the whole of the EU would have many gaps. By way of illustration, therefore, detailed information is provided on three of the four current Member States that have special representation in their national parliaments.<sup>36</sup> The three cases discussed here are countries with special representation of external voters, which is known to increase electoral turnout. Participation is therefore likely to be significantly lower in the majority of Member States that do have reserved seats for external citizens.

<sup>35</sup> Zákon o volbách do Parlamentu ČR [The Parliamentary Elections Act of the Czech Republic] No. 247/1995 Coll., Art. 27.

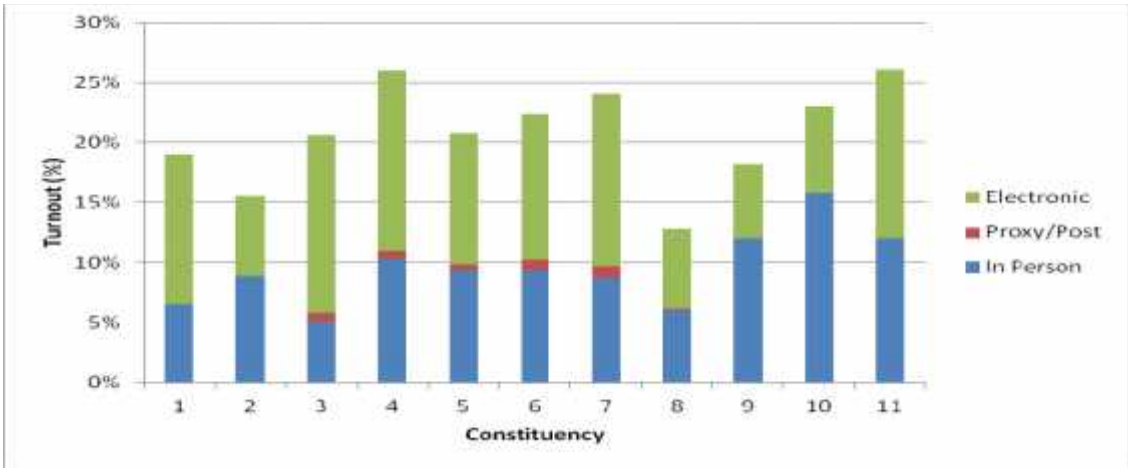
<sup>36</sup> In addition, Romania has four seats in its Chamber of Deputies and two in its Senate for external voters. In 2008, 24,008 non-resident citizens cast ballots in each of the Senate and Chamber of Deputies elections, of whom the majority were resident in other EU states. A total of 501,424 ballot papers were prepared for the non-resident voters in the Chamber of Deputies election, but the exact electorate was not published. The ballot paper count, however, suggests that turnout amongst external voters was in the region of 5%, in the context of an already relatively low national turnout of 39.2%. [Permanent Electoral Commission of Romania, 2008 election results by constituency, available at: [http://www.becparlamentare2008.ro/rezul/collegii\\_rezultate\\_ora10.htm](http://www.becparlamentare2008.ro/rezul/collegii_rezultate_ora10.htm), last accessed 4 February 2013.]

France 2012

Overseas voters were previously able to vote in French national elections, but special representation in 11 geographically-divided constituencies was provided for the first time in the June 2012 National Assembly elections.

Just over 1 million external voters were registered, with the largest single diaspora in Switzerland (106,695 voters). As Figure 1 shows, turnout amongst non-resident voters was much lower than amongst resident citizens, totalling 20.6% in the second round, and ranging from 12.8% (Constituency 8: Southern Europe, Turkey and Israel) to 26.1% (Constituency 11: East Europe, Asia and Oceania). This compares with a turnout in France itself of 57.4%. Electronic voting, introduced for this election, was the method favoured by most non-resident voters, accounting for more than half (53.6%) of all the foreign votes cast. Nearly three-quarters of the votes cast in North America and Northern Europe (Constituencies 1 and 3 respectively) were cast by internet, though in the African constituencies (9 and 10), most votes were still cast in person.<sup>37</sup>

Figure 1: Turnout and method of casting ballot, 11 out-of-country National Assembly constituencies, 2012



Source: Calculated from French Ministry of Foreign Affairs, 'Résultats des Français établis hors de France au 2nd tour des élections législatives', available at: <http://www.diplomatie.gouv.fr/fr/francais-a-l-etranger-1296/elections-2012-votez-a-l-etranger/elections-legislatives/article/resultats-des-francais-etablis-100395>, last accessed 4 February 2013.

Of those that voted in the first round, the proportion of votes cast for the two main parties was broadly similar to that in mainland France, but fewer non-resident FCCs voted for the nationalist Front Nationale (4.6% compared with 13.6% of the in-country voters) than inside the country.

In the presidential election two months earlier, turnout amongst non-resident voters was higher than in the subsequent legislative elections, at 38.4% in the first round and 42.1% in the second.<sup>38</sup> However, this was still only approximately half of the in-country turnouts of

<sup>37</sup> For a graphical depiction of internet voting patterns in the 2012 National Assembly election, see <http://www.targetmap.com/viewer.aspx?reportId=16827>, last accessed 3 February 2013.

<sup>38</sup> 'Français établis hors de France' [official results], available at: <http://www.data.gouv.fr/content/search?SearchText=Fran%C3%A7ais%20%C3%A9tablis%20hors%20de%20France>, last accessed 4 February.

79.5% and 80.4% respectively.<sup>39</sup> Of the twenty-three countries that had more than 10,000 French voters registered to vote, participation levels were above average in Lebanon, Morocco, Luxembourg, China, Bangladesh, Switzerland, Tunisia, Madagascar and Senegal, but below average in most of the other European states.

### Italy 2008

In the 2008 elections to the Italian Chamber of Deputies, just under 3 million Italian voters abroad were registered for the Chamber of Deputies election, and 2.6 million for the Senate election (which had a higher voting age threshold of 25). They elected 12 special representatives to the Chamber and 6 to the Senate.

The largest concentrations of Italian voters overseas were located in Germany (445,507 voters for the Chamber of Deputies election), Argentina (443,847), Switzerland (388,308), France (291,024), Brazil (189,228) and Belgium (186,029). Among all registered overseas voters, roughly two-fifths voted. As Table 7 shows, turnout levels approximated 50% in South America, and were between 34.7% and 39.9% in other regions of the world. This contrasted with a turnout of 80.5% inside the country.

Figures from the 2013 Italian national parliamentary elections indicated that turnout amongst voters abroad had actually fallen somewhat compared with the 2008 figures.<sup>40</sup>

Table 8: Turnout in Foreign Constituencies, 2008 Chamber of Deputies, Italy

Region	Chamber of Deputies			Senate		
	Electorate	Votes cast	Turnout (%)	Electorate	Votes cast	Turnout (%)
Europe	1,633,658	578,548	35.41	1,459,197	528,051	36.19
South America	838,373	414,810	49.48	748,200	377,502	50.47
North and Central America	296,661	103,097	34.75	278,609	98,107	35.21
Africa-Asia-Oceania-Antarctic	155,486	58,956	37.92	141,826	55,865	39.39
Total	2,924,178	1,155,411	39.51	2,627,832	1,059,625	40.32

Source: Italian Ministry of the Interior, Elezione della Camera dei Deputate: Documentazione legislativa e risultate definitivi 13/14 aprile 2008 (Rome: 2012), pp.46-56, available at:

<http://elezioni.interno.it/pubblicazioni/s2008/pdf/c2008vol.pdf>, last accessed 4 February 2013; Italian Ministry of the Interior, Elezione del Senato della Repubblica: Documentazione legislativa e risultate definitivi 13/14 aprile 2008 (Rome: 2012), pp. 40-53, available at: <http://elezioni.interno.it/pubblicazioni/s2008/pdf/c2008vol.pdf>, last accessed 4 February 2013.

<sup>39</sup> 'Résultats de l'élection présidentielle 2012' [Results of the Presidential Election of 2012], Ministry of the Interior (France), available at: [http://www.interieur.gouv.fr/Elections/Les-resultats/Presidentielles/elecresult\\_\\_PR2012/\(path\)/PR2012/FE.html](http://www.interieur.gouv.fr/Elections/Les-resultats/Presidentielles/elecresult__PR2012/(path)/PR2012/FE.html), last accessed 4 February 2013.

<sup>40</sup> Ministry of Foreign Affairs, 'L'impegno per il voto all'estero: data sui votanti' [Responsibility for the vote from abroad: data on the vote], available at: [http://www.esteri.it/MAE/IT/Sala\\_Stampa/ArchivioNotizie/Approf\\_Posting/Dettaglio/2013/01/elezioni%202013.htm](http://www.esteri.it/MAE/IT/Sala_Stampa/ArchivioNotizie/Approf_Posting/Dettaglio/2013/01/elezioni%202013.htm), last accessed 3 March 2013.

## Portugal 2011

Like France and Italy, Portuguese voters abroad elected special representatives – in this case, 2 deputies to represent Europe, and 2 to represent the rest of the world. Portuguese non-resident citizens can only vote at the embassy or consulate in their country of residence. This may have contributed to the low turnout: just 33,059 of the country's 195,109 external voters cast ballots (16.9%), which was fractionally more than the 2009 turnout of 15.3%.<sup>41</sup>

Turnout was relatively higher in Europe (17,939 of 75,053 voters, or 23.9%) than in the rest of the world, where only 15,120 of 120,057 registered voters cast a ballot (12.6%). The largest single diaspora of Portuguese voters was in Brazil, but only 10.8% of the 73,370 voters there participated. This compares with an in-country turnout of 58.1%.

### 2.4. External Citizenship and the Franchise

Through a comparison of each country's external franchise with its external citizenship regimes, it is possible to ascertain in a preliminary fashion to what extent each state includes its external diaspora in its demos, i.e., in the political community of fully enfranchised citizens.

To do this, we compare the inclusiveness of extra-territorial citizenship with ease of access to the ballot. For assessing the former, we use the CITLAW indicators developed by the European Union Democracy Observatory on Citizenship.<sup>42</sup> These indicators measure, for each mode of acquisition and loss of citizenship, the extent of inclusion and freedom of choice for target groups of provisions in citizenship laws. We calculate an "extra-territorial citizenship" score by combining CITLAW indicators for *ius sanguinis* abroad, naturalisation on grounds of cultural affinity, re-acquisition of citizenship, and involuntary loss of citizenship due to residence abroad and due to acquisition of foreign citizenship. Birthright acquisition, naturalisation, and loss of citizenship each contribute with a weight of one-third to the combined indicator for extra-territorial citizenship.

Map 3: Inclusiveness of extra-territorial citizenship (EU 27 plus Croatia)

---

<sup>41</sup> Direcção Geral de Administração interna, 'Resultados no Estrangeiro' [Director General of Internal Affairs – 'Results from abroad'], available at: <http://www.legislativas2011.mj.pt/legislativas2011/estrangeiro.html>, last accessed 4 February 2013.

<sup>42</sup> EUDO Citizenship Law indicators: <http://www.eudo-citizenship.eu/indicators/eudo-citizenship-law-indicators>, last accessed 3 March 2013.





Source: CITLAW Citizenship Acquisition Indicators, [www.eudo-citizenship.eu](http://www.eudo-citizenship.eu)

In Table 9, states with values below the median of the combined indicator are then categorised as restrictive, and those with values above the median as inclusive.

With regard to voting rights, those countries that do not give universal access to the vote to their external citizens, together with the countries where past residence in the country is a universal requirement for the franchise are classified as “restricted”. This group of countries includes categories 2, 3a and 3 from Table 1, as well as Sweden (where past residence is required) and the UK (where the franchise is lost after 15 years abroad).

Table 9: Inclusiveness of extraterritorial citizenship and access to the franchise

		Inclusiveness of extraterritorial citizenship	
		Restrictive	Inclusive
Access to external franchise	Restrictive franchise	CY, DK, MT, SE	EL, IE, UK
	Extensive franchise	AT, BE, CZ, EE, FI, LV, LT, NL, SI, SK	BG, ES, FR, HU, HR, IT, LU, PL, PT, RO

Regime Types:



Table 9 indicates how each country compares on the two dimensions. The group of countries in the top-left quadrant can be considered “externally exclusive” – restricting access to citizenship as well as the vote outside the country. At the opposite extreme, the ten countries in the bottom-right quadrant are the most inclusive, giving easier access to citizenship to former citizens and to the descendants of emigrants, and tolerating broadly dual citizenship among these groups, as well as enfranchising those who have obtained

citizenship outside the territory. In the latter countries, depending on both the size and the past and present emigration flows, there is some potential for the creation of a large extra-territorial electorate that can be mobilised politically, and it is in this group that we find all five states with special representation for extra-territorial voters in their national parliaments (Croatia, France, Italy, Portugal and Romania). The other countries fall into two groups: ten that combine inclusive voting rights with more restrictive access to extra-territorial citizenship, but only three combine more inclusive external citizenship regimes with restrictive voting rights.

### 3 PRACTICAL AND LEGAL CONSEQUENCES OF THE ABSENCE OF DIPLOMATIC AND EU REPRESENTATION FOR EU CITIZENS RESIDING IN A COUNTRY WHERE THEIR MEMBER STATE IS NOT REPRESENTED

#### KEY FINDINGS

- EU citizens located outside the EU generally exercise their voting rights in relation to elections organised by their EU country of nationality at the premises of the consular or diplomatic missions of this EU country from the receiving third state. Therefore, the effective exercise of voting rights of EU citizen residents in third countries for the European Parliament and national elections is dependent on the wide geographical coverage of the external representation network of the Member States of nationality.
- The effect of the combined trends of the increasing number of EU citizens taking up residence in third countries and of the Member States reducing their external representation networks is that there are more EU citizens resident outside the EU who are unrepresented and also unable to vote where consular voting is the only way of external participating in elections.
- The changes brought by the Treaty of Lisbon have the potential to secure, for unrepresented EU citizens, increased effective consular assistance in distress situations due to the express competence of the EU institutions to provide consular assistance to EU citizens in the world, and creation of a common and effective framework of protection for EU citizens abroad.
- The institutional changes introduced by the Treaty of Lisbon in the field of external relations, namely, the creation of a large network of EU external representations (EU delegations together with the Brussels based EEAS) have the potential of securing prompt consular assistance to EU citizens.
- Successful co-location practices between the external representations of Member States and between these and EU delegations in the field of consular services could be replicated to other third countries and consular services, including for securing the exercise of EU citizens' voting rights in the European Parliament and in national elections.

In the present day era of frequent international travel and taking residence in third countries by EU citizens of all Member States,<sup>43</sup> consular officers are facing growing demand on their emergency and day-to-day services. According to Article 5 of the Vienna Convention on Consular Relations (VCCR), consular officials can provide a broad list of consular services to citizens of their sending State such as: assisting the nationals of the sending state during their stay in the territory of the receiving state in cases of temporary

---

<sup>43</sup> Currently, it is estimated that EU citizens make over 80 million trips outside the EU and that 30 million EU citizens reside in third countries. According to a 2011 study, it was estimated that around 1.74 million unrepresented EU citizens reside in third countries, which, in turn, means that 5.6% of residents in third countries are unrepresented, according to Matrix (2011), Study for an Impact Assessment on Co-ordination and Co-operation Measures to Facilitate the Right to Consular Protection for Unrepresented EU Citizens.

difficulty, detention or incarceration;<sup>44</sup> facilitating administrative procedures pertaining to repatriation in cases of death or serious illness; the exercise of notary and public register functions; the control of maritime and aerial navigation; international judicial co-operation and the extension of passports and visas; the protection of the interests of minors and other persons lacking full capacity.<sup>45</sup> Securing the exercise of voting rights of citizens resident in a third country is also part of the numerous consular functions entrusted to the diplomats and consular officials of the State of nationality<sup>46</sup>.

EU citizens located outside the EU have usually exercised their voting rights in relation to national or European elections organised by their EU country of nationality at the premises of the consular or diplomatic missions of their EU country in the receiving third state. Thus, an external representation network which covers a wide geographical area can ensure a wider participation of citizens in the elections. However, recent surveys<sup>47</sup> showed that several Member States had to reduce their external representation networks due to, inter alia: budgetary constraints, security issues, or as a sign of disapproval of the massive violations of human rights by certain national political regimes.<sup>48</sup> In the latter

---

<sup>44</sup> Consuls may help their co-nationals by giving them information and advice on local legal proceedings. Consuls may also protest and seek redress when a wrong is committed against a citizen by local authorities. The overall purpose of consular assistance in situations of deprivation of liberty is to provide any necessary humanitarian assistance or access to legal assistance to nationals in custody, and to ensure that the minimum standards of international human rights protection are respected by the public authorities of the receiving third country throughout the legal proceedings. Timely consular assistance is essential for ensuring that foreign nationals facing prosecution and imprisonment receive fair and equal treatment by domestic courts and penal authorities. In third countries that still apply the death penalty, receiving prompt consular assistance ensures not only the foreigner's human rights regarding the prohibition of torture, inhumane and degrading treatment, and fair trial, but also the most fundamental of human rights, i.e., the right to life. The importance of maintaining the channel of communication between consular officers and nationals open at all times and securing immediate consular assistance for foreign nationals was clearly revealed in the LaGrand case, in which two German citizens were executed in the US in spite of the US public authorities failure to inform them of their international individual right to have access to consular assistance provided by the German consulate. The legal assistance secured by the German consulate at a later stage of judicial proceedings, namely, after the LaGrand brothers had already been sentenced to the death penalty, was unsuccessful due to the US specific procedural default rule that prohibits US federal courts from hearing new claims that were not raised according to the state laws before US state courts; see the contentious case between Germany and the US, LaGrand Case (Germany v United States of America), International Court of Justice (ICJ), 27 June 2001. For more legal literature on the LaGrand judgment and other similar jurisprudence, see Equal Protection: Consular Assistance and Criminal Justice Procedures in the USA. An Introductory Guide for Consulates, third edition edited by A James, M Cross and M Warren, available at <http://www.internationaljusticeproject.org/pdfs/VCCRguide.pdf>; Too Sovereign but Not Sovereign Enough: Are U. S. States beyond the Reach of the Law of Nations? Harvard Law Review, Vol. 116, No. 8 (2003), at 2654-2677; P. Van Alstine, The Death of Good Faith in Treaty Jurisprudence and a Call for Resurrection, 93 GEO. L.J., 1885-1937 (2005).

<sup>45</sup> However, according to Art. 5(m) VCCR, the list is not intended to be exhaustive and consuls can perform functions "which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State".

<sup>46</sup> For internal Documentation available at the Library of the European Parliament, see Poptcheva, E., (2013) "Consular Protection of EU Citizens Abroad" Library Briefing 120362REV2.

<sup>47</sup> Comparing the list of the Member States' external representations in third countries from Annex IV with the list of Member States' external representations from the second half of 2010 drafted by the General Secretariat of the Council (see EU diplomatic representation in third countries, 17770/2/09 REV 2 PESC 1795 RELEX 1235 COCON 47), it resulted that in the last two years, Member States have reduced their external representation networks in third countries. It was found that, currently, there are more third countries with no Member States' external representations, and also more reductions of Member State external representations as compared to the second half of 2010. For more details on this trend in individual Member States, see Melanie Morisse-Schilbach, for France, in: Brian Hocking and David Spence (eds), Foreign Ministries in the European Union: Integrating Diplomats, (London: Palgrave Macmillan, 2005), at 123; for Hungary, see <http://euobserver.com/economic/28315>. For the Netherlands, see the Ministry of Foreign Affairs' "Nota moderniserende Nederlandse diplomatie", 8 April 2011, at 10 & 18.

<sup>48</sup> The UK closed its embassies in Tehran and Bamako, while France closed its embassies on 21 September 2012 in 22 third countries: Afghanistan, Bahrain, Bangladesh, Comoros, Egypt, India, Indonesia, Iraq, Iran, Kenya, Libya, Lebanon, Malaysia, Mali, Mauritania, Niger, Nigeria, Pakistan, Sudan, Chad, Tunisia, and Yemen. See

circumstances, the practice has been that either those Member States that maintained an external representation in situ secured consular protection for the unrepresented EU citizens based upon a Protecting Powers international agreement,<sup>49</sup> or directly based upon the EU Treaty provisions on consular co-operation among the Member States,<sup>50</sup> or the EU delegation in situ themselves secured consular assistance for the unrepresented EU citizens.<sup>51</sup>

Currently, all 27 Member States are represented in only four non-EU countries.<sup>52</sup> The consequences of absence of Member State external representation in third countries for the EU citizens' protection abroad became clear in the aftermath of natural disasters<sup>53</sup> which affected several third countries in recent years.<sup>54</sup> The EU citizens realised that they did not have an external representation of their Member State of origin to resort to for help. In these situations, the protection of EU citizens was secured by means of Member States pooling their resources.

In parallel to the decreasing numbers of the Member State external representations,<sup>55</sup> there is a contrasting trend of an increasing number of EU citizens travelling abroad.<sup>56</sup> The combined effect of these two phenomena is that, in the years to come, more EU citizens will find themselves in situations in which they will need assistance from a representation of another EU Member State or the EU delegation located in the receiving third country. There are over 70 countries worldwide with between zero and five Member State embassies.<sup>57</sup> On

---

<http://ec.europa.eu/consularprotection/index.action;jsessionid=9JqgRGTOGLq2GpjVLTRbjQGCh28L421gMbit6sbGb9cHT7WyB2dQI-2096030516>.

<sup>49</sup> The British embassy in Tehran has been closed since 15 July 2012. Since 1989, whenever the UK severed its diplomatic relations with Iran, Sweden has usually exercised the Protecting Power responsibilities on behalf of the UK in Iran, including limited consular assistance to British nationals, based upon an international agreement regarding the protection of UK interests in Iran. See UKTS no. 45 (1989) printed version and A.V. Lowe, Colin Warbrick and Vaughan Lowe, "Diplomatic Law: Protecting Powers", *International and Comparative Law Quarterly*, Vol. 39, (1990) at 471-474.

<sup>50</sup> As laid down in Art. 23 TFEU.

<sup>51</sup> See the situation in the summer of 2012 in Syria, where the EU delegation hosted national diplomats of four Member States at its premise in Damascus and was prepared to secure the evacuation of the 25,000 EU citizens present in Syria, when 13 out of the 19 Member States that were represented had closed their external representations in situ. See the situation in Mali, Iran, Syria, and Libya, according to information available on the website of the European Commission, protection of EU citizens abroad, available at: <http://ec.europa.eu/consularprotection/index.action>, last accessed in January 2013.

<sup>52</sup> The People's Republic of China, the Russian Federation, the United States of America, and Canada, see <http://ec.europa.eu/consularprotection/index.action>, last accessed in January 2013.

<sup>53</sup> The notion of disaster is used according to the definition given by the International Law Commission : "A calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society." ILC, protection of persons in the event of disasters, Draft Articles 1-5, Document A/CN.4/629.

<sup>54</sup> Many regions of the world were affected by major natural or man-made disasters in the last five or six years, which caused a great number of deaths and injuries to the population. Examples include the democratic uprising in the Southern Neighbourhood in spring 2011, the earthquake and the tsunami that hit Haiti in January 2010, the Icelandic volcanic ash cloud of 2010, acts of local or international terrorism (Sharm el-Sheik 2005, 11 September 2001 Attacks on World Trade Center in New York), and military conflicts (Lebanon conflict of summer 2006, and the Georgian conflict of August 2008).

<sup>55</sup> See F Austermann, "Political Theory versus Diplomatic Practice: Bridging the Sovereignty-Gap of EU-China Relations", (2011) *EU External Affairs Review*, July 2011, at p. 50.

<sup>56</sup> According to the European Commission's report of December 2011, the number of unrepresented EU citizens travelling to third countries will increase from 5.12 million to 7.18 million in five years, and to 10 million in ten years, while the number of unrepresented EU citizens resident in third countries will increase from 1.74 million to 2.4 million in five years and to 3.3 million in ten years. Commission Staff Working Paper, Impact Assessment, accompanying the document, Proposal for a Directive of the Council on co-ordination and co-operation measures regarding consular protection for unrepresented EU citizens, SEC(2011) 1556 final, Brussels, 14.12.2011, p. 56.

<sup>57</sup> See Annex IV: Member States' External Representations and EU Delegations in third countries.

the other hand, the EU has built up a diplomatic service<sup>58</sup> which has a network of 140 Union delegations operating globally<sup>59</sup> and making the EU better represented externally than most of the Member States. Thus, in many third countries, only the EU is represented.<sup>60</sup> In this context, what becomes evident is the potential added value of the EU delegations for ensuring the protection of unrepresented EU citizens in situ and for the exercise of their EU citizenship rights, such as voting rights, -by using the EU delegations' premises.

### 3.1 The pre-Lisbon Treaty Forms of Securing Protection of EU Citizens in third countries

The problematic situation of who and how to ensure protection of unrepresented Europeans in the world has been discussed at the European level as early as the 1960s,<sup>61</sup> and among the several proposals, the solution found was by means of the Member States of the then European Community to conclude horizontal burden sharing agreements. The proposal was formalised, though at a much later date, with the entry into force of the Maastricht Treaty. Since 1993, EU citizens residing in third countries who did not have an external representation of their Member State of nationality to resort to for help have had an EU citizenship right to receive consular assistance from any of the consular or diplomatic authorities of the other Member States represented in situ on the same conditions as the nationals of these Member States.

This EU citizenship right was not though a completely new concept in the European continent, as European countries have offered to their citizens a similar right even before the creation of the European Community, or their accession to the Union, based on regional and bilateral consular co-operation agreements concluded between European countries. The added value of the Maastricht Treaty was to unite this fragmented consular co-operation framework under the ambit of the EU and of imposing an obligation on all Member States to provide equal consular assistance for all unrepresented Union citizen in the world.

The following text highlights how the EU primary law obligation of horizontal consular co-operation was implemented by the Member States and reveals the good practice examples as well as those less efficient cases of implementation.

Protection abroad of unrepresented EU citizens during the pre-Lisbon Treaty period was secured mainly by way of ad-hoc horizontal co-operation among the external representations of the Member States upon the basis of a limited number of EU rules: 1) ex-Art. 20 EC Treaty<sup>62</sup> and Decision 95/553/EC,<sup>63</sup> in conjunction with 2) the Civil Protection

---

<sup>58</sup> The European External Action Service established by Art. 27(3) TEU and Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ 2010 L 201/30.

<sup>59</sup> See EU External Service Directory, [http://eeas.europa.eu/delegations/web\\_en.htm](http://eeas.europa.eu/delegations/web_en.htm), last accessed in January 2013.

<sup>60</sup> See Annex IV: Member States' External Representations and EU Delegations in third countries.

<sup>61</sup> The first attempt to establish a legal basis for the protection of European citizens abroad dates from the period of elaboration of the Convention of the Council of Europe related to consular assistance. The drafting exercise started in Strasbourg in 1959. The draft European Convention on Consular Functions aimed at "codifying" rules and customs related to the Consular Assistance and protection of nationals of the then 18 Member States of the Council of Europe. See more on this in A. Ianniello- Saliceti, *The long road to the protection of EU citizens abroad in EUROPEAN CITIZENSHIP AND CONSULAR PROTECTION* New Trends in European Law and National Law, Edited by S Faro, Mario P Chiti, E Schweighofer; 2013, EditorialeScientifica Napoli; and from the same author, also, *The Protection of EU Citizens abroad: Accountability, Rule of Law, Role of Consular and Diplomatic Services*, in *European Public Law*, 17, no. 1 (2011), at91-109.

<sup>62</sup> See Art. 8 c first paragraph of the Treaty of Maastricht, then Art. 20 EC Treaty and now Art. 23(1) TFEU.

<sup>63</sup> Decision 95/553/EC, regarding protection for citizens of the European Union by diplomatic and consular representations, 1995 O.J. (L 314) 73.

Mechanism.<sup>64</sup> These rules are still in force, with the ex-Art. 20 EC Treaty remaining substantially unchanged by the Treaty of Lisbon.<sup>65</sup>

Based upon ex-Art. 20 EC Treaty the external representations of the Member States had a clear obligation of co-operation for the purpose of securing protection of unrepresented EU citizens abroad.<sup>66</sup> This legal basis and the two Decisions adopted by the Representatives of the Governments of the Member States<sup>67</sup> were primarily used in cases of day-to-day assistance, while the Civil Protection Mechanism was triggered for the purpose of consular assistance only in cases of crisis situations.

Decision 95/553/EC entitles unrepresented EU citizens to consular protection by the consular and diplomatic authorities of any of Member State diplomatic under the same conditions as the nationals of that Member State in the following situations: (1) Death; (2) Serious accident or serious illness; (3) Arrest or detention; (4) Victims of violent crime; (5) Relief and repatriation of distressed citizens. In addition, Member States agreed to offer assistance also in cases of (6) loss of travel documents by issuing a European Travel Document that will allow the EU citizen to return to his or her EU country of residence.<sup>68</sup> (8) All Member States offered some kind of assistance in cases in which a national finds himself or herself in financial need, although this assistance tends to be very restrictive.<sup>69</sup> Certain Member States also provide similar consular assistance in other situations.<sup>70</sup>

In addition to day-to-day consular assistance, the Member States' external representations have closely co-operated in cases of crisis affecting third countries. In these circumstances, the assistance of unrepresented EU citizens has usually involved providing updated guidance on the latest developments, issuing emergency travel documents to return home, and securing the evacuation of EU citizens from a third country affected by natural or man-

---

<sup>64</sup> Council Decision 2007/779/EC Euratom establishing the EU Civil Protection Mechanism (Recast), OJ L 314, 1.12.2007, p. 9. Complementary to the Civil Protection Mechanism, the military and civilian capabilities of CSDP missions can be used, in cases of emergencies, for the evacuation of European citizens. However, military assets may be used for humanitarian purposes only as a last resort and where there is no other available civilian alternative. See EU COUNCIL SECRETARIAT FACTSHEET EU BATTLEGROUPS February 2007; Declaration by the European Council on the Enhancement of the European Security and Defence Policy of 2008 and Art. 43(1) TEU, according to which CSDP missions have rescue and assistance tasks.

<sup>65</sup> Ex-Art. 20 EC Treaty is currently Art. 23 TFEU. The Treaty of Lisbon introduced a new paragraph to the previous corresponding Article. Apart from this addition, paragraph one remained the same. For a more detailed analysis of the whole range of tools used by the EU to ensure protection of EU citizens in disaster situations, see the Chapter The EU Legal Framework in International Disaster Response Law, Andrea de Guttry, M Gestri and G Venturini (eds), T.M.C Asser Springer, 2012, at 105 – 177.

<sup>66</sup> Ex-Art. 20(c) EC Treaty did not invent a new consular cooperation mechanism between the Member States, but it built upon the basis of previous numerous bilateral or regional consular and diplomatic co-operation agreements concluded between the European countries for the purpose of ensuring the widest possible representation of their foreign interests and protection of their citizens in the world. These international agreements were concluded before the creation of the EU, or the European countries accession to the EU. See, inter alia, the Helsinki Convention on Nordic Co-operation, concluded on 23 March 1962 between the Scandinavian countries (Denmark, Sweden, Finland, Iceland and Norway). For more detailed information on this type of regional agreements between the EU countries, see Chapter Three, Section 2.1.2 of the Final Report of the CARE (Consular and Diplomatic Protection: Legal Framework in the EU Member States) Project (hereinafter CARE Report), available online at: <http://www.careproject.eu>.

<sup>67</sup> Decision 95/553/EC; Decision 96/409/CFSP, on the establishment of an emergency travel document, 1996 OJ L 168, 11.

<sup>68</sup> Decision 96/409/CFSP.

<sup>69</sup> This kind of financial aid is provided mainly for the purpose of helping citizens to return to their home country (repatriation) and on condition that a reimbursement commitment is undertaken by the EU citizen; more on the comparative analysis of the practices of the Member States can be found in the CARE Report, Section 4.5.6.

<sup>70</sup> For a detailed analysis of the exact services that consular and diplomatic officials of the Member States provide, see the CARE Report.

made disasters. In recent years, the EU countries have shared human and technical resources on a constant basis in cases of crisis for the purpose of ensuring the prompt evacuation of all EU citizens from the affected third countries, without making a difference based upon nationality between the EU citizens. An example of this good practice can be found in relation to Cyprus, which secured the repatriation of over 60,000 non-nationals during the 2006 Lebanon conflict.<sup>71</sup>

In 2007, the concept of 'Lead State' was introduced by the Council of the EU,<sup>72</sup> whereby a Member State that is represented in situ accepts responsibility for the consular assistance of all unrepresented EU citizens. It was first put into practice by France in Chad, in early 2008, when it evacuated more than 1,200 citizens from 12 Member States and several third countries (60 nationalities in all). Independently of the Lead State role, both small and large Member States have continued to assume the responsibility to evacuate EU citizens of other nationalities than their own, when they found themselves in need of urgent help. During the 2008 Georgian conflict, Estonia secured the repatriation of non-national EU citizens. After the earthquake that hit Haiti in 2010, Italy arranged the evacuation of 1,300 EU citizens of which around 250 were not represented by diplomatic or consular authorities of their EU country of nationality.<sup>73</sup> More recently, when the democratic revolution shook Libya in the spring of 2011, only 8 Member States were represented, while a total of 6,000 EU citizens, many of whom were not represented, were evacuated.<sup>74</sup>

In addition to the horizontal co-operation, the EU has also closely co-operated with the Member States for securing the consular protection of EU citizens. Recent regional conflicts have shown that, in crisis situations, the scale of the disaster can overwhelm national response capacities, and additional assistance from the EU is required to ensure the protection of EU citizens in third countries. In 2007, the application of the Civil Protection Mechanism (EU measure)<sup>75</sup> was extended to cases of international crises for the purpose of ensuring consular assistance to unrepresented EU nationals in the form of relief and repatriation.<sup>76</sup>

To date, the EU's Civil Protection Mechanism has often been activated for the purpose of supporting the Member States in ensuring consular assistance to EU citizens in major emergencies in third countries. The Mechanism was activated in past crises such as Libya (2010),<sup>77</sup> Mumbai (2008)<sup>78</sup> and Libya again in early 2011.<sup>79</sup> During the Gaza crisis in

---

<sup>71</sup> See the CARE Report, at p. 649.

<sup>72</sup> Council Conclusion, General Affairs and External Relations, 2808th Council meeting, 10654/07, (Presse 137).

<sup>73</sup> Numbers and facts were taken from the CARE Final Report and from European Commission Communication Consular protection for EU citizens in third countries: State of play and way forward, COM (2011) 149/2 of 23 March 2011.

<sup>74</sup> Communication from the Commission, *ibid.*

<sup>75</sup> See Council Decision 2007/779/EC Euratom establishing the EU Civil Protection Mechanism (Recast), OJ L 314, 1.12.2007, p. 9.

<sup>76</sup> See Council Decision 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument OJ L 71, 10.3.2007, p. 9-17 in comparison to Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community Mechanism to facilitate re-inforced co-operation in civil protection assistance OJ L 297, p. 7.

<sup>77</sup> In particular, two grants (value of €112,000) were awarded to two Member States which evacuated about 150 EU citizens. See the European Commission Staff Working Paper, Impact Assessment, accompanying the document, Proposal for a Directive of the Council on co-ordination and co-operation measures regarding consular protection for unrepresented EU citizens, SEC(2011) 1556 final, Brussels, 14.12.2011 at p. 18.

<sup>78</sup> In Mumbai, the Mechanism was triggered by the French Presidency and activated in order to assist severely wounded EU citizens after the Mumbai attacks; this operation complemented bilateral operations undertaken by Member States to evacuate more than 100 non-wounded EU citizens to Europe. The costs of such evacuation were 50% co-funded by the Civil Protection Financial Instrument. See Impact Assessment, *ibid.*, at p. 18.



January 2009, nearly 100 people were evacuated in armoured buses thanks to the EU Delegation's support.

Co-operation among the external representations of the Member States for the purpose of securing the protection of EU citizens abroad has, for the most part, been a success story. However, several problems were registered in practice. For example, during the 2008 terrorist attacks in Mumbai, it was reported that certain Member State representations rescued their own citizens while leaving EU citizens of other nationalities who did not have any consular representation in the country behind, and thus were de facto denied their European citizenship. Problems have also been encountered by EU citizens when trying to obtain European Travel Documents in situations that were not the result of disasters.<sup>80</sup> Most of the problems<sup>81</sup> concerning the effective exercise of the EU citizen's right to equal protection abroad, registered before the entry into force of the Treaty of Lisbon, were the result of the discretionary implementation of the EU primary law obligation of the Member States to horizontal consular co-operation, such as: different personal and substantive scope attributed to the right enshrined in ex-Art. 20 EC Treaty within national law and practice;<sup>82</sup> different forms of the transposition of the relevant EU legal regime;<sup>83</sup> and different legal force and guarantees recognised to the unrepresented EU citizen right to equal consular protection.<sup>84</sup>

### 3.2 The Added Value of the Treaty of Lisbon: Increased Powers for the EU to Secure Protection of EU Citizens Abroad

Several of these deficiencies were remedied with the entry into force of the Treaty of Lisbon: the legal nature and scope of the right of the EU citizen to equal protection abroad was clarified as being both an EU citizenship right,<sup>85</sup> and a fundamental right of the EU citizen (Art. 46 CFR); Article 46 clarified the substantive scope as being both equal consular and diplomatic protection of the unrepresented EU citizen with the citizens of the Member State providing protection in third countries.<sup>86</sup>

<sup>79</sup> See EU press release of 23.02.2011 available at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/222&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>80</sup> See CARE Report, Chapter Three, Section Five.

<sup>81</sup> For a detailed assessment of the problems concerning the effective exercise of EU citizen's right to equal protection abroad, see the CARE Report, Chapter Three and S Faro, Madalina B Moraru, Comparative analysis of legislation and practice on consular protection and assistance of the 27 EU countries in EUROPEAN CITIZENSHIP AND CONSULAR PROTECTION New Trends in European Law and National Law, Edited by S Faro, Mario P Chiti, E Schweighofer; Editoriale Scientifica Napoli, 2013.

<sup>82</sup> For example, whether the right to equal protection of EU citizens abroad only includes consular protection or whether it also extends to diplomatic protection; what it means to be an unrepresented EU citizen; and whether third country nationals who are family members of the unrepresented EU citizens are entitled to equal treatment with the EU citizens.

<sup>83</sup> Moreover, Member States have transposed the Decision no. 95/553/EC into their national legislation at different times and in different ways (e.g., through laws, circulars, and constitutions) or, in some cases, they failed to transpose both this Decision and Decision no. 96/409/CFSP entirely. For a detailed analysis, see the CARE Report, Chapter Three, Section 2.3.1.

<sup>84</sup> In addition to the unclear *ratione personae* and *ratione materiae* scope of the right to equal protection of the EU citizen abroad, the concrete implementation of this right by the Member States and the EU was also not well established. For instance, the functioning of the co-ordination and co-operation among the Member States' external representations, and the precise role of EU delegations on the ground is unclear; also the procedure for the reimbursement of consular assistance services was cumbersome and not uniform across domestic jurisdictions.

<sup>85</sup> The right to equal protection abroad is provided by Art. 20(2)(c) TFEU located among the other three EU citizenship rights and under the Chapter on Non-Discrimination and Citizenship.

<sup>86</sup> Art. 46 is entitled "the right to consular and diplomatic protection" indicating thus that while outside the EU, any EU citizen can enjoy both consular and diplomatic protection from any of the Member States that is represented in the third country where the EU citizen is located under the same conditions as the nationals of those Member

The Treaty of Lisbon also provided for a greater role for the EU in relation to the protection of EU citizens abroad. The EU is now legally obliged to protect the interests of its citizens abroad (Art. 3(5) TEU) and has a foreign service (the EEAS) empowered to ensure this obligation (Art. 221 TFEU). The Treaty of Lisbon has thus made the EU directly responsible for the protection of EU citizens located outside the European Union. For the purpose of ensuring effective equal protection abroad, the Treaty of Lisbon has conferred both internal and external legislative powers to the EU Institutions. On the one hand, the Council was conferred express legislative competence to adopt, based upon the Commission's proposals, Directives for the purpose of enhancing the effectiveness of EU citizen protection abroad (Art. 23(2) TFEU).<sup>87</sup> A Directive on the Consular Protection of Unrepresented EU Citizens is currently under negotiation, which aims at developing a common set of rules on the procedural applicability, the substantive and personal scope of the right,<sup>88</sup> and a more precise role for the EU with regard to the implementation of the fundamental right of unrepresented EU citizens to equal consular protection. Secondly, the EU has also external competence, which it shares with the Member States, to conclude international agreements with third countries for the purpose of enhancing the protection of EU citizens abroad (Arts. 4(1) and 216(1) TFEU).

With regard to the practical application of the equal protection of unrepresented EU citizens abroad, Article 35(3) TEU obliges EU delegations in third countries to contribute to the implementation of this right, by co-operating with the external representations of the Member States (Art. 35(1) TEU). Thus, the consulates and embassies of the Member States have a dual obligation of co-operation for the purpose of securing the effective protection of unrepresented EU citizens abroad: 1) horizontally, with the other Member States (Art. 23 TFEU), and 2) vertically, with the EU delegations (Art. 35(3) TEU).

Article 5(10) of the Council Decision establishing the EEAS<sup>89</sup> has expressly entrusted the EU delegations to support the Member States, upon their request, in their role of providing consular protection to citizens of the Union in third countries, but this is only a supplementary power compared to that of the Member States. The 'supplementary' qualification of the EU's competence in this field should not be interpreted in the sense of supplementary EU competence in the meaning of Article 6 TFEU. The protection of EU

---

States. However, not all Member States agree with this maximalist interpretation of Art. 46 EU Charter and Art. 20(1)(c) TFEU; see the UK Report in the CARE Final Report, at p. 521. Legal scholars, especially international law academics, have also argued in favour of a minimalist interpretation of the substantive scope of the fundamental right to equal protection abroad of unrepresented EU citizen (i.e., the fundamental right to consular and diplomatic protection comprises only consular protection and not also diplomatic protection). See also AM.H. Vermeer-Künzli, "Where the Law becomes Irrelevant: Consular Assistance and the European Union", (2011) 60 *International and Comparative Law Quarterly*, 965-995.

<sup>87</sup> As an answer to the differences between the 27 national legal frameworks on consular and diplomatic protection highlighted in the previous Sections, the Commission has already made a proposal for a Directive on Consular Protection for Citizens of the Union Abroad, Brussels, 14.12.2011 COM(2011) 881 final 2011/0432 (CNS) approved with amendments by the European Parliament, see Report on the proposal for a Council directive on consular protection for citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS)), of the Committee on Civil Liberties, Justice and Home Affairs Rapporteur: Edit Bauer (PE 492.575v03-00) of 10 October 2012.

<sup>88</sup> One of the most important clarification that the Commission's proposal for a Directive could bring to the scope of the fundamental right to consular and diplomatic protection is the more accurate definition of 'accessible' Member States consulate or embassy, which in turn determines the scope of unrepresented Union citizens. Art. 3 of the Commission's proposal defines an accessible external representation of the Member States based on the travelling-time which must be counted at least on the basis of the same day return to the place of departure, while in emergency situations the time period can be even shorter. See Proposal for a Council Directive on consular protection for citizens of the Union abroad Brussels, 14.12.2011 COM(2011) 881 final 2011/0432 (CNS).

<sup>89</sup> Council Decision 2010/427/EU of 26 July 2010 Establishing the Organisation and Functioning of the European External Action Service, OJ 2010, L 201/30, 3 August 2010.

citizens abroad and the consular and diplomatic protection of EU citizens are not among the list of supplementary competences of the EU enumerated under Article 6 TFEU, nor are they to be found under one of the other articles stipulating the different types of EU competences.<sup>90</sup> Therefore, according to the fall-back Article 4(1) TFEU, the EU's competence in the field of consular and diplomatic protection of EU citizens is shared with the Member States, without thus placing a hierarchy between the competences of the Member States and those of the EU to secure protection abroad for unrepresented EU citizens. Article 5(10) of the Council Decision should be seen more as an operational principle guiding the co-operation in practice between the EU delegations and the Member State external representations. To date, in practice, the first responsibility has been borne by the Member State of nationality. In the event of the absence of the external representation of the former, responsibility falls to the other Member States that are represented in the specific third countries, and, lastly, responsibility falls to the EU delegations, if requested by one of the Member States.

It should be noted that, in the area of consular affairs, the extent to which specific sub-categories of consular services might be handled by the EU delegations is not regulated in detail by either the founding Treaties, or the EEAS Decision.<sup>91</sup> Both primary and secondary EU law only provide guiding principles for the responsibilities of the EEAS in the area of consular affairs, without detailing the exact consular services that the EU delegations are entitled to exercise in relation to EU citizens. Article 221(1) TFEU is the only provision in the founding Treaty which makes reference to the substantive scope of action of EU delegations. This article entrusts the EU delegations with general external representation for all EU external relations competences.

To date, EU delegations have provided the Member States with significant logistic assistance on numerous occasions for the purpose of ensuring consular assistance for both represented and unrepresented EU citizens in third countries affected by disasters.<sup>92</sup> The delegations have helped with the logistics, such as: opening their premises to the EU citizens and the Member States' consular and diplomatic officials, with transportation and with communications.<sup>93</sup> Furthermore, according to a Commission study, unrepresented EU citizens perceive Union delegations as "natural" contact points.<sup>94</sup>

<sup>90</sup> Art. 3 TFEU on exclusive EU competences, Arts. 4(2) or 5 TFEU on shared competences.

<sup>91</sup> A general reference is made in the preamble, recital 18 and Art. 2 of the Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism, OJ L 314, 1.12.2007, pp. 9-19: 'The Mechanism could also be used for supporting consular assistance to EU citizens in major emergencies in third countries, regarding civil protection activities, if requested by the consular authorities of the Member States.'

<sup>92</sup> The most recent example is during the political upheaval in Syria when the EEAS was ready to help with the evacuation of around 25 000 EU nationals in Syria and with hosting of the diplomatic official of four Member States in the EU delegation in Damascus (A Miozzo's statement of May 2012,

<http://www.europeanvoice.com/article/imported/eu-embassy-stays-open-as-expulsions-escalate/74455.aspx>)

Similar operations have been carried out in Libya, Egypt and Tunisia during the spring 2011 political upheaval that affected these countries.

<sup>93</sup> On the general role of the EEAS in the field of consular protection of EU citizens, see the December 2011 EEAS evaluation report which stated that '[...] over the past year we have also seen that the EU Delegations can play an important role in the coordination of evacuations of citizens [...]', European External Action Service (2011a) 'Report by the High Representative to the European Parliament, the Council and the Commission' (22 December 2011). For an academic position on the role of the EEAS in the field of consular protection of EU citizens, see B van Vooren Ramses Wessel, EU External Representation and the European External Action Service: Selected Challenges of EU law, CLEER Working Paper 2012/5 and European Parliament, AFET Committee Report on The Role of the European External Action Service in Consular Protection and Services for EU citizens, 2013, available at:

<http://www.europarl.europa.eu/committees/de/studiesdownload.html?languageDocument=EN&file=85428>.

<sup>94</sup> See European Commission Impact Assessment, *ibid.*, p. 28.

The fact that the EEAS has now been endowed with new co-ordination instruments<sup>95</sup> aimed at securing a more effective response to the needs of EU citizen assistance in crisis situations should lead to greater involvement of the EEAS and its EU delegations in securing consular assistance to unrepresented EU citizens abroad.

In short, the added value of the Treaty of Lisbon to the protection of unrepresented EU citizens abroad primarily consists in enhancing vertical co-operation, i.e., among the EU and the Member States, by giving more powers and instruments to the EEAS in the field of consular protection of EU citizens, and ensuring more efficient horizontal co-operation and co-ordination among the external representations of the Member States.

---

<sup>95</sup> For example, more Situation Rooms, with more on duty personnel working 24/7/365 which can provide a clearer description of the situation in a certain region or country affected by a disaster, when the Member States have issued different travel advices. According to A. Miozzo, Managing Director for Crisis Response at the European External Action Service, Speech on March 2012 at the Institute of International and European Affairs, the EEAS now has 9 Situation Rooms with which to ensure accurate and updated information regarding political situations worldwide. Another co-ordination instrument entrusted to the EU is the Crisis Platform, which is a new instrument created in the framework of the EEAS which, to date, has efficiently ensured the pooling of the Member States and the EU's resources and capabilities for the purpose of assisting the EU citizens in third countries affected by disasters. The Crisis Platform has now efficiently ensured the co-ordination tasks of the Member State taking the Rotating Presidency.

## 4 FRANCHISE AND ELECTORAL PARTICIPATION OF THIRD COUNTRY CITIZENS RESIDING IN THE EU

### KEY FINDINGS

- Of the 28 states covered in this section, 16 allow some or all categories of third country citizen residents who meet specified conditions to vote in one or several type of elections, whereas 12 do not.
- By contrast with the enfranchisement of non-resident citizens, the granting of voting rights to third country citizen residents is extremely rare at national level (available selectively in PT and the UK), relatively frequent for regional elections (DK, HU, PT, SE, SK, UK), and increasingly common for local elections (DK, HU, PT, SE, SK, the UK, BE, EE, EL, ES, FI, IE, LT, LU, NL and SI).
- Candidacy rights are even more restricted than those for voting, with only 2 countries allowing all or some categories of third country citizens to run as candidates in national elections (the UK and PT), 4 in regional elections (the UK, PT, SE, DK), and 10 in local elections (DK, FI, SE, IE, EL, LU, NL, PT, SK, the UK).
- The enfranchisement of third country citizens is subject to additional restrictions which do not apply to citizen residents and vary considerably from one Member State to another. The extension of electoral rights can be conditioned by (a) durational residency requirements; (b) specific legal residence status; and (c) distinct registration procedures.
- 3 states (PT, ES, the UK) grant electoral rights only to special categories of third country citizens while 4 others (FI, SE, DK, EL) offer facilitated access to selected categories. Such selective enfranchisement can be justified on three grounds: (a) membership to an international association of states other than the EU; (b) bilateral agreements applied unilaterally or upon the basis of reciprocity; and (c) special cultural or linguistic ties
- Available statistics suggest that both registration and turnout rates are low when compared with those of the reference category of citizen residents.
- Constitutional provisions reserving the right to vote to citizens only as well as lack of political consensus across party lines are the main impediments to further extension of the franchise.
- 8 Member States (BE, IE, SE, FI, NL, LU, EL, SK) offer both relatively inclusive nationality laws and local electoral rights for third country residents. At the other end, 9 Member States (AT, LV, IT, BG, PL, CZ, CY, RO and MT) combine restrictive rules for territorial access to citizenship by birth or naturalisation with an exclusive franchise.

- 11 states are either open for a residence-based franchise or for territorially-based citizenship, but not for both. As demonstrated by the 8 inclusive states listed above, facilitating the acquisition of citizenship and granting electoral rights to non-citizens are not mutually incompatible, but complementary policies which contribute in distinct ways to enhancing the participation of immigrants in the political life of the Member State in which they reside.

Unlike for other political rights, such as the right to freedom of association and of assembly, the power of Member States to decide what electoral rights (if any) should be accorded to third country citizens who are residing on their territory is hardly constrained by international or European law. To be sure, the European Union has repeatedly stressed its commitment to enhancing political rights to all residents of the EU irrespective of their legal status. For instance, the Common Basic Principles for Immigrant Integration in the EU adopted by the Justice and Home Affairs Council in 2004 state that "the participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration".<sup>96</sup> More specifically, the European Parliament has advocated voting rights for third country residents for local and EP elections since 1996 on the grounds that "from the perspective of integration, it is obvious that local franchise should derive from residence, not nationality".<sup>97</sup>

But while the European Union has the power to enforce rules on a variety of migration-related matters, such as immigration and asylum, it has no legal authority to make binding rules on the electoral rights of third country citizens. The discretion left to the Member States in this matter has been forcefully re-asserted in Article 79 (4) TFEU, which states that:

"[t]he European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States."<sup>98</sup>

The Council of Europe has also been very active in promoting local voting rights for foreign residents. Under Article 6 of the 1992 Convention on the Participation of Foreigners in Public Life at Local Level, signatory countries commit themselves to "grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the five years preceding the elections."<sup>99</sup> However, only eight Member States have signed the Convention to this date, and 5 have ratified it.

In this context, the fact that electoral rights as well as the conditions of enfranchisement of third country citizens residing in the EU vary greatly from one state to the other comes as no surprise.

---

<sup>96</sup> Common Basis Principle 9, available at: [http://ec.europa.eu/ewsi/en/EU\\_actions\\_integration.cfm](http://ec.europa.eu/ewsi/en/EU_actions_integration.cfm), last accessed 4 January 2013.

<sup>97</sup> European Parliament, Report on the Communication from the Commission on Immigration, Integration and Employment, A5-0445/2003, 1.12.2003, p.23.

<sup>98</sup> Reform Treaty, also known as the Treaty of Lisbon, Article 63a (4), our emphasis.

This section examines the voting and candidacy rights of third country citizens residing in all 27 EU Member States and Croatia in three types of election (presidential, legislative and referendum) and at four levels (European, national, regional and local). It is divided into four sub-sections. The first sub-section provides a general comparative overview of the degree of inclusiveness of voting and candidacy rights in all countries and categories of elections. The second sub-section examines in greater details the conditions which must be met before third country citizens can vote or stand as candidates, and which do not apply to citizen residents. The third sub-section shifts the focus away from electoral rights to electoral participation, and compares available statistics on electoral turnout in countries in which all or selected categories of third country citizens are allowed to vote in local elections. The fourth and last sub-section discusses the combination of legal and political obstacles which have impeded upon further extension of the franchise, and discusses the relationship between enfranchisement and naturalisation from a comparative perspective.

#### 4.1 Mapping Electoral Rights across Member States, Categories of Third Country Citizens and Types of Elections

For each type of election covered in our study and for both candidacy and voting rights, a general distinction can be made between at least three degrees of inclusion: (1) generally enfranchised, when all categories of third country citizens who meet specific residence-based requirements are included; (2) special franchise for certain groups of third country citizens, when electoral legislations distinguish between categories of foreign residents based upon their state of origin; and (3) generally excluded from the franchise when electoral rights are reserved to citizen residents (as well as EU citizens from other Member States for local and EP elections). It is important to note that the first and second degrees of inclusion are not mutually exclusive, as the franchise can be opened to all third country citizens while simultaneously offering privileged access to specific categories of foreigners. For instance, Scandinavian countries have hybrids of these two systems, offering all foreigners who have been continually resident for two years (Finland) or three years (Denmark and Sweden) the right to vote and to run as candidates in municipal elections, but waiving this requirement for citizens of Nordic Union countries, which, alongside the three Scandinavian EU Member States also include Norway and Iceland.

The remainder of this section will successively review the voting and candidacy rights of third country citizens according to the degree of inclusiveness of the franchise in the various types and levels of elections.<sup>100</sup> Additional restrictions on the enfranchisement of third country citizens which do not apply to citizen residents are not captured in this typology and will be discussed at length in the following sub-section (4.2.).

##### 4.1.1 Voting Rights

Of the 28 states covered in our study, twelve reserve the right to vote to their own nationals (as well as to EU citizens for local and EP elections). These are Austria, Cyprus, Germany, France, Italy, Latvia, Poland, Romania, the Czech Republic, Croatia,<sup>101</sup>

---

<sup>99</sup> Article 6 of the Convention on the Participation of Foreigners in Public Life at Local Level, Strasbourg 05.02.1992.

<sup>100</sup> We classify countries upon the basis of the laws currently in force, even if these laws have not been implemented or are currently under judicial review.

<sup>101</sup> In Croatia, the Parliament passed a law granting voting rights and candidacy rights to EU citizens in local and regional legislative elections in July 2010 as part of the process of harmonisation with the EU *acquis communautaire*. The extension of electoral rights to other categories of non-citizens has not become a salient political issue to date.

Malta, and Bulgaria. Conversely, 16 Member States have, at least, limited voting rights for third country citizens for some levels of elections, provided they meet country-specific requirements. Belgium, Lithuania, Estonia, Hungary Luxembourg, the Netherlands,<sup>102</sup> Slovakia and Ireland do not discriminate between different groups of third country citizens, whereas Spain, Portugal and the United Kingdom have only extended the franchise to selected nationalities. Lastly, Finland, Sweden, Denmark and Greece<sup>103</sup> grant the right to participate in local elections to all foreign residents subject to minimum residence requirements, while offering privileged conditions to special categories (the citizens of Norway and Denmark in the Scandinavian cases and the so-called "omogenis" in Greece).

Table 10: Voting rights in EU Member States plus Croatia by the level of enfranchisement and by election type

Country	Eur. Parl.	Nat. Leg.	Nat. Exec.	Nat. Ref.	Reg. Leg.	Reg. Exec.	Reg. Ref.	Local Leg.	Local Exec.	Local Ref.
AT	4	4	4	4	4	X	4	4	4	4
BE	4	4	X	X	4	X	X	2	X	2
BG	4	4	4	4	X	X	X	4	4	4
CY	4	4	4	4	X	X	X	4	4	4
CZ	4	4	4	X	4	X	4	4	X	4
DE	4	4	X	4	4	X	4	4	X	4
DK	4	4	X	4	1	X	1	1	X	1
EE	4	4	X	4	X	X	X	2	X	X
EL	4	4	X	4	4	X	X	1	4	X
ES	4	4	X	4	4	X	4	3	X	3
FI	4	4	4	4	X	X	X	1	X	1
FR	4	4	4	4	4	X	4	4	X	4
HR	X	4	4	4	4	4	4	4	4	4
HU	4	4	X	4	2	X	2	2	2	2
IE	4	4	4	4	X	X	X	2	X	X
IT	4	4	X	4	4	4	4	4	4	4
LT	4	4	4	4	X	X	X	2	X	2
LU	4	4	X	4	X	X	X	2	X	X
LV	4	4	X	4	X	X	X	4	X	X
MT	4	4	X	4	X	X	X	4	X	X
NL	4	4	X	N/A	4	X	N/A	2	X	N/A
PL	4	4	4	4	X	X	X	4	4	4
PT	4	3	4	3	3	X	X	3	X	3
RO	4	4	4	4	X	X	X	4	4	4
SE	4	4	X	4	1	X	1	1	X	1
SI	4	4	4	4	X	X	X	2	2	2
SK	4	4	4	4	2	2	2	2	2	2
UK	3	3	X	3	3	X	3	3	3	3

<sup>102</sup> In the Netherlands, all third country citizens who can document 5 years of residence are included except for diplomatic staff and their spouses who are temporarily serving in the Netherlands.

<sup>103</sup> This right has been legislated but not implemented in Greece. See Section 4.1.1.



Source: Electoral Legislation of 27 EU Member States plus Croatia (see Annex II)



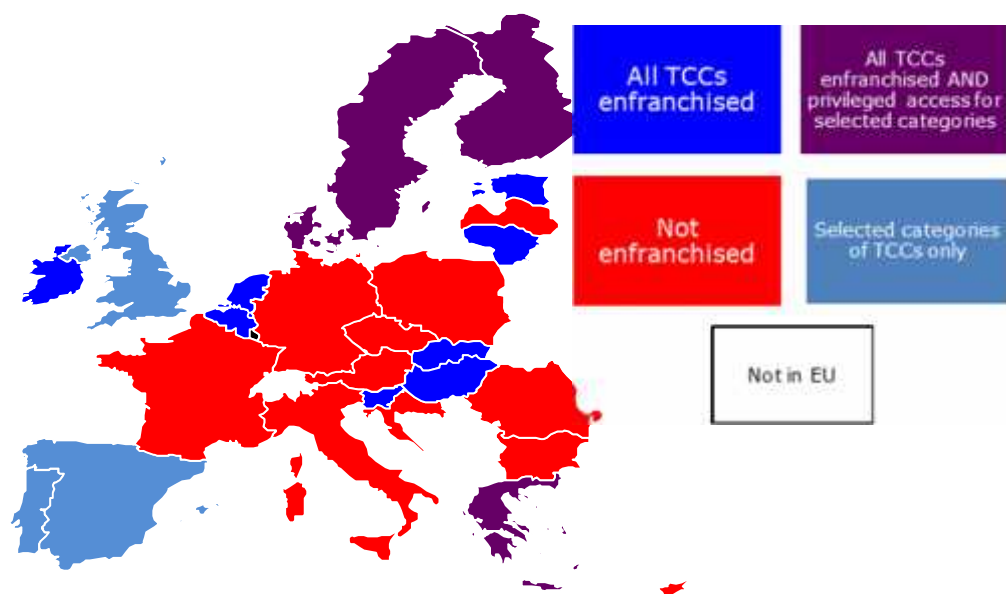
Contrary to the extension of the franchise to non-resident citizens, which is very frequent for national elections but quite rare for local elections, no countries allow third country citizens to elect their president, and only Portugal and the United Kingdom grant voting rights in national legislative elections to foreign residents of selected nationalities.<sup>104</sup> In Portugal, Brazilian citizens who can document three years of residence enjoy a status of political equality under the terms of the Treaty of Friendship, Co-operation and Consultation, signed in the year 2000 and ratified in 2004. With regard to the UK, Commonwealth citizens who have (or do not require) leave to remain in the UK, as well as Irish citizens residing in the UK, can vote in legislative elections. Ireland has a reciprocal arrangement for UK citizens to vote in lower house elections and could make provision for similar arrangements with other EU Member States if they were to give Irish citizens voting rights in national elections. In practice, other than with the UK, this reciprocity provision has not been activated. Similarly, only the United Kingdom grant voting rights to special categories of third country citizens in European Parliament elections, the franchise of which is also determined under national law<sup>105</sup>. By contrast, the enfranchisement of resident third country citizens in regional elections is more frequent. Of the 28 European countries covered in our study, twelve do not hold regional legislative elections, either because the relatively small size of the country does not justify the creation of an intermediate tier of government, or because regions are mere administrative units with no legislative powers. In Denmark, Hungary, Sweden, the UK and Slovakia, the conditions for enfranchisement are the same for local and regional legislative elections, whereas in Portugal, only Brazilian citizens who enjoy the above-stated right to political equality after three years of residence can participate in electing members of the Assemblies of the autonomous regions of the Azores and Madeira, under the same conditions as those for national elections.<sup>106</sup> The best cross-national comparison can be gleaned from examining local legislative elections, since these are held in every country and the enfranchisement of third country citizens is much more common.

Map 4: Voting rights of third country citizens in local legislative elections (EU 27 + Croatia)

<sup>104</sup> It is worth noting that, in the case of the Republic of Ireland, there has been some level of reciprocation. In 1985, following a Supreme Court Case, legislation was introduced in Ireland permitting UK citizens to vote in the elections to the Dáil (i.e., the lower house), but not for the Senate or President. Furthermore, British citizens residing in Ireland are not allowed to run as candidates (Shaw 2007).

<sup>105</sup> For a well-argued article in defence of the enfranchisement of third country citizens in European Parliament elections in all Member States, see Schrauwen, 2013.

<sup>106</sup> Portugal is a centralised state which presents strong territorial asymmetries. The Autonomous provinces of the Azores and Madeira are the only regional units in which regional assemblies are directly elected. Unlike local voting rights, which besides Brazilian citizens include Cape Verde citizens as well as nationals from countries which have signed a reciprocity agreement with Portugal, regional voting rights are extended to only Brazilian citizens who meet specified residence requirements (Cf., Sub-sections 4.2.4 and 4.2.5).



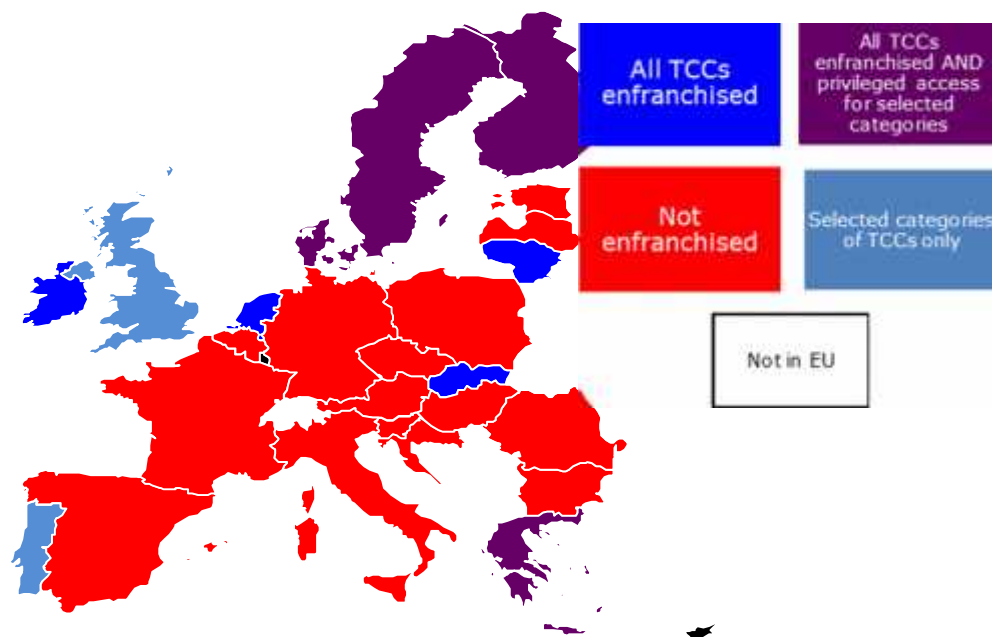
Source: Electoral Legislation of 27 EU Member States plus Croatia (see Annex II)

#### 4.1.2 Candidacy Rights

The candidacy rights of third country citizen residents are even more restricted than those for voting. At national level, only Portugal and the United Kingdom allow some categories of non-nationals to run in national legislative elections, applying more or less the same restrictions as to the right to cast a vote: alongside resident citizens, the only third country citizens who can stand for election to the national parliament in Portugal are Brazilians who enjoy the right to political equality after three years of residence. In the UK, national candidacy rights are granted to Commonwealth and Irish citizens.

At sub-national level, a few states currently grant candidacy rights to third country citizens, but this list is not as extensive as for voting rights. In total, four states (Denmark, Portugal, Sweden, and the United Kingdom) offer regional candidacy rights, while ten states do so at local level (Denmark, Sweden, Finland, Ireland, Lithuania, Luxembourg, the Netherlands, Portugal, Slovakia, and the United Kingdom). The British case is instructive, in so far as the franchise for devolved elections in Scotland, Northern Ireland and Wales not only includes Commonwealth and Irish citizens, but also all EU citizen residents. Ireland's regime is one of the most liberal, although it is still comparatively restrictive: any foreigner "ordinarily" resident in the state (a requirement that Irish citizens do not need to meet) can stand in municipal elections. In the other countries, even where de jure provision for TCC candidacy is made, de facto barriers exist in most cases. In Denmark and Sweden, there is a three-year residence requirement, except for Nordic Union nationalities. In Luxembourg and the Netherlands, a five-year residence requirement applies. In Lithuania, in addition to the requirement for permanent residence (which de facto usually means at least five years' prior temporary residence), an indirect impediment to the right of third country citizens to run as candidates in local elections lies in the fact that only Lithuanian citizens can be members of political parties, the key actors in the electoral process.

Map 5: Candidacy rights of third country citizens in local legislative elections (EU 27 plus Croatia)



Source: Electoral Legislation of 27 EU Member States plus Croatia (see Annex II)

Restrictions on candidacy rights are generally the same as for voting rights, with the notable exception of Greece, where foreign candidates in municipal elections must also demonstrate sufficient knowledge of the Greek language.<sup>107</sup> Consequently, the next sub-section does not distinguish between conditions applying to voting and candidacy rights.

#### 4.2 Additional Restrictions on Enfranchisement

The franchise of citizen residents is not uniformly defined in all Member States since voting and candidacy rights are restricted through age thresholds or the exclusion of mentally-disabled persons and inmates, which differ from one Member State to another. Likewise, procedures regulating the exercise of electoral rights vary greatly across countries or according to types and levels of election. For instance, the mode of registration can be either passive – when citizen residents are automatically registered on the relevant electoral roll – or active – when voters must apply under a distinct procedure in order to be registered. This sub-section focuses exclusively on those restrictions applying to third country citizens residing in the EU compared to the reference category of resident citizens as well as the variations of rights within these categories.

Only in very rare instances have states granted voting rights to third country citizens without additional restrictions. A first distinction can be made between those conditions which apply to all third country residents irrespective of their nationality – i.e., distinguishing between nationals and non-nationals – and those which apply to selected categories – i.e., distinguishing between categories of foreign residents.

The former encompasses three kinds of conditions: (a) durational residency requirements; (b) legal status of residence; and (c) mode of registration. With regard to the latter, the

<sup>107</sup> The law does not specify a formal procedure for assessing candidates' linguistic skills.

enfranchisement of selected categories of third country citizens can be justified on three mutually non-exclusive grounds: (a) a principle of reciprocity, based upon bilateral agreements or applied unilaterally; (b) membership of an international association of states other than the EU; and (c) special ties based upon cultural and linguistic affinity or former colonial relations.

#### 4.2.1 Durational Residency Requirements

Durational residency requirements designate the minimum period of time during which third country citizens must reside in the country before being allowed to vote and/or to run as candidate and constitute the most frequent impediment to their enfranchisement. Several countries formally specify a minimum length of residence ranging from two years (Finland) to five years (Belgium, Luxembourg, the Netherlands and Spain). Denmark and Sweden require three years of permanent residence for both the right to vote and the right to run as a candidate while, in Portugal and Spain, eligible categories of third country citizens must document between three to five years of residence according to the terms of the reciprocity agreement established with the country of origin. Interestingly, durational residency requirements are often identical or even higher than those specified for residence-based naturalisation. For instance, in the Netherlands, the 1984 law opening the local franchise to third country residents initially required a minimum period of four years, but this was subsequently increased to five years, thus matching the condition for residence-based naturalisation. Furthermore, the current government committed itself, in the coalition agreement which was signed in October 2012, to increase the five-year legal residence condition to seven years.<sup>108</sup> Similarly, the Belgian nationality code provides that Belgian citizenship can be acquired after four years of permanent residence against five years for local enfranchisement, while, in Spain, Ibero-American nationals – who enjoy privileged conditions for naturalisation – can naturalise after two years of residence only, against five years for voting rights.

#### 4.2.2 Legal Status of Residence

Even in those countries which do not explicitly require a minimum duration of residence, enfranchisement is conditioned by the applicant's legal status which is generally subject to a minimum length of residence in the country. In Lithuania and Estonia,<sup>109</sup> the right to vote in local elections is reserved to holders of a permanent residence permit, the acquisition of which usually requires a minimum residence of five years, while holding a temporary residence permit. It should be further noted that the vast majority of foreigners residing in these Baltic states are not immigrants, as the term is commonly understood in the public debate of Western European countries, but long-settled populations of Russian descent who did not meet the very restrictive naturalisation requirements introduced at the time of independence in the aftermath of the dissolution of the USSR (Brubaker 1997). In Slovakia and Slovenia, the enfranchisement of third country citizens for local (and, in the Slovak case, also for regional) elections is also limited to the holders of permanent residence permits, the rules of acquisition of which leave the relevant authorities with considerable discretionary powers. In the United Kingdom, the enfranchisement of Commonwealth citizens for all types of elections is not subject to durational residency requirements, although electoral rights are reserved to those who hold indefinite leave to remain (ILR) in the UK. Until the 1962 Commonwealth Immigration Act, Commonwealth citizens were not subject to immigration control. However, successive Parliamentary reforms have considerably restricted their mobility rights, subsequently limiting their access to electoral rights. Today, applicants for indefinite leave to remain – the equivalent of a permanent

---

<sup>108</sup> Bruggen slaal Regeerakkoord VVD – PvdA, 29 Oktober 2012, p. 31.

<sup>109</sup> In addition to holding a temporary residence permit and of the 5-year residence requirement, applicants must document a permanent legal income in Estonia. Besides, the applicant can see his or her permit refused if "there is reason to believe that his or her stay in Estonia may endanger public order, public safety, moral standards or the rights or interests of other persons". (L. 10.2 of the Aliens Act – Consolidated text of April 2005).

residence permit – must document a minimum of five years of residence, and demonstrate a good knowledge of language and life in the UK, in line with the current conditions for the acquisition of citizenship.<sup>110</sup>

#### 4.2.3 Registration Procedure

A more subtle aspect which may constrain or enhance eligible third country citizens' access to electoral rights concerns the mode of registration, which varies considerably from one country to another. In nine countries (the UK, Slovakia, Sweden, the Netherlands, Ireland, Finland, Estonia, Denmark, and the Czech Republic) the electoral registration procedure for citizen residents and third country citizens is identical. In several countries, however, the introduction of a distinct registration procedure for third country citizens has proved to be a major impediment to the exercise of their voting rights.

In Belgium, for instance, voting is mandatory and Belgian citizens are automatically registered on the electoral roll of their municipality of residence. By contrast, third country citizens must register voluntarily and submit a written declaration by which they swear to respect the Belgian Constitution, Belgian laws and the European Convention on Human rights. Once their registration has been accepted, the principle of mandatory voting also applies to them. Partly as a result of this cumbersome procedure, only 20,000 third country citizens were registered to vote for the 2006 municipal elections according to the Ministry of Interior, a figure which remained stable in the 2012 elections.<sup>111</sup>

In Hungary, third country citizens (as well as European citizens) must provide local authorities with a written statement certifying that they are domiciled in one of the municipalities of the country. In Spain, third countries citizens belonging to the categories who are allowed to vote upon the basis of a reciprocity agreement must voluntarily register with the Electoral Board, a requirement which does not apply to Spanish citizens. In Portugal, eligible third country citizens must register in person with the Registration Commission, except for Brazilians who have equal status of political rights and for whom registration is automatic. As in Belgium, the number of registered third country citizens has been extremely low in Portugal, hardly exceeding 15,000 of a total electorate of 9.4 million in 2012.<sup>112</sup> In Greece, eligible foreign residents must submit a fully documented registration request to the special electoral list of their municipality of residence, including proof of residence status, passport and criminal record certificate. Similarly, the registration procedure in Luxembourg is not automatic and requires applicants to submit a formal written declaration together with a currently valid identity card and a certificate documenting a minimum of five years of residence established by a public authority.

---

<sup>110</sup> "Commonwealth citizens" include nationals from Commonwealth countries, British Overseas Territories, and British Crown Dependencies. By contrast with their privileged access to electoral rights, Commonwealth citizens residing in the UK are subject to the same rules of immigration as other non-EEA nationals except for those who were, on 31 December 1982: (a) a Commonwealth citizen with a parent who, at the time of his/her birth or legal adoption, was a citizen of the United Kingdom and Colonies because they were born in the UK; (b) female Commonwealth citizen who were, or had been, married to a man who had the right of abode. ("UK Border Agency – Commonwealth citizens with the right to abode", available at: <http://www.ukba.homeoffice.gov.uk/britishcitizenship/right-of-abode/commonwealth>, last accessed 04 January 2013).

<sup>111</sup> Official statistics for the local elections of 14/10/12 and 10/08/06, available at:

[http://www.registrenational.fgov.be/rrn\\_fr/statelecpotentiels/statistiques/zsc612MV\\_310706\\_010806\\_c14.pdf](http://www.registrenational.fgov.be/rrn_fr/statelecpotentiels/statistiques/zsc612MV_310706_010806_c14.pdf).

<sup>112</sup> Official figures provided by the General-Directorate for Internal Administration (Diário da República, 2ª Série - nº 44 - 1 March 2012).

#### 4.2.4 Membership of an International Association of States other than the EU

The selective enfranchisement of third country citizens of states belonging to an international association other than the EU can be observed in the three Scandinavian EU countries, the United Kingdom and in Portugal.

In Finland, Sweden and Denmark, nationals of Iceland and Norway are allowed to vote and run as candidates under the same conditions as EU citizens as a result of their membership of the Nordic Council, established in the 1950s. The Nordic Passport Union initially provided for the introduction of a common labour market and free movement of citizens across the regions. In 1977, the Nordic Council issued a non-legally-binding document advocating the extension of the local franchise to Nordic citizens. The reform was adopted by all Member States the same year and was initially subject to a three-year residence requirement. This condition was waived in the 1990s, thus creating a two-track system offering privileged access to the local franchise to EU and Nordic citizens over other categories of foreign residents.

In the United Kingdom, all citizens of countries belonging to the Commonwealth who reside in the UK and who have (or do not require) leave to enter or remain in the UK are entitled to vote in all types and at all levels of election. Furthermore, Cypriot and Maltese citizens (as Commonwealth citizens) and Irish citizens (under the Ireland Act of 1949) enjoy a position of double privilege, having rights to vote at all levels of election in the UK and also not being subject to immigration control in the same way that other Commonwealth citizens are. Both Commonwealth and Irish citizens may also stand for election, but in the case of Commonwealth citizens (other than Cypriot and Maltese citizens) this is again on the condition that they have (or do not require) leave to enter or remain in the UK. The privileged position of these categories of third country citizens is, in general, a consequence of the UK's imperial history rather than an expression of any particular cultural or linguistic ties. As Ireland and the countries of the Commonwealth gradually became independent states over the course of the twentieth century, the franchise arrangements were preserved and updated (Shaw 2009a).

In Portugal, the enfranchisement of certain categories of third country citizens is also grounded in their respective countries' membership of an international association of states although, in contrast to the British case, the list of eligible states is strongly influenced by the persistence of special linguistic and cultural ties inherited from former colonial relations. Hence, electoral rights can be granted to citizens of states belonging to the Community of Portuguese-Language countries (CPLP)<sup>113</sup> and who reside in Portugal, provided that this right is reciprocated to Portuguese citizens residing in these countries. To date, only two such agreements have been signed – with Cape Verde and Brazil. The agreement with Cape Verde only applies to local elections and introduces a four-year residence requirement for both candidacy and voting rights. By contrast, Brazilian citizens who can document three years of habitual residence in Portugal are granted the status of equality of political rights by the Portuguese Ministry of Internal Affairs under the terms of the aforementioned Treaty of Friendship, Co-operation and Consultation. Accordingly, they can participate in all elections for as long as they are legally resident in Portugal. Lastly, the reciprocity principle does not apply to local referendums. Hence, all citizens of countries belonging to the CPLP

---

<sup>113</sup> The Member States of the Comunidade de Países de Língua Portuguesa (CPLP) are: Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, São Tomé and Príncipe and Timor-Leste. For further information on the organisation, see the official website, [www.cplp.org](http://www.cplp.org).

who legally reside for more than two years in the Portuguese municipality where the referendum is being held are allowed to vote.

#### 4.2.5 Bilateral Agreements

Several countries have granted electoral rights to selected categories of third-country citizens through bilateral agreements which operate upon the basis of a reciprocity principle. In the Czech Republic and Malta, the constitutions provide the possibility of extending the local franchise upon the basis of reciprocity, although no agreements have been concluded to this date. Of all the 28 countries covered in our study, only Spain and Portugal have signed bilateral agreements with an eclectic and growing list of countries.

In Spain, the ratification of reciprocity agreements started in the late 1980s with a number of European states. However, these agreements became obsolete when the Treaty of Maastricht came into force in 1992, with the exception of the treaty which was signed with Norway in 1990 and which is still in force today, as the latter refused to join the European Union in 1995. No further agreements were signed until 2007, when the Socialist government announced it would enter into negotiations with a number of non-EU countries. Two years later, agreements were signed with Bolivia, Cape Verde, Chile, Colombia, Ecuador, Iceland, New Zealand and Paraguay, eligible citizens of which were allowed to vote for the first time in the 2011 local elections. These agreements are subject to the principle of reciprocity as foreseen in the 1978 Spanish Constitution, thereby recognising the same rights to Spanish citizens living in the corresponding state. They only concern the right to vote in local legislative elections, not the right to stand as candidates. In addition, eligible third country citizens must document a minimum of five years of permanent residence in Spain, except for Norwegian citizens (three years). Although not constitutionally limited to former colonies, the fact that five out of a total of nine agreements were signed with Latin American countries suggests that cultural and linguistic affinities strongly influenced the selection of states.

Portugal has also successively extended the scope of the local franchise to foreigners of countries which do not belong to the Community of Portuguese Language Countries, provided that they grant the same rights to Portuguese citizens and can document at least five years of residence in Portugal. Currently, the list of these countries includes Argentina, Chile, Iceland, Norway, Peru, Uruguay and Venezuela.

#### 4.2.6 Special Ties Based upon Cultural and Linguistic Affinity

The extension of the franchise to selected categories of non-citizens on the grounds of membership of an association of states other than the EU or upon the basis of reciprocity is, to varying degrees, conditioned by the persistence of special cultural ties or former colonial relations. Greece is the only country covered in our study which formally granted local electoral rights to non-citizens on ethnic grounds in 2010. The legislation draws a distinction between so-called "omogenis" and "allogenis". The former designates the holders of an "omogenis" identity card granted to ethnic Greeks of non-Greek nationality who can document five years of residence. This category encompasses individuals of Greek descent who are citizens of Albania or of successor states of the Soviet Union and who were offered privileged access to Greek citizenship but chose not to acquire it, mainly because they feared this might result in their losing their former nationality. The category of "allogenis" refers to the holders of an indefinite residence permit, including parents of a Greek citizen, political refugees and officially recognised stateless persons who have resided in the country for at least five years. According to the Ministry of Interior, a mere 12,587 third country residents voted in the 2010 municipal elections, about half of whom were "omogenis" Albanian citizens. Besides, the constitutionality of the law extending local

electoral rights to non-citizens has recently been questioned by the Greek State Council, a point which will be discussed further in sub-Section 4.4.1.

### 4.3 Electoral Participation

Voting is not the only means whereby third country citizens can participate in the political life of the Member State in which they reside. Indeed, activism in a political party, being involved in one or several civic associations and unions, or becoming a member of consultative bodies advising the relevant authorities at local, regional, national or European levels on issues of direct interest to third country citizens all constitute important avenues for participation (Geller et al. 2007). However, this section deals specifically with the electoral participation of third country citizens in municipal elections, thus excluding other forms of political participation and other categories of voters. In contrast to the vast literature on political participation, research specifically dealing with the exercise of voting rights at local level is remarkably scarce. This can be mainly attributed to the lack of available data, as the votes of third country citizens are generally not counted separately but are assimilated into the broader voting total. Moreover, as a consequence of the absence of reliable statistics, studies on electoral behaviour have tended to focus on immigrants<sup>114</sup> (usually defined either on the grounds of foreign citizenship or foreign birth), on the declared ethnicity of respondents, or on the broader category of non-nationals (without distinguishing between EU and third country citizens), than on third country citizens as such (see, for instance, Doomernik et al. 2010, Aleksinska 2011).

To the best of our knowledge, Sweden is the only country in which relevant authorities provide comprehensive data aggregated at national level on the electoral turnout of third country citizens.

Table 11: Registration and turnout in 2006 and 2006 Swedish local elections by categories of voters

Year of election	Total electorate		Registration/foreign residents			Turnout/foreign residents		
	Registered voters	General turnout	EU citizens	Nordic Citizens	Third country citizens	EU citizens	Nordic Citizens	Third country citizens
2010	7,368,986	81.60%	151,000	134,000	108,000	31.00%	40%	28.00%
2006	7,098,000	79.40%	119,000	136,000	76,000	36.70%	37.60%	34.70%

Source: Statistics Sweden - [www.ssd.scb.se/databaser](http://www.ssd.scb.se/databaser) [last accessed 11 December 2012].

The Swedish case shows that the turnout rate for third country citizens is considerably lower than the general turnout, as well as significantly below that for European and Nordic citizens. In addition, the table indicates that the participation rate of third country citizens in local elections declined sharply between 2006 and 2010, although over the number of registered voters increased by 70% over the same period. The weak participation of third country citizens in Swedish local elections is particularly problematic in so far as Sweden pioneered the granting of voting rights to foreign residents in 1975 and requires comparatively low conditions for their enfranchisement (i.e., three years of permanent residence and an identical registration procedure as for citizen residents). Existing literature on the Swedish case found that electoral participation of foreign-born voters in local elections rises sharply once they have acquired citizenship. Peter Bevelander and Ravi Pendakur (2010) found that naturalised citizens are far more likely to exercise their voting

<sup>114</sup> For an insightful discussion on the difficulties in distinguishing between "immigrant origin" and "immigration-related" ethnicity in comparative migration studies in Europe, see Jacobs et al. (2009).



rights than non-citizens and that this aspect overrides other relevant variables such as the number of years spent in the country, or of having a Swedish spouse. These findings suggest that citizenship not only represents a formal legal bond, but also constitutes a psychological resource which enhances electoral participation (Just et al. 2011).

In other countries, where secondary data could be collected, the turnout of registered third country citizens fluctuates considerably, from a minimum of 10% in the 2009 local elections in Luxembourg (Dubajic 2007) to a maximum of 57% in the 2009 local elections in Denmark, a rate which almost matches the overall participation (Bhatti and Hansen).

The Estonian case is also worth mentioning, not least because the overwhelming majority of foreigners residing in Estonia are ethnic Russians and former Soviet citizens who have either acquired Russian citizenship or became stateless after independence. Perhaps because voting in local elections is the only avenue available to these long-settled populations for participating in the political life of their country of birth or long-term residence, their reported turnout rate in the 2009 local elections is significantly higher than in Sweden, Denmark or Luxembourg: 75% and 63% for Russian citizens and stateless persons respectively. Furthermore, as the proportion of registered third country citizens represents 17% of the total electorate today, their potential impact on electoral outcomes at local level is considerable.<sup>115</sup>

#### 4.4 Obstacles to the Enfranchisement of Third Country Citizens

Of the 28 states covered in our study, twelve reserve the right to vote to their own nationals (as well as to EU citizens for local and EU elections).

The purpose of this section is twofold. First, it briefly reviews the combination of political and legal obstacles which have impeded the extension of the franchise to third country citizens in practice. Second, it discusses the relationship between residence-based enfranchisement and access to citizenship status by examining whether or not Member States characterised by inclusive rules of acquisition of citizenship are more likely to grant electoral rights to non-citizens.

##### 4.4.1 Voting – A Citizen's Privilege? Legal and Political Obstacles to the Enfranchisement of Third Country Citizens

In several countries, the enfranchisement of third country citizens has been made difficult by constitutional provisions which - more or less explicitly - reserve the right to vote to citizens only. In Austria, for instance, the Vienna Provincial Parliament enacted a law in 2003 allowing third country citizens to vote and to be elected in municipal district elections. However, the provision was found to be unconstitutional in 2004 and was hence set aside by the Constitutional Court.<sup>116</sup> Thus, extensions of electoral rights to third country citizens can also be reversed even after having been implemented as a result of re-interpretation of the constitution by courts. An oft-cited example is Germany, where the enfranchisement of third country citizens was high on the political agenda throughout the 1980s. The controversy found its denouement in 1990 when the decision of the city-state of Hamburg

---

<sup>115</sup> National Electoral Committee (2012) Elections in Estonia 1992-2011, p. 90, available at: [http://www.vvk.ee/public/documents/Elections\\_in\\_Estonia\\_1992-2011\\_eng\\_issuu.pdf](http://www.vvk.ee/public/documents/Elections_in_Estonia_1992-2011_eng_issuu.pdf), last accessed 15 November 2012.

<sup>116</sup> The city of Vienna is also a federal province and has a single legislature as a municipality and province. EU citizens are, therefore, only enfranchised at the lower level of municipal districts. The proposal to enfranchise third country citizens at the same level was meant to create equality with EU citizens in this respect and also to avoid a constitutional challenge, since the federal constitution regulates the franchise for national, provincial and municipal elections, but not for urban district elections in the cities of Vienna and Graz. The Constitutional Court nevertheless invoked the principle of homogeneity of the people in all democratic representative elections, including at the level of urban districts. See VfGH 30. 6. 2004, G 218/03.

to grant voting rights to aliens who could document eight years of residence was struck down by the German Federal Constitutional Court on the grounds that elections must be representative of the "people", restrictively understood as the German citizens resident on the territory of that administrative unit.<sup>117</sup> While still formally excluded from the local franchise, naturalised German citizens and foreign residents (including EU citizens) who have resided in the municipality for more than six months can directly elect the representatives of consultative organs, the purpose of which is to advise local authorities on issues of direct interest to them.

Greece also provides a recent and telling example, as the constitutionality of the 2010 legislation introducing voting and candidacy rights to special categories of foreign residents was invalidated by the Fourth Chamber of the State Council in February 2011. This ruling was confirmed by the Greek State Council in November 2012 on the grounds that the extension of the local franchise to non-citizens violates the constitutionally-enshrined principle of the sovereignty of the Greek people. As the current Greek government has explicitly stated it would take appropriate measures to conform with the constitutional ruling, the question of whether or not third country citizens will be allowed to vote and run as candidates in the 2014 Greek municipal elections is highly uncertain.

Even in those cases where no such constitutional obstacles can be found, the lack of political will and the absence of a consensus cutting across party lines have prevented the extension of the franchise to third country citizens. In Poland, for instance, the 1997 Constitution defines local self-government as the political association of its inhabitants,<sup>118</sup> a view later confirmed by the Constitutional Tribunal, according to which local voting rights for foreign residents do not violate the principle of national sovereignty.<sup>119</sup> Despite the absence of legal constraints, local electoral rights have not been extended to third country residents, as a result of the political élite's widely-shared hostility to such reform. In a similar fashion, the constitution of the Czech Republic offers room for enfranchising selected categories of non-nationals through reciprocity agreements, although no international treaty has been signed to date, notably because of the lack of support by the governing parties. As in Lithuania, third country citizens in Poland and the Czech Republic are deprived of the right to join a political party, thus further constraining their capacity to participate in the political life of their country of residence. The Cypriot government, which has signed the Council of Europe's Convention on the Participation of Foreigners in Public Life at Local Level but never proceeded with the ratification, has been confronted with similar political constraints. A recent bill that proposed to grant local voting rights to long-term residents and holders of permanent immigration permits was firmly rejected by the main parties sitting in the House of Representatives.

In the vast majority of cases, political and legal obstacles to the enfranchisement of third country citizens are mutually reinforcing. In Romania, Latvia and Bulgaria, none of the major political parties has promoted reform of the legal provisions that reserve the right to citizens. In France, the extension of the local franchise to third country citizens has figured on the electoral manifestos of the Socialist Party since the 1981 presidential campaign, but the required constitutional amendment has never been made. The current French president, François Hollande, in office since May 2011, has evoked the possibility of organising a national referendum on this issue before the end of the current legislature but no concrete proposal has yet been made. Italy is also an interesting case, as it is among the few EU Member States which ratified the 1992 Council of Europe Convention on the

---

<sup>117</sup> Judgment of 13.10.1990. BVerfGE 8 3:37.

<sup>118</sup> Article 16.1: "The inhabitants of the basis territorial unit shall form a self-governing community in accordance with the law."

<sup>119</sup> Cf. Judgment of the Constitutional Tribunal concerning the Accession Treaty of Judgment of 11 May 2005, case-call No. K 18/04, para. 26 quoted n. 19 infra.

Participation of Foreigners in Public Life at Local Level.<sup>120</sup> The issue was initially raised during the discussion of the first comprehensive immigration law approved by the centre-left government led by Romano Prodi between 1996 and 1998, the so called Turco-Napolitano Act. The initial draft granted the right to vote in local elections to third country citizens subject to a five-year residence requirement. However, the provision was withdrawn from the final text of the law to secure its parliamentary approval, as both the Lega Nord (Northern League) and Alleanza Nazionale (National Alliance) strongly objected to this proposal. As in Germany, the absence of formal voting rights has been compensated to a certain degree by the proliferation of consultative organs at local level, the representatives of which are directly elected by third country residents. However, some municipalities and regions have been much more proactive than others in promoting and strengthening these bodies (Caponio 2010: 57-79, Shaw 2009b: 29-49).

#### 4.4.2 Territorial Access to Citizenship and the Franchise

Various bodies of the European Union and the Council of Europe clearly have taken position in favour of both facilitating the acquisition of citizenship and granting local electoral rights to third country citizen residents. They have actively promoted the view that third country citizens' local enfranchisement and access to citizenship constitute two distinct instruments which contribute to the common aim of enhancing their participation in the political life of the Member State in which they reside. Hence, the Council of Europe, which has advocated local voting rights for third country citizens through the Convention on the Participation of Foreigners in Public Life at Local Level, has also been a prominent actor for the liberalisation of nationality laws through the Convention on Nationality opened for signature since 1997. As for the European Commission, the first Handbook on Integration for Policy-makers and Practitioners published in 2004 promoted both the extension of the local electoral rights to long-term residents and facilitated naturalisation as prominent instruments of integration.<sup>121</sup>

In Map 6 below, the relative degree of inclusiveness of territorially-based rules acquisition of citizenship across Member States has been calculated on the basis of CITLAW indicators<sup>122</sup> in a similar way as extraterritorial citizenship in Map 3, Section 2. Three indicators have been used: *ius soli*, residence-based ordinary naturalisation, and socialisation-based naturalisation. The combination of these indicators covers the rules of acquisition of citizenship for three generations of third country citizen residents: the first generation (i.e., third country citizens born abroad) is captured by the ordinary naturalisation indicator, 'generation 1.5' (i.e., immigrants born abroad who have immigrated before the age of majority) is the reference population for the socialisation indicator, and the second and following generations (i.e., born in the territory of the Member State) are covered by the *ius soli* indicator. The combined indicator used for measuring territorial inclusiveness of the citizenship regime gives a weight of two-fifths to ordinary naturalisation and *ius soli* respectively, and a weight of one fifth to socialisation-based naturalisation for the generation 1.5.

<sup>120</sup> Italy signed the Convention in 1992 and ratified it in 1994. The Treaty came into force in 1997.

<sup>121</sup> European Commission (2004). Handbook on Integration for Policy-makers and Practitioners, pp. 38-50. See also the 9<sup>th</sup> Common Basic Principle for Immigration Integration in the European Union (2004).

<sup>122</sup>EUDO Citizenship Law indicators: <http://www.eudo-citizenship.eu/indicators/eudo-citizenship-law-indicators>, last accessed 3 March 2013.

Map 6: Inclusiveness of territorially-based rules of acquisition of citizenship (EU 27 plus Croatia)



Source: CITLAW Citizenship acquisition indicators, [www.eudo-citizenship.eu](http://www.eudo-citizenship.eu)

Table 11 contrasts the relative inclusiveness of the local franchise with territorially-based rules of acquisition of citizenship in all EU Member States and Croatia. Countries are classified as restrictive with regard to territorially-based access to citizenship if their score is below the median of the total distribution and as inclusive if their score is above the median. Preferential admission to citizenship based upon family ties or co-ethnic ties was deliberately excluded as these modes of access to citizenship are not primarily territorial.

Table 12: Inclusiveness of the local franchise and of territorially-based access to citizenship<sup>123</sup>

		INCLUSIVENESS OF TERRITORIALLY-BASED ACCESS TO CITIZENSHIP	
		Restrictive	Inclusive
INCLUSIVENESS OF THE LOCAL FRANCHISE	Not enfranchised	Latvia, Austria, Italy, Bulgaria, Poland, Czech Republic, Cyprus, Romania, Malta	France, Germany, Croatia
	Special categories only		United Kingdom, Portugal, Spain
	Generally enfranchised	Estonia; Denmark; Hungary, Lithuania, Slovenia	Sweden, Finland, Netherlands, Luxembourg, Belgium; Ireland, Greece, Slovakia

Regime Types:



The first observation which can be drawn from this table is that there is some degree of correlation between the relative inclusiveness of the franchise and of citizenship. However, a variety of Member States deviate from this trend by combining inclusive rules of

<sup>123</sup> The relative degree of inclusiveness of territorially-based rules acquisition of citizenship across Member States is based upon a series of Citizenship Law (CITLAW) indicators elaborated by EUDO CITIZENSHIP for the year 2011. For the purpose of this table, countries have been classified according to the distribution of their respective scores for three indicators: 'ius soli' (IS), 'residence-based ordinary naturalisation' (ON), and 'socialisation-based naturalisation' (SN). The combination of these indicators covers the rules of acquisition of citizenship for 3 generations of third country citizen residents: Generation 1 (i.e., third country citizens born abroad) is captured by the 'ordinary naturalisation indicator', generation 1.5 (i.e., immigrants born abroad who have immigrated before the age of majority) is the reference population for the 'socialisation indicator', and generation 2 and following (i.e., born in the territory of the Member State) is covered by the 'ius soli indicator'. The formula applied to aggregate all three indicators is:  $IS * 0.4 + ON * 0.4 + SN * 0.2$ . Countries are classified as restrictive with regard to territorially-based access to citizenship if their score is below the median of the total distribution and as inclusive if their score is above the median. Preferential admission to citizenship based upon family ties or co-ethnic ties was deliberately excluded as these modes of access to citizenship are not primarily territorial. CITLAW indicators as well as further information on the way they were developed can be consulted online at: <http://www.eudo-citizenship.eu/indicators/eudo-citizenship-law-indicators>.

acquisition of citizenship with restrictive franchise and vice versa. Accordingly, Member States can be clustered into four regime types according to the combination of the relative inclusiveness of the local franchise and citizenship: exclusive; inclusive; citizenship-based and denizenship-based.

### Exclusive and inclusive regimes

At one end of the spectrum, eight Member States (Belgium, Ireland, Sweden, Finland, Netherlands, Luxembourg, Greece, and Slovakia) offer both relatively inclusive nationality laws and local electoral rights for third country residents who meet specified conditions. At the other end, nine Member States (Austria, Latvia, Italy, Bulgaria, Poland, the Czech Republic, Cyprus, Romania, and Malta) combine restrictive rules for residence-based naturalisation with an exclusive franchise, reserving the right to vote to citizens alone. In both the inclusive and the exclusive regime types, the enfranchisement of immigrants as non-citizen residents and through access to citizenship status are perceived as linked to each other. In the inclusive regimes, the former is generally seen as a stepping stone towards full political integration through naturalisation, in the latter, immigrants are not seen as future citizens and the same reasons for making access to citizenship status difficult are invoked when insisting that the local franchise must remain connected to citizenship.

### Citizenship-based and denizenship-based regimes

Three countries (France, Germany and Croatia) exhibit the characteristics of a strictly citizenship-based regime by reserving electoral rights to citizens alone while leaving the gate to full and equal membership relatively open to non-citizen residents. Conversely, five Member States (Denmark, Hungary, Lithuania, Slovenia and Estonia) present features of a denizenship-based regime for electoral rights, combining exclusionary rules for the acquisition of citizenship with electoral rights for non-citizen residents.

In countries with a citizenship-based regime, a common objection to the enfranchisement of third country citizens stresses the fact that those who want to exercise their voting rights must first become citizens. In this view, the acquisition of citizenship is not considered as a step in a broader process of political integration, but as an end-point (Groenendijk 2008: 5-6). As voting rights are key to the principle of democratic representation, the argument is that their exercise should be reserved to those who have actively sought to become full and equal members of the political community by meeting all the conditions required for naturalisation. In order to assert the value of citizenship, the dividing line between members and non-members should remain a sharp and clearly-defined one by reserving the right to vote exclusively to citizens.

Conversely, in the denizenship-based regime, the local enfranchisement of third country citizens is used as a means of legitimising restrictive rules for the acquisition of citizenship. The emphasis is purposively placed on the fact that third country citizens are entitled to most of the social, civil, and political rights traditionally associated with citizenship, and hence neither need, nor aspire, to become citizens. Extending the local franchise to third country citizens has, in some of these countries, been invoked as a reason against liberalising naturalisation.

What the citizenship and the denizenship-based regimes have in common is that they regard the extension of the franchise to non-citizens and the inclusive rules for the acquisition of citizenship as being mutually exclusive. Both the acquisition of citizenship and access to electoral rights are conceived as alternative routes to the political integration of immigrants. However, they also differ in a fundamental way. The citizenship-based regimes

do not provide for additional electoral rights on the grounds that the rules for the acquisition of citizenship are relatively inclusive, whereas countries with a denizenship-based regime extend the franchise to non-citizen residents as a compensatory route to political representation.

A final interesting feature of Table 11 is that the three Member States that offer electoral rights to special categories of non-citizens (Portugal, Spain and the United Kingdom) all have comparatively inclusive and territorially-based citizenship laws. Since the franchise still depends in these cases on citizenship of origin, rather than merely on residence, these three cases could plausibly be merged with the citizenship-based regimes in the upper right corner of the table. This regrouping would lead to the conclusion that there is a weak positive correlation between territorial inclusiveness of electoral rights and citizenship laws with 17 out of 28 cases with inclusionary or exclusionary regimes on both dimensions, but still a significant number of 11 cases in the strictly citizenship-based and strictly denizenship-based electoral rights categories in which access to the franchise through residence is seen to compensate for a lack of access through citizenship status or vice versa.

## 5 ELIGIBILITY OF NON-NATIONALS FOR HIGH PUBLIC OFFICE IN THE EU

### KEY FINDINGS

- The majority of restrictions on access to high public office are contained in constitutional provisions, but some are also to be found in electoral law, supplementary law and non-binding circulars.
- Recent reforms throughout the Member States of public sector employment rules in order to ensure compliance with EU law on the free movement of workers in the public sector have had no significant impact on EU citizens' access to high public office in another EU Member State where they reside.
- All states reviewed reserve the position of Head of State for nationals explicitly or implicitly (HR, CZ, DE, EL, IT, AT, MT, FR, FI, SK, BG, LV and PT). A few exclude naturalised citizens (e.g., BG and PT) and dual citizens (e.g., LV) and some apply residence requirements (e.g., SK and CZ).
- In most of the Member States reviewed the position of Head of Government is reserved for nationals (HR, EL, IT, AT, BE, FR, FI, DE, PT, SK, and BG). However, in a number of states (e.g., UK, DK, MT, ES, NL, CZ and LV) it is at least theoretically, open to foreign nationals. Some states apply residence requirements (e.g., BG and SK), a few apply some form of restrictions on dual nationals (e.g., BG, CZ and AT) but no exclusion of naturalised citizens has been found.
- No significant difference has been found between the requirements for ministers in the executive branch of government and for Heads of Government.
- Most of the reviewed states apply some form of exclusion on grounds of nationality to civil service posts in the executive branch of government (e.g., HR, BE, ES, PT, IT, EL, NL, MT, FR and DE). Such exclusions are usually catch-all provisions based on the CJEU guidance on Article 45(4) TFEU from *Commission v Belgium*. In most Member States, these are further specified by sector or post through specific laws, or non-binding circulars (e.g., IT, EL, NL, MT, FR and DE). No explicit restrictions on dual nationals and no requirements of birthright citizenship or general residence conditions have been identified.
- All of the reviewed states reserve judiciary positions for nationals (HR, CZ, BE, DE, DK, EL, ES, FI, IT, AT, NL, FR, SK, BG, and LV) with the exception of Portugal, the UK and Malta. We have not found any explicit residence or birthright citizenship requirements, nor any explicit restrictions for dual nationals.
- Most of the reviewed states apply a nationality requirement in some form to high ranking positions in the national army (e.g., DE, BE, ES, FI, LV, PT and AT) while at the same time providing for exceptions in various circumstances (e.g., DE, BE and ES). The United Kingdom and Slovakia were unique in permitting non-citizens to enlist. There are some explicit restrictions on dual citizenship (e.g., BG and HR) and residence requirements (e.g., SK).



This section reports on access to high public office across various EU Member States.<sup>124</sup> For the purposes of this report “high public office” has been defined to include the following posts:

1. Head of State (where this is not a monarch);
2. Head of Government (e.g., prime minister);
3. Minister in the executive branch of Government (e.g., the minister of defence/the minister of foreign affairs/the minister of internal affairs);
4. Civil servant in the executive branch of Government (e.g., civil servant working in the ministry of foreign affairs);<sup>125</sup>
5. Judiciary;<sup>126</sup> and
6. High ranking officer in the national army (e.g., general/marshal).

This section will consider the extent to which access to the above-listed posts is reserved by EU Member States for their own citizens and whether there are further restrictions in place. The further restrictions considered are:

1. Residence requirements (i.e., requirements that the applicant must reside within the territory of the Member State);
2. Requirements as to mode of citizenship acquisition (i.e., restrictions on naturalised citizens); and
3. Restrictions on dual nationals.<sup>127</sup>

Where relevant, distinction is also made between the treatment of nationals, EU/EEA citizens and third country citizens.

## 5.1 Existing EU Law Legal Framework

Various provisions of the EU Treaties and Charter of Fundamental Rights support the free movement of workers as a fundamental principle of European Union law (i.e., Article 3(2) TEU, Articles 20, 21 and 45 TFEU and Article 45 CFR). Moreover, there is extensive EU legislation in this context, including Regulation 1612/68 of 15 October 1968 on Freedom of Movement for Workers within the Community, Regulations 1408/71 and 574/72, replaced as of 1 May 2010 by Regulation 883/2004 on the Co-ordination of Social Security Systems, the Implementing Regulation 987/2009, Directive 2005/36 on Mutual Recognition of

---

<sup>124</sup> Responses were not provided from all Member State experts and consequently 10 states were not included in this portion of the study: Cyprus, Estonia, Hungary, Ireland, Lithuania, Luxembourg, Poland, Romania, Slovenia and Sweden.

<sup>125</sup> We have opted to cover all civil servants in the executive branch of government rather than merely focusing on high-ranking civil servants. This is due to the fact that there is wide variation between the Member States as to the definition of high-ranking civil service offices which are covered by the Article 45(5) TFEU derogation. Therefore, in order to ensure a comprehensive approach, it was considered more appropriate to include all civil servants in the executive branch of government in the discussion.

<sup>126</sup> We have opted to cover all judges rather than merely focusing on senior judges. This is due to the fact that we have not identified any requirements that apply solely to senior judges (other than in relation to the post of President of either of the Supreme Courts in Portugal). Consequently, in order to capture the restrictions in place accurately, it was considered more appropriate to build the discussion around all judges.

<sup>127</sup> Others forms of restriction could include: language requirements, age requirements, qualification requirements and experience requirements although we do not consider such restrictions in this report.

Professional Qualifications and Directive 2004/38 on the Right of Citizens to Move and Reside Freely.<sup>128</sup>

However, the most relevant legal provision in this context is Article 45 TFEU, which provides for freedom of movement of workers within the Union. Article 45(4) TFEU exempts employment in the public service from the scope of the protections provided by Article 45(1) to (3). There is, moreover, no EU legislation specifically dealing with the Article 45(4) derogation, which means that CJEU case law must be referred to for guidance. Article 45(4) is an exception to the fundamental principle of free movement and consequently, in accordance with EU law interpretation conventions, has been interpreted restrictively. The most relevant case in this context is *Commission v Belgium*<sup>129</sup> where the Court asserted that Article 45(4) TFEU:

“[R]emoves from the ambit of Article 45 (1) to (3) a series of posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the state or of other public authorities. Such posts in fact presume on the part of those occupying them the existence of a special relationship of allegiance to the state and reciprocity of rights and duties which form the foundation of the bond of nationality.”<sup>130</sup> (Emphasis added)

In subsequent case law<sup>131</sup> on Article 45(4) TFEU, the CJEU has confirmed the position taken in the above citation and additionally made it clear that the specified criteria are cumulative (i.e., exempted posts must involve the exercising of powers conferred by public law and safeguarding general interests of the state). The CJEU has further ruled that criteria must be assessed on a case-by-case basis with regard to the nature of the tasks and responsibilities involved.<sup>132</sup>

Meanwhile, in 1988 and again in 2002, the Commission provided specific guidance on its position with regard to Article 45(4).<sup>133</sup> The Commission maintained that:

“[The derogation at Article 45(4)] covers specific functions of the State and similar bodies such as the armed forces, the police and other forces of the maintenance of order, the judiciary, the tax authorities and the diplomatic corps. However, not all posts in these fields imply the exercise of public authority and responsibility of the safeguarding the general interests of the State; for example: administrative tasks; technical consultation; maintenance. These posts may therefore not be restricted to nationals of the host Member State.

In relation to posts in State ministries, regional government authorities, local authorities, central banks and other public bodies, which deal with the preparation of legal acts, their implementation, monitoring their application and the supervision of subordinate bodies, [...] even if management and decision-making posts which involve

---

<sup>128</sup> J. Ziller, *Free movement of European Union citizens and employment in the public sector: current issues and state of play*, 2010, European Commission, (the “Ziller Report”), p. 10, available at: <http://ec.europa.eu/social/main.jsp?catId=465&langId=en>.

<sup>129</sup> Case 149/79, *Commission v Belgium* I ECR [1980] 03881.

<sup>130</sup> *Ibid.* at paragraph 9.

<sup>131</sup> Case 149/79, *Commission v Belgium* II ECR [1982] 01845; Case 307/84, *Commission v France* ECR [1986] 01725; Case 66/85, *Lawrie-Blum* ECR [1986] 02121; Case 225/85, *Commission v Italy* ECR [1987] 02625; Case C-33/88, *Allué* ECR [1989] 01591; Case C-4/91, *Bleis* ECR [1991] I-05627; Case C-473/93, *Commission v Luxembourg* ECR [1996] I-03207; Case C-173/94, *Commission v Belgium* ECR [1996] I-03265; Case C-290/94, *Commission v Greece* ECR [1996] I-03285.

<sup>132</sup> For example, it has been held that jobs such as postal and railway workers or teachers and nurses may not be reserved for nationals of the relevant host Member State (Commission Staff Working Document: *Free Movement of Workers in the Public Sector*, SEC (2010) 1609 final).

<sup>133</sup> Communication from the Commission: *Free Movement of Workers – Achieving the Full Benefits and Potential* (COM (2002) 694 final).

the exercise of public authority and responsibility for safeguarding the general interests of the State may be restricted to nationals of the host Member State, this is not the case in relation to all jobs in the same field. For example, the post of an official who helps prepare decisions on granting planning permission should not be restricted to nationals of the host Member State.”<sup>134</sup>

In the light of the position taken by the CJEU and the comments of the Commission, it would seem that, in the current state of EU law, it is within the discretion of Member States to reserve most, if not all, of the high public office posts identified above to nationals (certainly Head of State, Head of Government, minister in the executive branch of Government, judge and high ranking officer in the national army). However, with regard to civil servants in the executive branch of Government, there may be some scope for the application of Article 45(1) to (3) depending on the precise functions of the relevant post.

It should also be noted that Member States are free to open up their public sectors at all levels, and are actively encouraged to do so by the Commission, in order to boost the mobility of workers between Member States.<sup>135</sup> Moreover, once a public-sector post is open to migrant workers, the Member States must guarantee equal treatment with regard to all other aspects of recruitment.<sup>136</sup>

In the remainder of this section the position with regard to each of the identified posts will be reviewed across the EU Member States.

## 5.2 Head of State

With respect to the office of Head of State, we have investigated only those EU Member States where the Head of State is not a monarch, but a president. Across the remaining states, there is not a great degree of variation. All states reviewed in this context<sup>137</sup> reserve the post to nationals in one way or another; either explicitly (e.g., Bulgaria, Finland or Germany)<sup>138</sup> or implicitly, by virtue of catch-all laws which adopt a functional approach and reserve posts involving the exercise of certain specified functions to nationals (e.g., France, Greece or Portugal).<sup>139</sup> Moreover, there do not appear to be any special provisions in place for EU citizens or EEA nationals or for third country nationals, other than the kind of catch-all provision just mentioned (as in place in France, Greece and Portugal) which entitles citizens of other EU Member States to be appointed to posts which do not involve the exercise of relevant functions (these types of provisions will be discussed in more detail below in the section on civil servants).

Indeed, even in Portugal, where resident citizens of states belonging to the Community of Portuguese-Speaking Countries<sup>140</sup> are entitled to vote in local and national elections and to be elected as members of Parliament (provided reciprocal arrangements exist for Portuguese citizens resident in the relevant country), the office of President of the Republic

<sup>134</sup> Ibid. p. 19.

<sup>135</sup> See fn.132 above, SEC(2010) 1609 final, p. 14.

<sup>136</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the regions reaffirming the free movement of workers: rights and major developments, COM(2010)373 final, p. 10.

<sup>137</sup> i.e., Croatia, the Czech Republic, Germany, Greece, Italy, Austria, Malta, France, Finland, Slovakia, Bulgaria, Latvia and Portugal.

<sup>138</sup> See Article 93 of the Constitution of Bulgaria, Article 54 of the Finnish Constitution and Article 54 of the German Basic Law.

<sup>139</sup> See French Law n° 2005-843 of 26 July 2005, Article 4 of the Greek Civil Service Code and Article 15(2) of the Portuguese Constitution.

<sup>140</sup> i.e., Angola, Brazil, Cape Verde, East Timor, Equatorial Guinea, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and the Chinese Special Administrative Region of Macau.

is reserved to Portuguese citizens who acquired Portuguese citizenship at birth.<sup>141</sup> Although such requirements (regarding the mode of citizenship acquisition) do seem to be rare, similar arrangements exist in Bulgaria, where in addition to the need to have been resident in Bulgaria for a period of five years, candidates must also be natural-born Bulgarian citizens.<sup>142</sup>

Residency requirements, on the other hand, appear to be more common. Indeed, in some countries, candidates for the post of Head of State are required to be eligible to vote or stand in parliamentary elections which often effectively requires some form of residency (for example, in Slovakia and the Czech Republic, where permanent residence is a precondition for access to the franchise).

It should be noted that, in relation to restrictions on dual nationals, all EU Member States that restrict dual nationality in general, while at the same time reserving the post of Head of State to citizens will, effectively, exclude dual-nationals (by naturalisation) from taking up the post indirectly through their citizenship laws. However, since all EU Member States in principle accept dual citizenship acquired at birth (with restrictions in Germany in cases of *iure soli* acquisition), citizenship laws alone cannot guarantee that a candidate for the position of Head of State does not also hold another citizenship. This is the position in Austria and the Czech Republic.<sup>143</sup> However, in Latvia, candidates for the Presidency are explicitly prohibited from being dual nationals.<sup>144</sup>

### 5.3 Head of Government

In relation to the office of Head of Government, there is a limited degree of variation. In most of the Member States reviewed the post is reserved for nationals (i.e., Croatia, Greece, Italy, Austria, Belgium, France, Finland, Germany, Portugal, Slovakia and Bulgaria). Again, this is done either explicitly or implicitly, for example, by virtue of catch-all laws which reserve posts involving the exercise of certain functions to nationals (e.g., France, Greece and Portugal).<sup>145</sup> Finland and Belgium were somewhat unique in reserving all ministerial posts to their citizens.<sup>146</sup>

However, in a number of states, the post is - at least theoretically - open to foreign nationals (this is not surprisingly the position in many monarchies, such as the UK, Denmark, Spain and the Netherlands, where the monarch retains the sovereign right to appoint the Head of Government). For example, in the UK, there are no explicit legal restrictions or requirements in relation to the nationality of the Prime Minister. In practice, however, the Prime Minister will normally be a Member of Parliament, and, as such, would need to be a British citizen, a citizen of the Republic of Ireland or a citizen of a

---

<sup>141</sup> Article 122 of the Portuguese Constitution limits the post to "citizens of Portuguese origin" which means persons who acquired Portuguese citizenship at birth, see N. Piçarra and A. Gil, Country Report: Portugal, 2012, EUDO Citizenship Observatory, p. 24, available from [www.eudo-citizenship.eu](http://www.eudo-citizenship.eu).

<sup>142</sup> See Article 93 (2) of the Constitution of Bulgaria (also confirmed by the Electoral Code Article 112).

<sup>143</sup> However, persons are not required to surrender their prior citizenship and may become Czech dual or multiple nationals if they are permanent residents, have stayed legally in the territory for at least five years, have a genuine link to the Czech Republic and, in addition, satisfy one of the prescribed conditions. These are, for example, situations when the applicant's renunciation of the previous citizenship involves unreasonable fees or other demands not acceptable in a democratic state, when naturalisation is in the interest of the Czech Republic because of the expected significant contribution to the Czech society in science, societal life, culture or sports or when the applicant is a former Czech (or Czechoslovak) national. See Baršová, A, Country Report: Czech Republic, 2010, EUDO Citizenship Observatory, available at: [www.eudo-citizenship.eu](http://www.eudo-citizenship.eu).

<sup>144</sup> See Article 37 of the Constitution of Latvia.

<sup>145</sup> See French Law n° 2005-843 of 26 July 2005, Article 4 of the Greek Civil Service Code, and Article 15(2) of the Portuguese Constitution.

<sup>146</sup> See Article 60 of the Finnish Constitution and Article 97 of the Belgian constitution.

Commonwealth country who is not subject to immigration control (i.e., either with leave to enter or remain in the UK, or not requiring leave to enter or remain in the UK (which essentially serves as a minimum residence period requirement)).<sup>147</sup> However, the UK stands alone in effectively permitting non-nationals (relevant Irish and Commonwealth citizens) to occupy the office of Head of Government (i.e., by virtue of their eligibility to become Members of Parliament in the first place).

In other monarchies, non-nationals are not explicitly prohibited from being appointed Head of Government, although, in practice, this remains highly unlikely. For example, in Denmark, there are no constitutional or any other legal provisions which require the Prime Minister to be Danish; however, in practice, the Prime Minister will normally be a Member of Parliament, and, as such, would need to be a Danish citizens residing in Denmark. The position is the same in the Netherlands and in Spain. In a similar fashion, in Latvia, Malta and the Czech Republic, there are no explicit nationality requirements and the President holds the constitutional power to appoint the Prime Minister, thus/thereby making it theoretically possible for a non-national to be appointed.<sup>148</sup> Again, in practice, the Prime Minister will usually be a Member of Parliament (thus requiring citizenship).<sup>149</sup>

Excluding the kind of catch-all provisions discussed above (and to be discussed further below in the section on civil servants), there do not seem to be any special provisions in place for EU or EEA nationals or for third country nationals (other than those mentioned in the UK).

However, in relation to residence requirements, there are some states in which - as a result of the fact that only Members of Parliament may be appointed as Head of Government - residence requirements do effectively operate given that Members of Parliament are, in turn, required to be residents (e.g., Bulgaria or Slovakia).<sup>150</sup>

No specific requirements as to the mode of citizenship acquisition were identified in this context. However, with regard to the restrictions on dual nationals, there are a number of effective restrictions in place. For example, in Bulgaria, as Members of Parliament are required to have sole Bulgarian nationality and the Prime Minister is required to be a Member of Parliament, an effective restriction for dual nationals is in place.<sup>151</sup> In addition, as mentioned above, where a general prohibition on dual nationality is maintained in tandem with a nationality requirement, an effective restriction on dual nationals (by naturalisation) will be in place (e.g., as in Austria).

## 5.4 Minister in the Executive Branch of Government

No significant difference was identified between the requirements for ministers in the executive branch of Government and the requirements for the post of Head of Government. Moreover, both the Head of Government and ministers in the executive branch of government are often required to be Members of Parliament and so it is the eligibility to become a Member of Parliament that is, on many occasions, decisive in both cases.

---

<sup>147</sup> See Electoral Administration Act 2006 ss7 and 8; Act of Settlement 1700 s3; and British Nationality Act 1981 s52(6).

<sup>148</sup> See Article 56 of the Constitution of Latvia and Article 68 of the Constitution of the Czech Republic.

<sup>149</sup> However, Andris Šķēle (a Latvian national) was not associated with any political party during his first term as prime minister of Latvia from 1995 to 1997.

<sup>150</sup> See Article 110 of the Bulgarian Constitution read in conjunction with Article 4 of the Electoral Code and Article 110 of the Slovakian Constitution in conjunction with Slovakian electoral law.

<sup>151</sup> See Article 110 of the Bulgarian Constitution read in conjunction with Article 65 of the Bulgarian Constitution.

For further details on the requirements to stand as a candidate in parliamentary elections throughout the EU Member States, see Section 4 of this report.

## 5.5 Civil Servant in the Executive Branch of Government

With regard to civil service posts in the executive branch of government, most of the Member States reviewed apply some form of implicit exclusion on the grounds of nationality. Such exclusions are usually catch-all provisions which adopt a functional approach and are based upon the CJEU guidance on Article 45(4) TFEU stemming from *Commission v Belgium*.<sup>152</sup> In most Member States, such catch-all provisions are then further specified by sector or post specific laws (as in Italy, Greece and the Netherlands), or by non-binding circulars (as in France, Germany and Malta), thus fulfilling the CJEU case-by-case basis requirement.

For example, Article 4 of the Greek Civil Service Code provides that:

“[t]he citizens of other EU Member States can be appointed to or recruited for posts or specialties, the competencies of which do not involve direct or indirect participation in the exercise of public authority as well as performance of duties designed to safeguard the general interests of the State or of other public authorities.”

Similarly, in Italy, Article 38 (1) of Legislative Decree n° 165 of 2001 provides that:

“[c]itizens of European Union Member States may access posts in public administrations that do not imply direct or indirect exercise of public authority or do not involve the safeguard of national interest.”<sup>153</sup>

Similar provisions are in place in Belgium and Spain.<sup>154</sup> In all cases, sector-specific laws identify which posts fall within the derogation.

Bulgaria, France, the Netherlands and Portugal also have similar provisions in place but use slightly different language.<sup>155</sup> For example, in France, access to civil service posts is reserved to French citizens, EEA nationals and Swiss nationals (no distinction is made between EU citizens and EEA nationals), with the exception of offices and mandates for which the functions either cannot be separated from “the exercise of sovereignty” or involve direct or indirect participation in the exercise of the prerogatives of the public authorities of the state or of other public authorities.<sup>156</sup> A non-binding opinion of the State Council then provides further sector-specific guidance.

---

<sup>152</sup> See the Ziller Report, fn. 128 above, for more detail on the application of such provisions in practice.

<sup>153</sup> An implementing regulation of 7 February 1994, n. 174 (“Regolamento recante norme sull’accesso dei cittadini degli Stati membri dell’Unione europea ai posti di lavoro presso le amministrazioni pubbliche”) lists posts and functions which are reserved to Italian nationals. A number of posts are listed, which amount to management posts in the state administration: posts comprising senior administrative functions in branch offices of the state administration; the posts of state’s advocate and prosecutor; civil and military posts in the office of the Prime Minister, Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Justice, Ministry of Defence, Ministry of Finance and in the National Forests Corps. See the Ziller Report, fn.128 above, p. 72.

<sup>154</sup> See Article 10 (2) of the Belgian Constitution in conjunction with Article 16 of the Law on the status of (federal) state servants of 1937, Article 2(2) of the Royal Decree determining the conditions of recruitment under a contract of employment in certain (federal) public services and Articles 56 and 57 of the Spanish Law 7/2007, on the Basic Statute of Public Employees.

<sup>155</sup> See Article 7(1) of the Bulgarian Law for Civil Servants, French Law n° 2005-843 of 26 July 2005, Article 125(e) of the Dutch Civil Service Act and Article 15(2) of the Portuguese Constitution. For example, the Netherlands uses the concept of “functions of confidence”, while the in Portugal the notion of “public offices that are [...] predominantly technical in nature” is used.

<sup>156</sup> See Law n° 2005-843 of 26 July 2005 on various measures transposing Community measures to the civil service. According to an opinion of the State Council of 31 January 2002, the ministerial sectors that could be described as sovereign, and therefore correspond to fields where employment may be closed to non-citizens, are the following: defence, budget, economy and finance, justice, interior, police and foreign affairs. See the Ziller Report, fn.128 above, p. 64.

Again, in Germany, while EU/EEA citizens (as well as nationals of third countries for which there is an agreement with the EU on mutual recognition of qualifications) are generally eligible for posts in the civil service, they are not eligible for positions requiring the exercise of public functions which, because of their specific content, must be performed by Germans.<sup>157</sup> Decisions are made upon a case-by-case basis and non-binding federal recommendations on the application of the nationality requirement take a liberal approach and are reported to permit the employment of nationals of other EU Member States in fields which go far beyond the minimum requirements under EU law.<sup>158</sup>

Latvia is somewhat unique in that all civil service posts are reserved for Latvian citizens. However, by virtue of Article 3 of the State Civil Servants Law, "civil servants" are defined as persons in charge of performing:

"sectorial policy or development strategy, coordination of sectorial activities, distribution or control of financial resources, development of draft legislation or control over its implementation, issuance of administrative acts or preparation or adoption of the important decisions related to the rights of the individuals."

It has been suggested that this provision arguably brings Latvia within the confines of Article 45(4) TFEU as interpreted by the Court of Justice.<sup>159</sup> Finland is also unique in that it explicitly lists all civil service posts which are reserved to Finnish in a legally-binding document (the Civil service law of 1994, Section 7). All posts in the departments of defence and foreign affairs fall within this reservation.

Malta has, perhaps, taken a somewhat more liberal approach in that there is no explicit nationality requirement for posts in the civil service. However, a non-binding circular details posts that may be reserved to Maltese citizens.

Croatia is an outlier in that all civil service posts are reported to be explicitly reserved to Croatian citizens, while a designated minister of the Government has discretion to make exceptions in special circumstances.<sup>160</sup> This arrangement is unlikely to be in compliance with EU law.

On the whole, it seems that the current Member States have complied with EU law by applying catch-all provisions which take a functional approach and are further specified by some form of case-by-case basis application. Whether or not a civil servant in the executive branch of Government is required to be a national will, in most cases, depend on the sector; with posts in the ministries of defence, foreign affairs, interior and the judiciary being likely to be reserved to nationals.

No explicit restrictions on dual nationals were reported. No requirements as to the mode of citizenship acquisition or general residence requirements were identified.

## 5.6 Judiciary

In relation to the post of judge, all of the Member States reviewed reserved this position for nationals with the exception of Portugal, the UK and Malta.

---

<sup>157</sup> See Article 7 of the German Federal Law on the Civil Service.

<sup>158</sup> See the Federal Public Service (Bundesministerium des Innern), 2009, Federal Ministry of the Interior, p. 35-36, available from: [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2009/oed\\_en.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2009/oed_en.pdf?__blob=publicationFile).

<sup>159</sup> See the Ziller Report, fn.128 above, pp. 83-84.

<sup>160</sup> See Article 48 of the Croatian Civil Servants Act.

In Portugal, with the exception of the post of President of either the Supreme Administrative Court or the Supreme Court of Justice, judicial positions are open to resident citizens of Portuguese-speaking countries.<sup>161</sup> In the UK, Irish citizens and Commonwealth citizens (who are not subject to immigration control) are eligible for all judicial positions, and, in Malta, there are no nationality requirements at all. However, Article 49(f) of the Maltese Public Administration Act sets out a non-binding, non-exhaustive list of posts which “may be reserved for Maltese nationals” on account of the fact that the relevant posts involve the exercise of public authority and the safeguarding of the state. Posts in the judiciary are included in the list.<sup>162</sup>

In the remainder of the Member States reviewed, posts were typically explicitly reserved for nationals via a blanket nationality requirement for all judges (as in Finland, Spain, Belgium, Bulgaria, Latvia, the Netherlands and Slovakia).<sup>163</sup> Again, in France, Greece and Portugal, posts were reserved for nationals (and, as just mentioned, resident citizens of Portuguese-speaking countries in the case of Portugal) upon the basis of the functions exercised, implicitly operating as a nationality requirement for the post of judge.<sup>164</sup>

In Slovakia, there is an implicit requirement of permanent residence, but no other residence requirements were reported across the Member States. No explicit requirements as to the mode of citizenship acquisition were identified. No explicit prohibitions on judges holding dual citizenship were identified, either.

## 5.7 High Ranking Officer in the National Army

With respect to high ranking positions in the national army, and positions in the national army more generally, most of the Member States reviewed apply a nationality requirement in some form, while at the same time providing for exceptions in various circumstances. For example, in Germany, the law explicitly provides that only German nationals are permitted to be soldiers in the German Army, but the Ministry of Defence is empowered to make exceptions.<sup>165</sup> The same types of provisions apply in Belgium and Spain.<sup>166</sup> Explicit nationality requirements were also reported in Finland, Latvia, Portugal and Austria.<sup>167</sup> In a similar vein, in the Netherlands, Dutch nationality is required for all military posts with the exception of posts which cannot be fulfilled by already appointed military personnel.<sup>168</sup>

In Malta, there are no explicit nationality requirements at all, although a non-binding circular provides that posts in the armed forces may be reserved for nationals. In Slovakia, EU citizens and citizens of the member states of international organisations providing common defence (e.g., NATO) are explicitly permitted to enlist in the Slovakian Army; however, a language and permanent residence requirement applies, and the President

---

<sup>161</sup> See Article 15(3) of the Portuguese Constitution. See, also, Piçarra and Gil, fn.141 above.

<sup>162</sup> See the Maltese Public Administration Act Article 49(f)(2).

<sup>163</sup> See Section 7 of the Finnish Civil Service Law of 1994, Article 302 of the Spanish Organic Law 6/19835, on Judicial Power, Article 259 of the Belgian Judiciary Code, Article 162 of the Bulgarian Law on the Judiciary, Article 51 of the Latvian Law on Judicial Power, Article 46 of the Dutch Law on Judicial Officers and Article 145 of the Slovakian Constitution.

<sup>164</sup> See French Law n° 2005-843 of 26 July 2005, Article 4 of the Greek Civil Service Code and Article 15(2) of the Portuguese Constitution.

<sup>165</sup> See Article 37 of the German Soldiers Law (version of May 30, 2005 as amended by Article 9 of the Law of July 21, 2012).

<sup>166</sup> See Article 10 of the Belgian Constitution and Article 3 of the Spanish Law 39/2007, on the Military.

<sup>167</sup> See Section 7 of the Finnish Civil Service Law of 1994, Article 5 of the Latvian Law on National Armed Forces, Article 15(3) and 276 of the Portuguese Constitution and Article 3 of the Austrian Basic Law of 21 December 1867, on the general rights of citizens for the kingdom represented council kingdoms and countries, in conjunction with Article 9(1) of the Defence Act 2001.

<sup>168</sup> See Articles 5 and 11 of the Dutch Military Service Regulations.



retains the authority to appoint generals.<sup>169</sup> The UK is also unique, in that Irish citizens and Commonwealth citizens are explicitly eligible to join the armed forces. However, for officer level posts (including the rank of general) Commonwealth citizens are required to have resided in the UK for at least five years prior to entering officer training (although exceptions can be made).

Explicit restrictions for persons holding dual citizenship were reported in Croatia and Bulgaria and no requirements as to the mode of citizenship acquisition were reported.

---

<sup>169</sup> See Article 102 of the Slovakian Constitution and Act No. 346/2005, law on the professional armed forces in the Slovak republic as amended.

## 6 EU CITIZENS RESIDING IN THIRD COUNTRIES AND THIRD COUNTRY CITIZENS RESIDING IN THE EU: AN OVERVIEW OF ELECTORAL RIGHTS IN TEN THIRD COUNTRIES

### KEY FINDINGS

- Ten countries were selected for analysis either due to their significance as destination countries for emigration from the EU, as source countries of immigration in the EU, or because they offer important policy examples.
- Data on international migration at global level is poor and unreliable. The tables in this section use UNPD data on foreign born. Citizenship is more significant than place of birth for voting rights, but there is no reliable global data on the location of citizens.
- All ten countries allow registered non-resident citizens to vote in national elections, although generally not in local elections. The means of non-citizen voting vary widely: postal, electronic, proxy, at consulate or only in case of return.
- Postal ballots are the most common, although US voters have to sign a waiver acknowledging that their vote is not secret, and Turkey's Constitutional Court has criticised postal ballots for the same reason.
- Explicit limits on the period of time which voters are allowed to have spent out of the country also vary. Brazil sets a minimum time, whereas New Zealand and Canada set maximums. In practice, enforcement of these rules varies.
- Non-citizen voting is very rare. In national elections, only New Zealand enfranchises permanent residents regardless of nationality. Brazil allows Portuguese citizens to vote, and both Switzerland and the US permit limited local voting.
- No governments oppose the voting of their residents in foreign elections, although Canada has expressed opposition to incorporation into territorially-defined foreign constituencies.

This section reports on electoral rights in ten selected non-European countries: Brazil, Canada, India, Morocco, New Zealand, Serbia, Switzerland, Turkey, Ukraine and the USA. The following countries were selected for the study according to the following criteria:

1. the high numbers of EU citizen residents;
2. the high numbers of third-country nationals residing in EU Member States;
3. reciprocity arrangements;
4. other electoral rights, laws or policies that are of special interest;
5. neighbouring countries with special relations with the EU (EEA, accession candidates, association agreements); and
6. the deficit in diplomatic representation of EU Member States.

Brazil: reciprocity agreements on electoral rights with Portugal, major source country for immigration in Portugal, but recently also destination for emigration from Portugal.

Canada: major overseas destination for emigration from the EU, special restrictions on external voting on Canadian territory.

India: major source country for immigration into the EU, long experience with democratic elections.

New Zealand: overseas destination for emigration from the EU, residence-based franchise in general elections; only 9 Member States are diplomatically represented.

Morocco: major source country for immigration in several EU Member States.

Serbia: EU accession candidate, major source country for immigration in several EU Member States.

Switzerland: free movement treaty with the EU and major destination for emigration from the EU, local and cantonal voting rights for non-citizens in several Cantons.

Turkey: EU accession candidate, largest source country for immigration in several EU Member States and on aggregate across EU.

Ukraine: ENP state and major source country for immigration in several EU Member States.

USA: largest overseas destination for emigration from the EU.

Each of these countries is considered in turn in more detail. Each section presents a table of common data on migration and electoral systems, from a variety of sources: population statistics are from the World Bank (2012), migration data are from UNPD (2012), data on electoral systems are from IDEA (2012). No data on migration are perfect. UNPD figures are based upon data from countries of destination, and, in most cases, they report total foreign born (there are some exceptions for countries which only collect statistics for foreign citizens). Data on individuals born in a specific country do not match up exactly with the citizens of that country, and, in the case of elections, it is the number of citizens that is of most concern.

Each section considers data on three issues:

1. Conditions for external EU citizens exercising electoral rights in elections held in the EU: only the Canadian government has raised any objections to particular electoral systems that include Canada in a directly represented constituency. The Canadian government has not raised any objections to other forms of external voting.
2. Rights for external EU citizens to participate in elections in those countries: at national level, Brazil allows Portuguese nationals to participate in all elections, and New Zealand allows all permanent residents to vote in national elections after one year of residence. In Switzerland and the USA, non-citizens are allowed to vote in certain local elections. The other six countries restrict the franchise to citizens.
3. External electoral rights of nationals of those countries residing in the EU: all ten countries considered here allow non-resident citizens to vote in one form or another in national elections.

## 6.1 Brazil

Table 13: key statistics: Brazil

Total population (2012)	196,655,014
Estimated total emigrants (2012)	1,524,222
Estimated emigrants in EU27 + Croatia (2012)	444,632
Estimated total residents foreign born (2012)	688,026
Estimated residents foreign born, born in EU27 + Croatia (2012)	388,303
Parliament type	Bicameral
Electoral system	PR

Source: World Bank (2012); UNPD (2012); IDEA (2012)

Voting is compulsory in Brazil for all literate citizens between the ages of 18 and 70. This includes non-resident Brazilian citizens and any non-citizens who are allowed to vote.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: Portuguese nationals represent sixty per cent of the EU citizens in Brazil and a third of all foreign nationals resident in Brazil. The special relationship between Brazil and Portugal offers them political rights that are the equivalent of those granted to Brazilian citizens. There is no evidence that any other external voting operations would be affected in any way in Brazil. The second most significant group of EU residents in Brazil are Italians. UNPD data estimate there are 57,088 Italian-born residents in Brazil but the Italian authorities recorded 189,228 registered electors in Brazil for the April 2008 Italian elections.<sup>170</sup> The discrepancy is explained by the significant historical migration from Italy to Brazil and the provision in Italian nationality laws that allows their descendants to claim citizenship, and therefore voting rights.<sup>171</sup> A much larger number could potentially claim Italian nationality; Tintori (2011) cites an interview with an official from the Italian consulate in Brazil who suggested that as many as 12 million people have the potential to claim Italian nationality under the current nationality laws.

Rights for external EU citizens to participate in elections in Brazil: Non-citizens are generally not permitted to vote in Brazilian elections at national, regional or municipal level. This covers all long-term residents with the sole exception of Portuguese citizens. The 1988 Brazilian Constitution provided rights for Portuguese nationals which are equivalent to those accorded to Brazilians (including voting in all elections) whenever there is reciprocity (Article 12). Following the Friendship Treaty of Co-operation and Consultation between Brazil and Portugal of 22 April 2000, which was fully implemented in Brazil by Decree no. 3,927 of 19 September 2001, this constitutional provision was fully enacted. Portuguese citizens who have been permanently resident in Brazil for a period of at least three years may request voting rights from the Minister of Justice, on the condition that they can read and write Portuguese and enjoy political rights in Portugal.<sup>172</sup>

External electoral rights of Brazilian nationals residing in the EU: Brazilian citizens living outside the country are currently only able to participate in presidential, not parliamentary, elections. In the plebiscite of 21 April 1993, the participation of emigrants in the system of national government was also facilitated and it is expected that emigrants would participate in any future plebiscite. The 1988 constitution provides the legal basis for emigrant participation and the 1989 presidential election was the first time that emigrants were allowed to vote. The electoral law stipulates that those who are temporarily out of the country, such as tourists or students, are not able to register, but this is not systematically enforced (Calderon-Chelius 2007). Registration and voting takes place at diplomatic missions. If more than 400 individuals are registered at any particular mission, additional voting facilities must be found. Registration is limited, with fewer than 100,000 registered

<sup>170</sup> Italian Archivio Storico Delle Elezioni, available at: <http://elezionistorico.interno.it/index.php>.

<sup>171</sup> Discrepancies will always arise with these figures but this is likely to be the largest.

<sup>172</sup> Website of Brazilian Ministry of Foreign affairs, available at:

<http://portal.mj.gov.br/data/Pages/MJ7787753DITEMID9ABDF6611F5B44CDA8B33C5D96338A47PTBRIE.htm>, last accessed 23 December 2012.

in the most recent (2010) elections. Although voting is compulsory for those who have registered, the participation of emigrants has fallen, from a high of 70% in 1994 to below 50% in 2006.

## 6.2 Canada

Table 14: key statistics: Canada

Total population (2012)	34,482,279
Estimated total emigrants (2012)	1,402,106
Estimated emigrants in EU27 + Croatia (2012)	167,106
Estimated total residents foreign born (2012)	7,202,340
Estimated residents foreign born, born in EU27 + Croatia (2012)	2,282,546
Parliament type	Bicameral
Electoral system	FPTP

Source: World Bank (2012); UNPD (2012); IDEA (2012)

Canada is a federation of 10 provinces and 3 territories. Elections occur separately for federal and provincial/territorial assemblies.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: There are an estimated 2.2 million EU citizens living in Canada, although most are probably dual nationals. Almost half of this total is accounted for by British and Italian citizens. The Canadian government has expressed its opposition to electoral systems which establish territorially-defined constituencies with directly elected representatives. In the EU, France, Portugal and Romania currently operate such systems<sup>173</sup>. In January 2012, the French ambassador was invited to the foreign ministry for a discussion of the upcoming French elections (National Post 26 January 2012) and a compromise was agreed upon which saw French electors in Canada voting mainly by post or electronic means in the June 2012 elections (Globe and Mail 6 June 2012). Discussions with French electors and academic experts in Canada suggest that, in this case, Canadian governmental opposition was aggravated by the high profile campaigning as much as the election itself.

Rights for external EU citizens to participate in elections in Canada: only Canadian citizens may vote in Canadian elections at federal and provincial/territorial level. Permanent residents are not able to vote. There are no exceptions to this rule.

External electoral rights of Canadian nationals residing in the EU territory: Canadian citizens resident outside of Canada have been able to participate in Canadian elections since 1944. Article 222(1) of the Electoral Law of Canada stipulates that a Canadian citizen can vote providing they have: (i) been previously resident in Canada; (ii) have resided outside Canada for less than 5 consecutive years; and (iii) intend to return to Canada in the future. Until 2006, this provision was loosely interpreted so that Canadian citizens only had to return to Canada every five years to retain their right to vote. Since the 2006 elections, Canada has begun to disqualify individuals who have not resided in Canada in the previous five years. A judicial challenge to this decision is currently underway upon the basis that it contravenes Article 3 of the 1982 Constitution Act which guarantees 'every citizens of Canada' the right to vote.<sup>174</sup>

<sup>173</sup> Although the Italian electoral system also has external constituencies the PR system means that electors in these constituencies do not have a single representative.

<sup>174</sup> Court documents related to this challenge are available at: <http://www.cavalluzzo.com/canadiansvotingabroad>, last accessed 2 January 2013.

## 6.3 India

Table 15: key statistics: India

Total population (2012)	1,241,491,960
Estimated total emigrants (2012)	11,398.091
Estimated emigrants in EU27 + Croatia (2012)	1,025,065
Estimated total residents foreign born (2012)	5,436,012
Estimated residents foreign born, born in EU27 + Croatia (2012)	12,419
Parliament type	bicameral
Electoral system	FPTP

Source: World Bank (2012); UNPD (2012); IDEA (2012)

India is a semi-federal republic. The 28 states and 7 territories have legislative independence; all states and 2 of the 7 territories have legislative assemblies and hold separate elections but these may be dissolved by central government.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: Relatively few EU citizens are recorded as being permanently resident in India. Only German, French and UK nationals are resident in any significant numbers. There is no record of any barrier being imposed on their participation in external elections in the EU.

Rights for external EU citizens to participate in elections in India: According to Article 16 of the Representation of the People Act, 1950, only Indian citizens are able to vote. Since the electoral roll is common to elections to the national parliament (Lok Sabha), regional legislative assemblies and local councils (Panchayats), this rule covers all elections. There are no exceptions to this and all permanent residents without citizenship are officially excluded from the franchise, although there are reports about widespread voting by foreign residents, including those with irregular statuses (Sadiq 2009).

External electoral rights of Indian nationals residing in the EU territory: The Representation of the People Act 1950 specified that individuals had to be 'ordinarily resident' in the constituency in order to register to vote. Article 20 defined 'ordinarily resident' in particularly narrow terms, stating that owning a house in a constituency was not sufficient to be considered 'ordinarily resident' there, and that those who are more than 'temporarily absent' (though 'temporary' is not defined) would be ineligible. Exceptions were made for members of the armed forces and those in government employment. This restriction, which disenfranchised the vast majority of those permanently resident outside India, remained in place until the Representation of the People (Amendment) Act 2010. Following the publication of the Registration of Electors (Amendment) Rules 2011, this act came into force on 10 February 2011. Indian nationals residing outside India are now able to register to vote in the constituency stated in their passport, and stand for election, providing they have not acquired the nationality of any other country. However, no provision is made for external voting so electors can only vote if they are physically present in the constituency on polling day. The most recent general election in India was in 2009 and the next will be in 2014 so this change has not yet been put into practice at national level. In 2011, there were elections to five legislative assemblies but participation was limited. According to the Times of India (9 January 2012), only one external voter participated in the constituent assembly elections in West Bengal.

## 6.4 Morocco

Table 16: key statistics: Morocco

Total population (2012)	32,272,974
Estimated total emigrants (2012)	2,815,219
Estimated emigrants in EU27 + Croatia (2012)	2,405,830
Estimated total residents foreign born (2012)	49,098
Estimated residents foreign born, born in EU27 + Croatia (2012)	6,809
Parliament type	Bicameral
Electoral system	PR

Source: World Bank (2012); UNPD (2012); IDEA (2012)

Morocco is a constitutional monarchy with regular direct elections to the lower house of Parliament, most recently held in 2011. Local elections were last held in 2009.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: The permanently resident population of EU nationals is very small, mostly French and Italians. There is no record of any problems with external electoral participation in elections held in Europe.

Rights for external EU citizens to participate in elections in Morocco: Only Moroccan citizens are able to vote in national elections. The 2011 constitution (Article 30) introduced the right for resident foreign nationals to participate in local elections. There has been no revision of the 1997 Electoral Code published. Some new legislation implementing changes foreseen in the constitution have been approved but they do not deal with questions relating to the participation of resident non-citizens or non-resident citizens. The next local elections are due in June 2013.

External electoral rights of Moroccans residing in the EU territory: More than 85% of the approximately 2.5 million Moroccan emigrants are resident in the Member States of the EU. Their voting rights have changed substantially over time. From 1984 to 1992, Morocco was one of the first countries to introduce direct representation of emigrants. From 1992, emigrants were no longer permitted to vote, although, in 2005, the King called for the re-introduction of the right to vote. In 2007, the Conseil de la Communauté Marocaine à l'Etranger (CCME) was established by the King as a form of indirect representation of emigrants. It comprises 50 directly appointed emigrant members. The Constitution of 2011 guarantees the right to vote to emigrants (Article 17). The participation of emigrants in the referendum to approve this constitution in July 2011 was facilitated with 520 voting booths open outside Morocco for three days, but participation was disappointing; 266,301 Moroccan emigrants participated, or less than 10% of all Moroccans registered in Moroccan consulates. Partly as a result of this limited response, emigrants who were not able to return to Morocco to participate in the legislative elections in November 2011 were granted a proxy vote, justified by the cost and logistical complexity of organising a direct vote so soon after the constitutional referendum. Proxy votes were restricted so that electors in Morocco were allowed to vote for a maximum of one external elector each. The electoral law was drawn up immediately before the elections and was somewhat rushed. Nevertheless, interviews at the CCME suggested that a direct overseas vote would not be organised for the next legislative elections either, due to the difficulty of ensuring equal access to polling stations for all emigrants around the world.

## 6.5 New Zealand

Table 17: key statistics: New Zealand

Total population (2012)	4,405,200
Estimated total emigrants (2012)	587,348
Estimated emigrants in EU27 + Croatia (2012)	83,021
Estimated total residents foreign born (2012)	962,072
Estimated residents foreign born, born in EU27 + Croatia (2012)	93,451
Parliament type	Unicameral
Electoral system	Mixed

Source: World Bank (2012); UNPD (2012); IDEA (2012)

New Zealand holds local and national elections, it is divided into 16 provinces but these serve no electoral function. It is a constitutional monarchy and parliamentary democracy. Conditions for external EU citizens exercising electoral rights in elections held in the EU: EU citizens are a small minority of immigrants in New Zealand, and they are chiefly Dutch, Irish and British. There is no evidence of any difficulty with their participation in elections held in Europe.

Rights for external EU citizens to participate in elections in New Zealand: New Zealand is almost unique at a global level since all permanent residents have the right to vote at both local and national elections. This was first introduced in 1975 and is currently provided by Article 74(a)(ii) of the 1993 Electoral Act. The right is gained after one year of continuous residency and, for permanent residents, is lost if they spend more than one year outside the country.

External electoral rights of nationals of New Zealand residing in the EU territory: Anyone qualified to vote (including permanent residents) who will be absent from their polling district on polling day may vote as a special voter (Electoral Act Article 60). This includes those who will be out of the country, for periods up to a year. Provisions for special voters may be tailored to the needs of particular voters and may change from one election to another. These arrangements have always involved the possibility of voting by post as well as the provision of polling stations outside the country. Votes are counted in the polling district of the most recent residence. Citizens are disqualified from voting if they have not visited New Zealand for three-year period. Permanent residents are disqualified after a year of residence abroad.

## 6.6 Serbia

Table 18: key statistics: Serbia

Total population (2012)	7,261,000
Estimated total emigrants (2012)	1,055,505
Estimated emigrants in EU27 + Croatia (2012)	692,315
Estimated total residents foreign born (2012)	525,388
Estimated residents foreign born, born in EU27 + Croatia (2012)	197,162
Parliament type	Unicameral
Electoral system	PR

Source: World Bank (2012); UNPD (2012); IDEA (2012)



Serbia is a parliamentary democratic republic with an elected president and a unicameral parliament.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: more than half of the nationals of the EU27 and Croatia resident in Serbia (listed above) are actually from Croatia. There is no record of any difficulties faced by EU nationals participating in elections in Europe.

Rights for external EU citizens to participate in elections in Serbia: only Serbian citizens are allowed to vote in national and local elections, though dual nationality is openly tolerated, and, at least until 2010, Serbia made it very easy for anyone of Serbian origin in neighbouring newly independent states to be granted Serbian nationality. Serbian nationality law is still relatively liberal in admission (naturalisation) (Rava 2010).

External electoral rights of nationals of Serbia residing in EU territory: The Constitution of Serbia guarantees the right to vote and be elected to all citizens (Article 52). It does not specify that they have to be present in the country in order to be allowed to do so. According to the Law on the Single Electoral Roll of 27 December 2011, voters must register with their municipality of origin, and all votes are counted in that municipality (Canham 2012). Voting may take place outside the country and polling booths are organised to allow this, although all voting must take place in person.

## 6.7 Switzerland

Table 19: key statistics: Switzerland

Total population (2012)	7,907,000
Estimated total emigrants (2012)	395,841
Estimated emigrants in EU27 + Croatia (2012)	254,884
Estimated total residents foreign born (2012)	1,762,797
Estimated residents foreign born, born in EU27 + Croatia (2012)	1,219,528
Parliament type	Bicameral
Electoral system	PR

Source: World Bank (2012); UNPD (2012); IDEA (2012)

Switzerland is a confederation of 26 self-governing cantons. Relevant legislation may vary between cantons and even between municipalities within the same canton.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: The large majority of immigrants in Switzerland are, unsurprisingly, from the EU, and the principal nationalities are German, French, Italian and Portuguese. The approximately 150,000 French nationals living in Switzerland comprise an entire constituency in the post-2012 organisation of the National Assembly (Zone 6). There are no recorded disruptions to, or difficulties with, the external participation of individuals in these elections.

Rights for external EU citizens to participate in elections in Switzerland: Only Swiss citizens are able to participate in national elections. Participation in cantonal and municipal elections varies, as do the laws governing such participation: nine of the 26 cantons allow non-citizens to vote in elections in part or all of the canton (Appenzell, Basle, Berne, Fribourg, Geneva, Grisons, Jura, Thurgovie, Vaud), although, in some cases, this involves only a small number of communes. Residency requirements vary from 8 to 10 years, with some cantons specifying that all of this time has to be spent in the canton itself, rather than elsewhere in Switzerland.

External electoral rights of nationals of Switzerland residing in the EU territory: Swiss citizens living outside Switzerland (known as *Auslandschweizer*) maintain and can pass on Swiss nationality and continue to enjoy all rights associated with citizenship, including voting rights, as long as they are registered with their local embassy (Achermann et al. 2010). According to the Federal Law on the Political Rights of *Auslandschweizer* of 1975, individuals select a particular canton in which they have previously lived as their 'voting canton' and they cannot change this while they are abroad (Article 51). Polling is not organised outside the country. Individuals are able to return or vote by post. Federal law empowers cantons to introduce electronic voting as they see fit.

## 6.8 Turkey

Table 20: key statistics: Turkey

Total population (2012)	73,639,596
Estimated total emigrants (2012)	4,284,137
Estimated emigrants in EU27 + Croatia (2012)	3,686,463
Estimated total residents foreign born (2012)	1,410,947
Estimated residents foreign born, born in EU27 + Croatia (2012)	1,057,689
Parliament type	Unicameral
Electoral system	PR

Source: World Bank (2012); UNPD (2012); IDEA (2012)

Turkey is a parliamentary democratic republic, divided into 81 provinces.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: More than 80% of immigrants from the EU in Turkey are Bulgarian and German citizens. There is no record of any difficulties with electoral participation of EU citizens residing in Turkey in elections held in their EU Member States.

Rights for external EU citizens to participate in elections in Turkey: Permanent residents are not able to vote in national elections for the Turkish Grand National Assembly, Presidential elections or local elections. Only registered Turkish citizens can vote.

External electoral rights of nationals of Turkey residing in the EU territory: The Amendment to the Basic Provisions on Elections and Voter Registrations, published on 18 May 2012 allows Turkish citizens living overseas to vote in their countries of residence for the first time. Previous legislation required Turkish citizens to return to Turkey in order to vote and ballot boxes were set up at customs gates for this purpose. This legislation enters into force one year after its publication, i.e., on 18 May 2013 and thus will be in place for the next election – the presidential election scheduled for 2014. A variety of means of voting are proposed in the amendment and will vary depending on the number of voters in each country, including voting in person, electronic voting and postal voting (Article 5), although ballots will continue to be set up at land and air borders. The Constitutional Court cancelled the possibility of using postal ballots due to concerns that this violates the secrecy of the vote (Kadirbeyoglu 2012). There are no restrictions on the time abroad mentioned in the legislation.

## 6.9 Ukraine

Table 21: key statistics: Ukraine

Total population (2012)	45,706,100
Estimated total emigrants (2012)	6,356,532
Estimated emigrants in EU27 + Croatia (2012)	1,093,723
Estimated total residents foreign born (2012)	5,257,527
Estimated residents foreign born, born in EU27 + Croatia (2012)	46,065
Parliament type	Unicameral
Electoral system	Mixed

Source: World Bank (2012); UNPD (2012); IDEA (2012)

Ukraine is a presidential democratic republic, divided into 24 oblasts and two municipalities. Crimea is an autonomous republic.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: A small proportion of permanent residents in Ukraine are from EU Member States, chiefly Latvia, Lithuania and Estonia as other former members of the USSR. There is no indication that they have had any problems with external participation in elections.

Rights for external EU citizens to participate in elections in Ukraine: The Election Code of Ukraine considers Presidential and Parliamentary elections as national elections and categorises all other elections as local. These include elections in Crimea and all other sub-national elections (oblasts, cities, and villages). Only Ukrainian citizens can participate in both national and local elections.

External electoral rights of nationals of Ukraine residing in the EU territory: External voting is allowed, but only for national (presidential and parliamentary) elections. External electors are not permitted to vote in local elections, as stipulated by the Law on Elections of Members of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement and City Mayors (Article 3). External voters are permitted to stand for election at either national or local level. External electors are also prevented from voting in referenda (Law N 1287-XII Article 7).

## 6.10 USA

Table 22: key statistics: USA

Total population (2012)	311,591,917
Estimated total emigrants (2012)	2,630,940
Estimated emigrants in EU27 + Croatia (2012)	631,983
Estimated total residents foreign born (2012)	42,813,281
Estimated residents foreign born, born in EU27 + Croatia (2012)	4,914,835
Parliament type	Bicameral
Electoral system	FPTP

Source: World Bank (2012); UNPD (2012); IDEA (2012)

The USA is a federal presidential democratic republic comprised of 50 states which retain very substantial legislative authority.

Conditions for external EU citizens exercising electoral rights in elections held in the EU: The USA is home to more permanent residents from the EU than any other country in the world; a million German and British nationals and half a million Poles and Italians, in addition to smaller, but nonetheless substantial, numbers from most other Member States. There is no record of any problems for these individuals participating in elections in their EU home state.

Rights for external EU citizens to participate in elections in the USA: Resident aliens are not able to participate in any federal elections (presidential or congressional).<sup>175</sup> Historically, it was common for states to allow non-citizens to vote, but, by the 1930s, this had been entirely abandoned. At least three states (California, Minnesota and Maine), in addition to Washington DC, have had votes on the introduction of voting rights for non-citizens since 2000, but none has been successful. A potential problem to enfranchisement at state level is that state voters are constitutionally recognised as voters in federal elections (Renshon 2008) so this would create a legislative conflict. In a few rare cases, non-citizens are able to vote in local elections: these include the towns of Amherst and Cambridge in Massachusetts and several small communities in Maryland. In New York City, non-citizens with children in public schools were allowed to participate in school board elections until elected school boards were eliminated in 2003, and there are several other very local examples of similar practices, such as Chicago (Kini 2005).

External electoral rights of nationals of the USA residing in the EU territory: Federal law makes provision for external voting for federal elections for both military personnel and civilians residing abroad (Uniformed and Overseas Citizens Absentee Voting Act 1986). A study by the Pew Centre on the United States identified very different practices operating between states (Pew 2007). Since then, the 2009 Military and Overseas Voter Empowerment (MOVE) Act has set federally-defined standards, and in 2010 and 2011, 47 states and the District of Columbia introduced new legislation covering overseas voters (Pew 2012). All states allow external voting in state elections. For both state and federal elections, it is the responsibility of the individual states to arrange the mechanisms, and these vary slightly, but not appreciably, from state to state. For example, voters in Alaska are permitted to return their ballot papers by fax, but most states stipulate postal voting. The greatest challenge to the facilitation of the overseas vote is the time taken to return ballot papers (Cain et al. 2008).

---

<sup>175</sup> The US Citizenship and Immigration Services Website provides the most current explanation of this; available at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=fb853a4107083210VgnVCM10000082ca60aRCRD&vgnnextchannel=fb853a4107083210VgnVCM10000082ca60aRCRD>, last accessed 3 January 2013.

## 7 POLICY RECOMMENDATIONS

### 7.1 The External Franchise of EU Citizens in EP Elections

EU citizens residing in other Member States have the right to cast their vote or stand as candidates in EP elections in either their country of residence or country of citizenship. However, this basic principle of the franchise in EP elections is severely constrained by the right of Member States to determine under their own law as to whether and under which conditions to grant an external franchise to citizens residing outside their territory. Some EU citizens do not have the opportunity to vote in European Parliament elections in their country of origin, as there are no voting rights or only restricted voting rights there for non-resident citizens. Therefore, although every voter has only one vote, some transnational voters currently have the opportunity to choose the country in which they exercise it, whilst others do not. A strong case can be made for action by the EP to support proposals to bring about a harmonisation of conditions that guarantee a sufficiently equal franchise for all EU citizens in EP elections. Given the current limitations on the competences of the EU in relation to matters of citizenship, and, in particular, EP elections, where the only reference is to rights vis-à-vis the state of residence, it would be essential first for there to be an amendment to the treaties under the simplified amendment process provided for under Article 25(2) TFEU:

“On this basis, and without prejudice to the other provisions of the Treaties, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to strengthen or to add to the rights listed in Article 20(2). These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements.”

Such an amendment could open up the possibilities for a more far-reaching equality between EU citizens with regard to the exercise of the right to vote in EP elections now guaranteed in Article 39 CFR.

Thereafter, the provisions of Directive 93/109/EC could be modified to create a greater degree of consistency in the external voting rights of EU citizens living in other Member States. The retention of the existing provisions with regard to country of residence, accompanied by the universalisation of rights in the country of origin (on similar terms as for resident FCCs), would give substance to the choice of country implied by Art. 4(1). The right of Member States to determine voting rights for their own citizens in other elections need not be affected. A precedent has been set by Denmark, which extends the franchise to all its citizens living in the EU in European Parliament elections, but only to selected ones in national elections.

A more far-reaching reform would aim at creating equal conditions for the exercise of the franchise in EP elections by EU citizens residing in third countries. Whether such a reform should be promoted depends on whether the EP is seen as representing the citizens of the EU as such, or only EU citizens residing within the territory of the Union. The current regime is, in any case, problematic from a perspective of equal representation, since it leaves it to the Member States to determine whether their citizens in third countries are included in the EU demos. In contrast to those residing in another Member State, these citizens of the Union are fully disenfranchised if their country of origin does not provide them with an external franchise. The EU itself could facilitate the extension, as well as the

exercise, of the franchise by offering the services of EU representations in third countries as polling stations.

A clearly desirable reform would create equal conditions for candidacy rights in EP elections. For Second Country Citizens living in the Member States that prohibit membership of political parties to non-nationals (e.g., Lithuania, Poland and the Czech Republic) it is difficult to take up their candidacy rights under Directive 93/109/EC. The only real opportunity is to be politically active in their country of nationality.

Equally desirable, but more difficult to argue upon the basis of the current principles for the EP franchise is a greater degree of consistency in the methods of casting a vote, which currently make access to the ballot harder in some countries than others. A first step might be to universalise the right to a postal vote, although there may be constitutional obstacles and concerns regarding the secrecy of the vote in some countries.

## 7.2 The External Franchise of EU Citizens in National and Sub-national Elections

The enfranchisement of EU citizens in national and sub-national elections is important not only from the perspective of the Member States of which they are citizens, but also from the perspective of democracy at EU level. Since the EU does not have the competence to regulate Member State policies in this regard – with the exception of the local franchise for SCCs, which is not an object of this study – our policy recommendations are primarily addressed to the Member States.

Freedom of movement as the core right of EU citizenship should not result in a loss of fundamental rights. Citizens who take up residence in another Member State enjoy the right to vote or stand as candidate there in EP and local elections, but may lose the right to vote in any national election unless either their state of residence or of citizenship grants them a national franchise. Currently, all Member States grant external voting rights to at least some of their citizens residing abroad but no Member State grants voting rights in national elections to EU citizens as such – only the UK and Ireland afford each other such rights upon a reciprocal basis, while Cypriot and Maltese citizens can vote in the UK through their Commonwealth membership. In order to ensure that EU citizens who exercise their right of free movement within the EU retain a right to participate in national elections, the most promising strategy is thus to promote the removal of restrictions on external voting in national elections for at least all those citizens residing in another Member State.

Alternatively, the current right of EU citizens to participate in EP and local elections in another Member State in which they reside could be extended to regional and national elections. This proposal, which would require more far-reaching constitutional changes in nearly all the Member States, is currently being promoted by a European Citizens Initiative.<sup>176</sup>

EU citizens are not only directly represented in the EU through the European Parliament, but also indirectly through the Council of the EU, which represents Member State governments, which, in turn, represent these Member States' citizens. Citizens excluded from voting in national elections in their Member State are thus not fully represented in the legislative institutions of the EU either. This argument lends additional force to the proposal to extend external voting rights in national elections and – unlike the argument based upon

---

<sup>176</sup> See [www.letmevote.eu](http://www.letmevote.eu).

free movement – applies also to EU citizens residing in third countries. A more general extension of external voting rights also to citizens residing in third countries would thus improve the equality of the indirect representation of EU citizens.

At the same time, a universal extension of the national franchise to all citizens residing abroad may also be regarded as illegitimate if it includes voters who have never resided in the EU but have acquired citizenship of an EU Member State through descent or extra-territorial naturalisation. A consistent policy of promoting the external franchise for EU citizens in third countries would, therefore, also have to include recommendations on Member States' policies with regard to citizenship status itself, such as limitations on *iure sanguinis* transmission across multiple generations born abroad or facilitated access to citizenship by ethnic kin minorities and the descendants of former citizens.

### 7.3 Diplomatic and EU Representation in Third Countries

The data collected for this report show that the number of EU citizens residing in third countries where they lack diplomatic and consular representation has increased as more Member States have reduced their external representation networks for fiscal reasons. At the same time, the Treaty of Lisbon has strengthened the tasks of EU delegations in relation to the co-ordination of the EU and the Member States meetings in third countries,<sup>177</sup> and the EEAS has successfully co-ordinated and supplemented the protection of EU citizens in distress during the Arab revolutions. More co-ordination roles could be attributed to the EU delegations in the field of consular protection and a broader field of consular services could be covered, including the co-ordination of the participation of EU citizens residing in third countries in European Parliament elections.

Two measures have been promoted in order to address the general problem of unrepresented EU citizens: 1) enhancing horizontal co-operation between the Member States' external representations and vertical co-operation, i.e., between the Member States' external representations and EU delegations; and 2) taking advantage of the extensive network of EU delegations and the capabilities of the EEAS as a whole.<sup>178</sup> These measures would not only contribute to enhancing the consular protection of EU citizens in third countries, but could also facilitate their participation in EP and national elections in which the EU Member State of which they are citizens grants them external electoral rights but lacks representations from where these rights can be exercised.

Co-location agreements between EU delegations and Member State representations as well as those between several Member States should be extended to more third countries and should cover a broader range of consular services, including assistance in external voting in EP and national elections.

Even where there is a national consular representation, EU citizens often have difficulties in accessing these across large geographic distances or where conditions for travel in the country are difficult. An external representation of a Member State should be considered to

---

<sup>177</sup> The EU delegations, instead of the embassy of the Member State holding the Presidency, head the co-ordination meetings of the external representations of the Member States in third countries.

<sup>178</sup> These steps were seen by the European Commission, European Parliament and most of the Member States as making the exercise of consular protection for EU citizens more efficient. See the European Parliament Report on the proposal for a Council Directive on Consular Protection for Citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS)); Draft opinion for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a Council Directive on Consular Protection for Citizens of the Union abroad (PE487.728v01-00, rapporteur: Tadeusz Zwiefka); Commission Staff Working Paper Impact Assessment, accompanying the document Proposal for a Directive of the Council on Co-ordination and Co-operation Measures regarding Consular Protection for Unrepresented EU Citizens, Brussels, 14 December 2011 SEC (2011) 1556 final.

be non-accessible when the EU citizen cannot reach the EU delegation and return to his or her place of departure in the same day at least, or, in more urgent conditions, in less time. In these cases, EU representations or the consular offices of other Member States could provide assistance to EU citizens.

Member States that currently grant external voting rights but require that ballots be cast in embassies or consulates should consider introducing postal voting or electronic voting as alternative methods which could enhance participation without requiring assistance by EU representations or those of other Member States.

#### 7.4 Electoral Rights of Third Country Citizens in EU Member States

The majority of EU Member States grants some electoral rights to third country citizens. There are three main rationales for such extension of the franchise to non-citizens: historical ties, reciprocity or denizenship. The first is exemplified by the voting rights for Commonwealth citizens in all UK elections, the second by the local franchise in Spain and Portugal. The primary intention of reciprocity agreements on voting rights is to promote the political participation rights of emigrant citizens by offering similar rights to immigrants originating from major destination countries. These two principles use citizenship of origin as a criterion for selective access of third country citizens to the franchise. By contrast, a denizenship-based franchise is neutral with regard to citizenship and derives voting rights from residence, instead. This franchise is generally restricted to local level and, in rarer cases, to regional level, which indicates that it cannot substitute for naturalisation. Instead, the local franchise serves as a stepping-stone towards full political equality through naturalisation.

Eight Member States (BE, IE, SE, FI, NL, LU, EL and SK) combine territorially-inclusive citizenship laws with a residence-based franchise for non-citizens. This dual approach to immigrant political integration can be regarded as a best practice model. By contrast, reforms should be encouraged in nine Member States (AT, BG, CY, CZ, IT, LV, MA, PL and RO) that are restrictive on both dimensions and thus effectively block the political integration of immigrants, as well as five countries (DK, ES, HU, LT and SI) in which the local franchise is combined with strong restrictions on access to citizenship.

Whilst harmonising residence-based conditions is clearly beyond the scope of EU competence, the criteria regulating the acquisition of long-term resident status for third country citizens, as laid down in Council Directive 2003/109/EC, should be considered the maximum requirements for enfranchisement. The same maximum requirement of five years of lawful and habitual residence is foreseen in Article 6(1) of the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level. In accordance with a recommendation of the Council of Europe<sup>179</sup> and the current laws in Denmark, Finland, Hungary, Ireland and Sweden, a residence requirement of three years or less can be promoted as best practice.

Third country citizens' participation rates in local elections are generally low. This is partly due to the fact that the most successful and politically active immigrants more frequently choose to naturalise and thus move out of the category of third country citizens. At the same time, enhancing electoral turnout among third country nationals is important to strengthen the legitimacy of their electoral inclusion and the effectiveness of their democratic representation. Lowering registration barriers, information campaigns and

---

<sup>179</sup> Council of Europe, Parliamentary Assembly, Recommendation 1625 (2003), Policies for the integration of immigrants in Council of Europe Member States, 30 September 2003.



placing candidates with an immigrant background in constituencies or on party lists in positions where they have better chances of winning a seat are three different mechanisms that are likely to enhance voter participation.

In local elections, the franchise for EU citizens residing in another Member State provides a benchmark that has facilitated the extension of the same rights to third country citizens, especially in the five 2004 accession states (EE, HU, LT, SI and SK). By contrast, residence-based local electoral rights for third country citizens in the Nordic Member States of the EU (DK, FI and SE) and the Netherlands were already established before the introduction of the EU citizen franchise in the Treaty of Maastricht – as well as before EU membership in the case of Sweden and Finland.

By contrast with local elections, the franchise of non-citizens in regional elections at sub-state level is not regulated in any way by EU law. Only in Scotland, Northern Ireland, Wales, and in Greater London Authority elections, are rights to vote and to stand as candidates granted specifically to EU citizens (in addition to those Commonwealth citizens who enjoy a franchise in all UK elections). In Denmark, Sweden and Slovakia, regional voting rights are afforded to all foreign citizens who meet specific residence requirements. A non-citizen franchise in regional elections is thus much rarer than in local elections. With the notable exception of the UK, we observe that the stronger the constitutional competences and autonomous powers of regions are, the less likely it is that EU citizens as well as third country citizens will be granted voting rights. In Hamburg, Berlin and Vienna, EU citizens cannot even participate in elections for municipal-level legislative assemblies because these cities are also federal provinces.

An extension of the electoral rights of resident EU and third country citizens to regional levels would strengthen their political participation and integration. At the same time, it should be taken into consideration that not all Member States have regional elections and that the legislative powers of regional entities vary much more widely across Member States than those of local governments. The promotion of regional voting rights for SCCs and TCCs will, therefore, meet rather strong constitutional obstacles and political resistance.

## 7.5 Access to High Public Office

EU law permits Member States to reserve high public offices to their own citizens. All Member States make use of this exemption from free access of EU citizens to employment in other Member States, but they do so in different ways. Some have explicit constitutional provisions that require citizenship of the country as a condition for certain office holders, while others rely on ordinary laws or indirect and informal regulations that de facto exclude non-citizens. Reserving the offices of Head of State, Head of Government, minister in a national or regional level government, Member of Parliament, judge in a Constitutional Court or high ranking officer in a national army for citizens of the state does not raise any plausible concerns.

By contrast, provisions that require that such office-holders must not be dual citizens, must have acquired the citizenship of the state at birth, rather than through naturalisation, or must have been born within the territory may be seen as discriminatory by creating unequal conditions for citizens' access to such offices, or by excluding EU citizens on the ground that they hold an additional citizenship of another Member State. This report has found a few instances of such secondary conditions, but no general pattern. The 1997 European Convention on Nationality, which has been signed by 19 and ratified by 11 EU Member States, affirms a principle of non-discrimination between citizens by birth and by

naturalisation (Art. 5(2)) and asks signatory states to accept dual citizenship acquired at birth, but permits a requirement of renunciation of a foreign citizenship as a condition for naturalisation (Art. 7(1a)). The Tanase judgment of the European Court of Human Rights<sup>180</sup> is relevant in this regard. When the ECtHR struck down a Moldovan law banning candidates who hold dual citizenship from participating parliamentary elections as a violation of Article 3 of Protocol No. 1 to the ECHR, it made it clear that this judgment applied specifically to Moldova as a state that explicitly allows for dual citizenship and has particularly large numbers of dual citizens in the population, and pointed out that the ban was introduced shortly before elections and had a potential to create unfair conditions for electoral competition. The judgment can therefore not be interpreted as supporting a general right of dual citizens to be candidates for high public office.

Member States should be broadly encouraged to abolish restrictions for naturalised citizens and to re-consider a ban on dual citizens' access to high public office. A general suspicion of disloyalty on any of these grounds seems unwarranted. As pointed out by the ECtHR, alternative means, such as oaths of loyalty, can be employed to ensure the loyalty of holders of high offices.

A second area of concern can be found in blanket exclusions of EU citizens from positions in the executive and judiciary branches of government. Croatia, which is the next state that will join the European Union, is an extreme case, since it appears to reserve all positions in the civil service for Croatian citizens, which is likely to be incompatible with EU law. Among the current Member States, this report has not found any such general exclusion. Instead, most Member States reserve only certain sectors of the civil service for their own citizens in accordance with the guidelines provided by the CJEU on Article 45(5) TFEU in its judgment on *Commission v Belgium*.<sup>181</sup>

All Member States exclude foreign citizens from the position of judge through explicit or implicit citizenship requirements without making any distinction between EU citizens and third country citizens (in line with their regulations on the franchise for non-citizens, the UK and Portugal make exceptions for citizens of Commonwealth or Lusophone countries respectively). Whether the role of judges in lower courts should be regarded as an exercise of a core function of national sovereignty that needs to be reserved to citizens can be reasonably disputed, but the rather uniform Member State practice with regard to judiciary positions makes reform unlikely.

While the current Member States broadly comply with the need to define these sectors or positions in the civil service to which access is denied to EU citizens, a stronger harmonisation of Member State practices in this regard would be highly desirable, as it would provide more equality of conditions for EU citizens seeking employment in the civil service of other Member States.

---

<sup>180</sup> *Tanase v Moldova*, Application no. 7/08, ECtHR, 27 April 2010.

<sup>181</sup> See the Ziller Report, fn. 128, for more detail on the application of such provisions in practice.

## ANNEX I

## Conditions of disenfranchisement for resident citizens on grounds of age, mental disability and criminal punishment (EU 27 plus Croatia)

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
AT	16	18	NO	<p>YES. There are two different situations in which disenfranchisement can occur (in both cases, it is not an automatic measure, but depends on a judicial decision):</p> <p>1) Being sentenced to prison for over a year for specific crimes (including high treason and other crimes against the state; specific (not all) crimes under the section entitled 'Crimes Against the Public Order'; crimes under the section entitled 'Crimes Against the Public Office', corruption and other similar acts, but only if the crimes were perpetrated in connection with elections or referenda; and the perpetration of an act under the Prohibition Act (1947) which relates to Holocaust denial).</p> <p>2) Being sentenced to prison for five years or more, but only in cases of intentional crimes.</p>
BE	18	21	YES, but only with a Court order.	YES, with the exception of citizens on remand or serving a sentence not exceeding four months. In these cases, prisoners can vote by proxy.
BG	18	21	YES, when subject to a judicial interdiction.	YES. Disenfranchised if serving a prison sentence.
CY	18	25	<p>NO, in practice. Disenfranchisement laws are, in practice, no longer applied. However, in the case of an individual placed in a psychiatric institution, the treating psychiatrist has the discretion to determine whether or not a patient will be able to exercise his or her right to vote.</p>	<p>In practice, NO for active voting rights and YES for candidacy rights.</p> <p>The Constitution states that that persons having been convicted of crimes of dishonesty/moral turpitude or an electoral crime cannot enjoy candidacy rights. The Law on the Elections of Members of the House of Representatives provides that persons imprisoned do not have the right to vote. According to the Data Archives Law 2002, citizens can be disenfranchised only when there is a court decision to that effect. In practice, however, prisoners have enjoyed and exercised their right to vote.</p>

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
CZ	18	21 - House of Representatives 40 - Senate	YES. Those who are fully deprived of legal capacity (zbavení zp sobilosti k právním úkon m) by court are disenfranchised. Those whose legal capacity is only restricted (omezení zp sobilosti k právním úkon m) by court are not disenfranchised.	NO, but practical problems occur in the Senate elections which take place only in one third of the 81 "Senate districts" every two years. Those prisoners who are not serving their sentence in the Senate district of their residence are de facto disenfranchised.
DE	18	18	YES. A person can be disenfranchised on the grounds of disability only if he or she has been found to require the services of another person to attend to all their affairs (which is seldom the case) and this is declared by a judge. Persons in a psychiatric hospital are excluded from the right to vote.	YES. Persons convicted for a crime punishable by imprisonment (of a minimum of one year) are disenfranchised for five years. The court may deprive the convicted person of passive and/or active voting rights for a period of from two to five years if the law expressly provides so. The measure takes effect only after the prison sentence has expired.
DK	18	18	YES - When the person concerned is declared legally incompetent.  Conditions: - the person concerned is under guardianship, in all economic aspects, because of mental illness, including severe dementia, or impaired mental development or other illness, seriously impaired health, or severely weakened state; and - the person concerned is deprived his or her legal capacity because it is necessary to prevent the person from exposing his or her assets, income or other economic interests to the danger of significant deterioration or economic exploitation.	NO for active voting rights; YES for candidacy rights - if the person is convicted of an act which makes the person unworthy of being a member of the parliament in the general opinion.
EE	18	21	YES. Riigikogu Elections Act (RT I 2002, 57, 355) Article 4 (2) stipulates that a person who has been divested of his or her active legal capacity with regard to the right to vote cannot vote. However, by virtue of the Code of Civil Procedure, a person whose legal capacity is only partially limited by the court retains the right to vote.	YES. All prisoners are disenfranchised if convicted of a criminal offence by a court, and are serving a prison sentence. Other sentenced offenders do not lose voting rights. Persons on remand in penal institutions but not serving a prison sentence can vote in a penal institution.

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
EL	18	25	YES. The current electoral law (art. 5, Presidential Decree 96/2007) foresees the deprivation of voting rights for every citizen who finds him- or herself 'according to the provisions of the Civil Code in full judicial guardianship'.	<p>YES. Disenfranchisement depends on the type of sanction (Greek Penal Code, articles 59-66):</p> <ul style="list-style-type: none"> <li>· Life imprisonment: automatic, life-time ban.</li> <li>· Imprisonment for an indefinite period - loss of electoral rights for ten years (automatic, no judicial discretion).</li> <li>· Temporary imprisonment - 2-10 years of disenfranchisement.</li> <li>· Other sorts of imprisonment - disenfranchisement can last from 2-5 years if the sentence in question is at least 1 year of imprisonment and the offender demonstrates 'moral perversion of character'.</li> <li>· Internment in a psychiatric institution (also due to crime): if the crime is a felony, the rule under (3) will apply, and if it is a misdemeanour, the rule under (4) will apply.</li> </ul> <p>The regaining of electoral rights is not automatic, but needs court approval.</p>
ES	18	18	NO, in general. However, persons can be disenfranchised by a judicial decision on incapacity or judicial authorisation for interns in a psychiatric hospital. The judge must expressly decide on disenfranchisement.	NO, with regard to active voting rights; YES, with regard to candidate rights. Article 6(2) LOREG establishes that anyone condemned to deprivation of liberty, for whatever crime, cannot stand as a candidate while in prison. The forfeiture of eligibility rights is, therefore, a compulsory accessory punishment to any person sentenced to prison.
FI	18	18	NO, in general. However, enfranchisement can be removed if the person is under guardianship by the declaration of the court.	NO

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
FR	18	18	NO, in general. However, when ordering or renewing a measure of guardianship, the judge must rule on the retention or abolition of the right to vote of the protected person. (Article L5 EC)	YES, but this is not automatic. A felony or a misdemeanour may be punished by the forfeiture of the right to vote/to be elected only where the law so provides (Criminal Code, Art. 131.10). Where the law so provides, disenfranchisement does not follow automatically from the conviction. It is not an automatic measure, but an additional penalty that depends on a judicial decision (Art. 132.21). Forfeiture of civic, civil and family rights may not exceed a maximum period of ten years in the case of a sentence imposed for a felony and a maximum period of five years in the case of a sentence imposed for a misdemeanour (Art. 131.26).
HU	18	18	YES. Although persons are no longer automatically disenfranchised upon the basis of guardianship, persons can be disenfranchised by a court ruling based upon an assessment of their 'limited mental ability'.	YES. The Fundamental Law requires that 'A person disenfranchised by a court for committing an offence or due to his or her limited mental capacity shall have no suffrage' (Freedom and Responsibility, Art. XIII). Exclusion from participation in public affairs is automatic in the case of convictions resulting in imprisonment, and disenfranchisement is a part of exclusion from participation in public affairs. Thus disenfranchisement is automatic in the case of imprisonment.
IE	18	21	NO	NO

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
IT	18 - Chamber of Deputies 25 - Senate	25 - Chamber of Deputies 40 - Senate	NO	<p>YES. Disenfranchisement may occur in two cases:</p> <p>1. Conviction to imprisonment. If the sanction is from 3-5 years of imprisonment, disenfranchisement will last for 5 years. If the sanction is from 5 years to life imprisonment, the disenfranchisement will be permanent.</p> <p>2. Conviction for specific crimes (embezzlement of public funds, extortion and market abuse; some offences against the judicial system; offences relating to the abuse of power) regardless of the sanction imposed and the duration of the sentence. These lead to a ban from public office (which includes disenfranchisement).</p>
LT	18	25	YES. Mentally disabled persons are disenfranchised. The necessary condition in order to disenfranchise them is by a judicial decision which declares a mentally disabled person to be incapable (legally incompetent due to mental disability).	NO (with regard to active voting rights); YES (with regard to candidacy rights): all persons who have not yet served a sentence imposed by a court may not be elected to the Seimas.
LU	18	18	YES. Adults under guardianship are disenfranchised (Art. 6 of electoral law).	YES. Convicts and persons, who, by way of sanction, are deprived of the right to vote are disenfranchised (Art. 6 of electoral law)

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
LV	18	21	<p>YES. According to Article 2 of the Saeima Election Law, persons who have been declared mentally disabled according to the law are not entitled to vote. According to Latvian Civil law there is a special procedure by virtue of which a person is declared mentally disabled by the court.</p> <p>According to Article 5 of the Saeima Election Law, persons who have been declared mentally disabled according to the law are not entitled to stand as candidates or be elected in the Saeima.</p>	<p>PARTIALLY - Articles 451 and 452 of the Saeima Election Law provide for procedures on how detained persons and prisoners participate in the Saeima elections. Article 5 of the Saeima Election Law provides that a person cannot stand as candidate or be elected if he or she:</p> <ul style="list-style-type: none"> <li>- is serving a sentence in prison;</li> <li>- has been sentenced for a crime which was committed deliberately; except if person has been rehabilitated or if previous criminal record has been expunged or annulled;</li> <li>- has committed a criminal offence in a state of mental disability or a state of limited mental competency or, after committing a crime, has become mentally ill and is incapable of taking conscious action or controlling it and, as a result, has been subjected to compulsory medical treatment or the case has been dismissed without applying such a compulsory measure;</li> <li>- is working for foreign security, intelligence or counter-intelligence services, or had been working for the USSR, the Latvian SSR security, intelligence or counter-intelligence services except the persons who were employed in the planning, finance or administrative departments of the Committee of State Security of the USSR or the Latvian SSR;</li> <li>- was active in the CPSU (the CP of Latvia), the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees after 13 January 1991;</li> <li>- has been convicted with a prohibition to run for elections of the Saeima, the European Parliament, city councils and municipality councils except if the candidate has been exonerated or the criminal record has been expunged or annulled.</li> </ul>



	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
MT	18	18	YES. The constitution of Malta denies voting rights to persons 'interdicted or incapacitated for any mental infirmity by a court in Malta or [...] otherwise determined to be of unsound mind'. A Medical Board set up by virtue of section 14 of the General Elections Act is entrusted with processing such cases. The decision of the Medical Board is final and binding.	YES. According to Article 58 (b) of the Constitution of Malta, prisoners are disenfranchised and disqualified from voting for the following conditions: a) if they are under sentence of death imposed on them by any court in Malta [this provision is still included in the Constitution, although the death sentence has now been revoked from Maltese legislation]; or b) are serving a sentence of imprisonment exceeding twelve months imposed on them by such a court or substituted by competent authority for some other sentence imposed on them by such a court, or are under such a sentence of imprisonment the execution of which has been suspended.
NL	18	18	NO. As of 2008, individuals with mental health problems and persons with intellectual disabilities are fully enfranchised.	YES, if sentenced by irrevocable judgment of a court of law to a custodial sentence of not less than one year and simultaneously disqualified from voting.
PL	18	21 – Sejm 30 - Senat	YES. Incapacitated persons do not have voting rights. The court makes this decision if, as a result of mental illness, mental retardation or other mental disorders, particularly binge drinking or drug use, the person is not able to control their conduct.	NO. Prisoners are entitled to vote unless they are deprived of civil/public rights by a final court decision. A person cannot run as a candidate if he or she was convicted to imprisonment for an intentional offence or a deliberate tax offence.
PT	18	18	YES. Individuals who, by the final order of a court, are subject to legal incapacitation are disenfranchised. Moreover, those clearly known to be mentally ill, even if not subject to legal incapacitation imposed by a court order, provided that they are admitted to a psychiatric establishment or declared as mentally disabled by two doctors, are disenfranchised.	NO. Prisoners are not disenfranchised per se. Those who have been banned from voting by a judicial sentence res judicata (a decision that can no longer be appealed) are disenfranchised, as are those who have been deprived of their political rights by a decision res judicata.

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
RO	18	23 for Chamber of Deputies 33 for Senate	YES. Persons subject to judicial interdiction or disenfranchised by a final court order are disenfranchised.	<p>YES, by court order. The loss of voting rights can be imposed both during and after the sentencing to imprisonment and serving of a prison sentence.</p> <p>During imprisonment: it represents an 'accessory penalty' and relates to all prisoners.</p> <p>After sentence: it represents 'complementary penalty' and relates to those who have been convicted to (and obviously served) at least two years in prison and if, additionally, 'the court finds that, with regard to the nature and seriousness of the act, the circumstances of the cause and the person of the perpetrator, this penalty is necessary'.</p>
SE	18	18	NO. Mentally disabled persons are not disenfranchised (this was abolished in 1991). A person who, because of illness or physical disability, cannot personally go to a polling station or advance voting place may vote by proxy. In addition, the Election Committee (i.e., the local election authority) may appoint special persons to act as messengers for those who have no one to help them. Special material is required for voting by messenger and can be ordered from the Election Authority or from a municipality.	NO. Persons convicted of criminal offences are not disenfranchised. The right to vote was introduced for convicted criminals in 1937. Persons detained on remand or in correctional institutions may vote by proxy. It is also possible to vote at an advance voting place.
SI	18	18	YES, if their capacity to contract has been revoked or parental guardianship prolonged and they cannot comprehend the relevance, purpose and effect of elections; the court must explicitly rule on disenfranchisement when revoking the capacity to contract.	NO

	General age of voting right	General age of candidacy right	Exclusion of mentally-disabled citizens from franchise?	Disenfranchisement for inmates/criminal offenders?
SK	18	21	YES. Persons subject to legal incapacitation by virtue of a court order are disenfranchised. If no court order has been issued, the relevant person is entitled to exercise his or her electoral rights.	NO with regard to active voting rights; YES with regard to candidacy rights. Persons convicted of criminal offences in the Slovak Republic lose their right to run as a candidate in all types of elections in the Slovak Republic, but are not generally disenfranchised of the right to vote. Only those convicts who were deprived of their legal capacity due to imprisonment for serious crimes (over 10 years in prison) are deprived of their right to vote. Slovak legal regulation is partially harmonised with the ECtHR decision in the case of Hirst v. the United Kingdom (see finding of the constitutional court PL. ÚS 6/08 of 11 February 2009).
UK	18	18	NO. As of 2006, the common law rule that a person lacks legal capacity to vote by reason of mental health problems has been abolished. However, persons detained in a psychiatric hospital as a consequence of criminal activity are not entitled to vote.	YES. Convicted prisoners are prohibited by law from voting in elections (though remand prisoners, unconvicted prisoners and civil prisoners in default of a fine or a breach of recognisances can vote if they are on the electoral register). The European Court of Human Rights has found that restricting prisoners' right to vote in this way breaches the European Convention on Human Rights. However, the present government has confirmed that convicted prisoners will not be given the right to vote.
HR	18	18	YES. The condition is a final court decision on the loss of business capacity.	NO.

## ANNEX II

Legislations collected and reviewed for the purpose of the Study

## A. EU Member States (plus Croatia)

Item of legislation	English name
<b>Austria</b>	
EU level elections	
Europa Wählerevidenzgesetz 1996	1996 European Electoral Register Law
National elections	
Bundes Verfassungsgesetz, BGBl Nr 1/1930	Austrian Federal Constitutional Law
Nationalrats Wahlordnung, BGBl Nr 471/1992	1992 Electoral Regulation for the National Council (Popular Chamber of the Federal Parliament)
Regional elections	
Burgenland	
Landtags Wahlordnung 1995	1995 Provincial Electoral Regulation
Kärntner	
Kärntner Landesverfassung, LGBl Nr 85/1996	1996 Carinthian Provincial Constitution
Kärntner Landtagswahlordnung, LGBl Nr 191/1974	1974 Carinthian Provincial Electoral Regulation
Niederösterreich	
Niederösterreich Initiativ-, Einspruchs- und Volksbefragungsgesetz, LGBl Nr 0060/1981	1981 Lower Austria Law on Popular Initiatives, Complaints and Referenda
Niederösterreich Landesbürgerevidenzengesetz, LGBl Nr 0050/1981	1981 Lower Austria Provincial Law on the Electoral Roll
Niederösterreich Landesverfassung, NÖ LV 1979	1979 Lower Austria Provincial Constitution
Oberösterreich	
Oberösterreich Landtagswahlordnung, LGBl Nr 48/1997	1997 Upper Austria Provincial Electoral Regulation
Oberösterreich Landes Verfassungsgesetz, LGBl Nr 122/1991	1991 Upper Austria Provincial Constitution
Salzburg	
Salzburger Landes Verfassungsgesetz 1999, LGBl Nr 25/1999	1999 Salzburg Provincial Constitutional law
Salzburger Landtags Wahlordnung 1998, LGBl Nr 116/1998	1998 Salzburg Provincial Electoral Regulations
Salzburger Volksabstimmungs- und volksbegehrengesetz, LGBl Nr 61/1985	1985 Salzburg Law on Referenda and Popular Initiatives
Steiermark	
Steiermärkisches Landes Verfassungsgesetz, LGBl Nr 77/2010	2010 Styria Provincial Constitutional Law
Steiermärkisches Landtags Wahlordnung, LGBl Nr 45/2004	2004 Styria Provincial Electoral Regulation
Steiermärkisches Volksrechtegesetz, LGBl Nr 87/1986	1986 Styria People's Rights Act
Tirol	
Tiroler Landtags Wahlordnung, LGBl Nr 5/2012	2012 Tyrol Provincial Electoral Regulations

Item of legislation		English name
Tiroler Gesetz über Volksbegehren, Volksabstimmungen und Volksbefragungen, LGBl Nr 56/1990		1990 Tyrol Law on Popular Initiatives, Plebiscites and Referenda
Vorarlberg		
Gesetz über die Wahl und Stimmberechtigtenkartei, LGBl Nr 29/1999		1999 Vorarlberg Law on the Electoral Register
Gesetz über das Verfahren bei Wahlen zum Landtag, LGBl Nr 60/1988		1988 Law Governing Provincial Elections
Gesetz über das Verfahren bei Volksbegehren, Volksabstimmungen und Volksbefragungen, LGBl Nr 60/1987		1987 Law on Popular Initiatives, Plebiscites and Referenda
Local elections		
Niederösterreich		
Niederösterreich Gemeinderatswahlordnung, LGBl Nr 112/94		1994 Lower Austria Municipal Election Regulation
Oberösterreich		
Oberösterreich Kommunalwahlordnung, LGBl Nr 81/1996		1996 Upper Austria Local Elections Regulation
Salzburg		
Salzburger Gemeindewahlordnung, LGBl Nr 117/1998		1998 Salzburg Municipal Election Regulation
Steiermark		
Gemeinde Wahlordnung, LGBl Nr 59/2009		2009 Styria municipal regulation
Tirol		
Innsbrucker Wahlordnung, LGBl Nr 120/2011		2011 Innsbruck election regulation
Tiroler Gemeindewahlordnung, LGBl Nr 88/1994		1994 Tirol municipal election regulation
Vorarlberg		
Gesetz über das Verfahren bei Wahlen in die Gemeindevertretung und des Bürgermeisters, LGBl Nr 30/1999		1999 Law on the Election of Local Councils and Mayors
Wien		
Wiener Gemeindewahlordnung, LGBl Nr 16/1996		1996 Vienna Municipal Election Regulation
Wiener Volksbefragungsgesetz, LGBl Nr 05/1980		1980 Vienna Referendum Law
Verfassung der Bundeshauptstadt Wien, LGBl Nr 28/1968		1968 Constitution of Vienna
Belgium		
EU level elections		
Loi du 23 mars 1989 relative a l'élection du Parlement européen	Wet van 23 maart 1989 betreffende de verkiezing van het Europese Parlement	1989 European Parliament Elections Law
National elections		
Constitution de la Belgique	De Belgische Grondwet	Constitution of Belgium
2012 proposition de loi Portant sur la modification du code électoral, en ce qui concerne le vote des Belges à l'étranger	2012 wetsvoorstel tot wijziging van het kieswetboek, wat betreft het stemrecht van de belgen in het buitenland	2012 Bill Amending the Electoral Code, Regarding the Voting Rights of Belgians Abroad

Item of legislation		English name
2009 code électoral	2009 algemeen kieswetboek	2009 Electoral Code
2004 proposition de loi portant sur l'organisation d'une consultation populaire sur le traité établissant une constitution pour l'Europe	2009 wetsvoorstel houdende organisatie van een volksraadpleging over het verdrag tot instelling van een grondwet voor Europa	2009 Bill on the Organisation of a Referendum on the Treaty Establishing a Constitution for Europe
Regional elections		
2009 code de l'élection du parlement wallon	2009 wetboek voor de verkiezing van het Vlaams parlement	2009 Code for the Election of the Flemish Parliament
Loi du 6 juillet 1990 réglant les modalités de l'élection du Conseil de la Communauté Germanophone	Wet van 6 juli 1990 tot regeling van de wijze waarop de raad van de Duitstalige gemeenschap wordt verkozen	1990 Law Regulating the Procedure for the Election of the German-Speaking Community Council
Loi du 12 janvier 1989 réglant les modalités de l'élection du parlement de la région de Bruxelles-capitale et des membres bruxellois du parlement flamand	Wet van 12 januari 1989 tot regeling van de wijze waarop het Brussels hoofdstedelijk Parlement en de Brusselse leden van het Vlaams Parlement worden verkozen	1989 Law Regulating the Elections of Brussels Parliament and of the Brussels Members of the Flemish Parliament
Local elections		
Décret portant sur l'organisation des élections locales et provinciales du 8 juillet 2011	Lokaal en Provinciaal Kiesdecreet van 8 juli 2011	2011 Law on Local and Provincial Elections
Gemeentedecreet van 15 Juli 2005	Arrêté municipal du 15 Juillet 2005	2005 Municipal Law
Loi visant à octroyer le droit de vote aux élections communales à des étrangers, 19 mars 2004	Wet tot toekenning van het actief kiesrecht bij de gemeenteraadsverkiezingen aan vreemdelingen van 19 Maart 2004	2004 Law Granting the Right to Vote in Municipal Elections to Foreigners
Bulgaria		
EU level elections		
2009		2009 Law on Election of Members of the European Parliament from the Republic of Bulgaria
National elections		
		Constitution of the Republic of Bulgaria
2011		2011 Electoral Law
2006		2006 Law on the Election of the President

Item of legislation	English name
2001	and Vice-President of the Republic 2001 Law on the Election of Members of Parliament
Local elections	
1999	1999 Law on Local Elections
<b>Croatia</b>	
National elections	
Ustav Republike Hrvatske	Constitution of Croatia
2007 zakon o izmjenama i dopuni zakona o izborima zastupnika u Hrvatski sabor	2007 Amendment to the Law on Croatian Parliamentary Elections
2006 odluku o proglašenju zakona o državnom izbornom povjerenstvu republike hrvatske	2006 Law on the State Electoral Commission of the Republic of Croatia
1999 zakon o izborima zastupnika u Hrvatski sabor	1999 Law on Croatian Parliamentary Elections
1992 zakon o izboru predsjednika Republike Hrvatske	1992 Law on the Election of the President of the Republic of Croatia
Regional and local elections	
2009 odluku o proglašenju zakona o izmjenama i dopunama zakona o referendumu i drugim oblicima osobnog sudjelovanja u obavljanju državne vlasti i lokalne i područne (regionalne) samouprave	2009 Amendments to the Law on Referenda and Other Forms of Personal Participation in the Performance of State Powers and Local and Regional Self-Government
2008 odluku o proglašenju zakona o izmjenama i dopunama zakona o izborima općinskih načelnika, gradonačelnika, župana i gradonačelnika grada Zagreba	2008 Amendment to the Law on the Election of Municipality Heads, Mayors, County Prefects and the Mayor of the City of Zagreb
2007 odluku o proglašenju zakona o izborima općinskih načelnika gradonačelnika župana i gradonačelnika grada Zagreba	2007 Law on the Election of Municipality Heads, Mayors, County Prefects and the Mayor of the City of Zagreb
2005 zakon o izboru članova predstavničkih tijela jedinica lokalne i područne (regionalne) samouprave	2005 Amendment to the Decision on Regional and Local Self-Government
2001 odluku o proglašenju zakona o lokalnoj i područnoj (regionalnoj) samoupravi	2001 Law on Regional and Local self-government
2001 odluku o proglašenju zakona o izboru članova predstavničkih tijela jedinica lokalne i područne (regionalne) samouprave	2001 Law on the Election of Members of Local and Regional Governments
<b>Cyprus</b>	
EU level elections	
μ 2004	2004 Federal Law on Elections to the European Parliament
National elections	
μ	Constitution of Cyprus
μ 1979	1979 Law on the Election of Members of the House of Representatives
<b>Czech Republic</b>	
EU level elections	
Zákon ze dne 18. února 2003 o volbách do Evropského Parlamentu a o změnách některých zákonů	2003 Law on Elections to the European Parliament

Item of legislation	English name
National elections	
Ústava České republiky	Constitution of the Czech Republic
Zákon ze dne 27. Září 1995 o volbách do parlamentu České republiky a o změnách a doplnění některých dalších zákonů	1995 Law on Parliamentary Elections
Regional elections	
Zákon ze dne 12. Dubna 2000 o volbách do zastupitelstev krajů a o změnách některých zákonů	2000 Law on the Election of Regional Councils
Zákon ze dne 11. Prosince 2003 o místním referendu a o změnách některých zákonů	2003 Law on Local Referenda
Zákon ze dne 6. Prosince 2001 o volbách do zastupitelstev obcí a o změnách některých zákonů	2001 Law on Elections to Municipal Councils
Zákon ze dne 12. Dubna 2000 o obcích (obecní zřízení)	2000 Law on Local Government
Denmark	
EU level elections	
2011 bekendtgørelse af lov om valg af danske medlemmer til Europa-Parlamentet	2011 Law on the Election of Danish Members of the European Parliament
National elections	
Danmarks Riges Grundlov	Constitution of Denmark
2011 bekendtgørelse af lov om valg til Folketinget	2011 Consolidated Law on General Elections
2002 lov om valg til Stortinget, fylkesting og kommunestyre (valgloven)	2002 Parliamentary Elections Law
Regional and local elections	
2011 bekendtgørelse af lov om kommunale og regionale valg	2011 Consolidated Law on Municipal and Regional Elections
Estonia	
EU level elections	
Euroopa Liidu kodaniku seadus vastu võetud 20.11.2002 RT I 2002, 102, 599	2002 European Union Law
Euroopa Parlamendi valimise seadus Vastu võetud 18.12.2002 RT I 2003, 4, 22	2002 European Parliament Election Law
National elections	
Eesti Vabariigi põhiseadus	Constitution of Estonia
Riigikogu valimise seadus Vastu võetud 12.06.2002 RT I 2002, 57, 355	2002 Election Law
Rahvahääletuse seadus Vastu võetud 13.03.2002 RT I 2002, 30, 176	2002 Referendum Law
Vabariigi Presidendi valimise seadus Vastu võetud 10.04.1996 RT I 1996, 30, 595	1996 Presidential Election Law
Local elections	
Kohaliku omavalitsuse volikogu valimise seadus Vastu võetud 27.03.2002 RT I 2002, 36, 220	2002 Local Government Council Law
Kohaliku omavalitsuse korralduse seadus Vastu võetud 02.06.1993 RT I 1993, 37, 558	1993 Local Government Organisation Law
Finland	
National elections	
Suomen perustuslaki	Constitution of Finland
Ulkomaalaislaki 30.4.2004/301	2004 Aliens Law



Item of legislation	English name
Vaalilaki 2.10.1998/714	1998 Election Law
Regional Elections	
Laki Kainuun hallintokokeilusta 9.5.2003/343	2003 Law on Regional Self-Government
Kotikuntalaki 11.3.1994/201	1994 Law on Domicile
Local elections	
Kuntalaki 17.3.1995/365	1995 Local Government Law
France	
National elections	
Constitution de la République française	Constitution of the Republic of France
Code électoral: version consolidée du 19 juin 2012	French Electoral Code
Local elections	
Code général des collectivités territoriales: version consolidée du 18 août 2012	Local Authorities Code
Loi organique n° 2003-705 du 1 août 2003 relative au référendum local	Organic Law of 1 August 2003 on Local Referenda
Germany	
EU level elections	
Europawahlordnung in der Fassung der Bekanntmachung vom 2. Mai 1994 BGBl. I S. 957, Zuletzt Geändert durch Artikel 2 der Zweiten Verordnung zur Änderung der Bundeswahlordnung und der Europawahlordnung vom 3. Dezember 2008 BGBl. I S. 2378	1994 European Electoral Regulations
Gesetz über die Wahl der Abgeordneten des Europäischen Parlaments aus der Bundesrepublik Deutschland in der Fassung der Bekanntmachung vom 8. März 1994 BGBl. I S. 423, 555, 852, Zuletzt Geändert durch Artikel 2 des Gesetzes vom 17. März 2008 BGBl. I S. 394	1994 Law on the Election of Deputies of the European Parliament from the Federal Republic of Germany
Europaabgeordnetengesetz vom 6. April 1979 BGBl. I S. 413, das Zuletzt durch Artikel 1 des Gesetzes vom 23. Oktober 2008 BGBl. I S. 2020 Geändert Worden ist	1979 MEPs law
National elections	
Bundeswahlgesetz 1956, BGBl. I S. 383	1956 Federal Electoral Law
Bundeswahlordnung, BGBl. I S. 1951	1951 Federal Electoral Regulations
Grundgesetz für die Bundesrepublik Deutschland, BGBl. 1949 S. 1	1949 Basic Law for the Federal Republic of Germany
Änderungen von Grundgesetz für die Bundesrepublik Deutschland durch 19. August 1969 and 23. August 1976	Amendment to Basic Law for the Federal Republic of Germany from 1969 and 1976
Regional Elections	
Baden-Württemberg	
Verordnung des Innenministeriums zur Durchführung des Landtagswahlgesetzes (Landeswahlordnung ) in der Fassung vom 2. Juni 2005 GBl. S. 513, Geändert durch Verordnung vom 16. August 2010 GBl. S. 732	2005 Ordinance of the Ministry of Interior to Implement the Provincial Election Regulations
Gesetz über die Landtagswahlen	2005 Law on Provincial Elections

Item of legislation	English name
(Landtagswahlgesetz) in der Fassung vom 15. April 2005 GBl. S. 384, Zuletzt Geändert durch Gesetz vom 29. Juli 2010 GBl. S. 574	
Gesetz über Volksabstimmung und Volksbegehren (Volksabstimmungsgesetz) in der Fassung der Bekanntmachung vom 27. Februar 1984	1984 Law on Referenda and Popular Initiatives
Verfassung des Landes Baden-Württemberg vom 11. November 1953, GBl. S. 173	1953 Constitution of the Province of Baden-Württemberg
Bayern	
Gesetz über Landtagswahl, Volksbegehren und Volksentscheid (Landeswahlgesetz ) 2003, GVBl S.142	2003 Law on Electoral Procedures
Gesetz über Landtagswahl, Volksbegehren und Volksentscheid (Landeswahlgesetz) 2002, GVBl S. 506	2002 Law on the Election of the Regional Assembly and Referenda
Verfassung des Freistaates Bayern 1946	1946 Constitution of the Free Province of Bavaria
Berlin	
Wahlordnung für die Wahlen zum Abgeordnetenhaus und zu den Bezirksverordnetenversammlungen (Landeswahlordnung) 2006, GVBl. S. 224	2006 Election Regulations
Gesetz über Volksinitiative, Volksbegehren und Volksentscheid (abstimmungsgesetz) 1997, GVBl. S. 304	1997 Election Law
Verfassung von Berlin 1995	1995 Berlin Constitution
Gesetz über die Wahlen zum Abgeordnetenhaus und zu den Bezirksverordnetenversammlungen (Landeswahlgesetz) 1987, GVBl. S. 2370	1987 Law on Electoral Procedures
Brandenburg	
Brandenburgische Landeswahlverordnung 2004, GVBl. S.150	2004 Brandenburg National Election Regulations
Wahlgesetz für den Landtag Brandenburg (Brandenburgisches Landeswahlgesetz) 2004, GVBl. S.30	2004 Brandenburg Law on Electoral Procedures
Verfassung des Landes Brandenburg 1992, GVBl. S.298	1992 Brandenburg Constitution
Bremen	
Verfassung der Freien Hansestadt Bremen 1947	1947 Bremen Constitution
Bremisches Wahlgesetz 1990, Brem.GBl. S. 321	1990 Bremen Law on Electoral Procedures
Bremen Bürgerbeteiligungsgesetz 1995, Brem.GBl. S. 379	1995 Bremen Citizens' Participation Law
Hamburg	
Hamburgisches Gesetz über Volksinitiative, Volksbegehren und Volksentscheid (Volksabstimmungsgesetz) 1996, HmbGVBl. 1996, S. 136	1996 Law on Referenda and Popular Initiatives
Gesetz über die Wahl zur Hamburgischen Bürgerschaft 1986, HmbGVBl. 1986, S. 223	1986 law on Hamburg Parliament Elections
Wahlordnung für die Wahlen zur Hamburgischen Bürgerschaft und zu den	1986 Regulations on the Hamburg Parliament and District Assemblies

Item of legislation	English name
Bezirksversammlungen 1986, HmbGVBl. 1986, S. 237	Elections
Verfassung der Freien und Hansestadt Hamburg 1952, HmbBL I 100-a	1952 Hamburg Constitution
Hessen	
Gesetz über die Wahlen zum Landtag des Landes Hessen (Landtagswahlgesetz) 2005, GVBl. I 2006, 110	2005 Hessen National Election Law
Landeswahlordnung (LWO) 1998, GVBl. I 1998, 101	1998 National Election Regulations
Gesetz über Volksabstimmung 1995, GVBl. I 1995, 427	1995 Referendum Law
Verfassung des Landes Hessen 1946, GVBl. 1946, 229	1946 Hessen Constitution
Mecklenburg-Vorpommern	
Gesetz über die Wahlen im Land Mecklenburg-Vorpommern (Landes- und Kommunalwahlgesetz) 2010, GVOBl. M-V 2010, S. 690	2010 Province and Local Election law
Gesetz zur Ausführung von Initiativen aus dem Volk, Volksbegehren und Volksentscheid in Mecklenburg-Vorpommern (Volksabstimmungsgesetz) 1994, GVOBl. M-V 1994, S. 127	1994 Law on Referenda and Popular Initiatives
Verfassung des Landes Mecklenburg-Vorpommern 1993, GVOBl. M-V 1993, S. 372	1993 Mecklenburg-Vorpommern constitution
Niedersachsen	
Niedersächsische Gemeindeordnung 2006, GVBl. S. 473	2006 Niedersachsen Municipal Regulations
Niedersächsisches Landeswahlgesetz 2002, GVBl. S. 153	2002 Niedersachsen Law on Electoral Procedures
Niedersächsische Landeswahlordnung 1997, GVBl. S. 437	1997 Niedersachsen Election Regulations
Niedersächsisches Gesetz über Volksinitiative, Volksbegehren und Volksentscheid (Niedersächsisches Volksabstimmungsgesetz) 1994, GVBl. S. 270	1994 Law on Referenda and Popular initiatives
Niedersächsische Verfassung 1993, GVBl. S. 107	1993 Niedersachsen Constitution
Nordrhein-Westfalen	
Gesetz über das Verfahren bei Volksinitiative, Volksbegehren und Volksentscheid 2004	2004 Law on Referenda and Popular Initiatives
Landeswahlordnung 1994, GV. NW. S.516	1994 Election Regulations
Gesetz über die Wahl zum Landtag des Landes Nordrhein-Westfalen 1993, GV. NW. S.300	1993 Nordrhein-Westfalen Law on Electoral Procedures
Verfassung für das Land Nordrhein-Westfalen 1950	1950 Nordrhein-Westfalen Constitution
Rheinland-Pfalz	
Landeswahlgesetz GVBl 2004, 520	2004 Election Law
Landeswahlordnung GVBl 1990, 153	1990 Election Regulations

Item of legislation	English name
Verfassung für Rheinland-Pfalz, VOBI 1947, 209	1947 Rheinland-Pfalz Constitution
Saarland	
Landeswahlordnung 2009, Amtsbl. S. 198	2009 Election Regulations
Landtagswahlgesetz 1988, Amtsbl. S. 1855	1988 Election Law
Über Volksbegehren und Volksentscheid 1982, Amtsbl. S. 649	1982 Law on Referenda and Popular Initiatives
Verfassung des Saarlandes 1947	1947 Saarland Constitution
Sachsen	
Gesetz über die Wahlen zum Sächsischen Landtag 2010	2010 Saxony Election Law
Gemeindeordnung für den Freistaat Sachsen 2003, SächsGVBl. S. 159	2003 Municipal Regulations for the Free Province of Saxony
Verordnung des Sächsischen Staatsministeriums des Innern über die Durchführung der Wahlen zum Sächsischen Landtag 2003	2003 Regulations of the Saxon Province Ministry of the Interior on the Implementation of the Elections to the Parliament of Saxony
Sachsen-Anhalt	
Wahlgesetz des Landes Sachsen-Anhalt GVBl. LSA 2010, 80	2010 Sachsen-Anhalt Election Law
Wahlordnung des Landes Sachsen-Anhalt GVBl. LSA 2010, 198	2010 Sachsen-Anhalt Election Regulations
Verfassung des Landes Sachsen-Anhalt GVBl. LSA 1992, 600	1992 Sachsen-Anhalt Constitution
Schleswig-Holstein	
Landesverordnung über die Wahl zum Schleswig-Holsteinischen Landtag GVObI. 2009, 430	2009 Schleswig-Holstein Election Regulations
Verfassung des Landes Schleswig-Holstein, GVObI. 2008, 223	2008 Schleswig-Holstein Constitution
Wahlgesetz für den Landtag von Schleswig-Holstein 1991	1991 Schleswig-Holstein Election Law
Thüringen	
Thüringer Wahlgesetz für den Landtag GVBl. 2012, 309	2012 Thüringen Election Law
Thüringer Landeswahlordnung GVBl. 1994, 817	1994 Thüringen Election Regulations
Verfassung des Freistaats Thüringen GVBl. 1993, 625	1993 Thüringen Constitution
Local elections	
Baden-Württemberg	
Gemeindeordnung für Baden-Württemberg 2000, GVBl. S. 581	2000 Municipal Regulations for Baden-Württemberg
Kommunalwahlgesetz 1983, GVBl. S. 429	1983 Local Elections Law
Kommunalwahlordnung 1983, GVBl. S. 417	1983 Local Elections Regulations
Bayern	
Gesetz über die Wahl der Gemeinderäte, der Bürgermeister, der Kreistage und der Landräte GVBl 2006, S. 834	2006 Law on the Election of Councillors, the Mayor, the County Councils and District Councils
Wahlordnung für die Gemeinde- und die Landkreiswahlen 2006, GVBl. S. 852	2006 Regulations on Municipality and County Elections
Berlin	
Bezirksverwaltungsgesetz, GVBl. 2006 S. 2	2006 District Administrative Law
Gesetz über die Wahlen zum	1987 Law on Elections to the House of

Item of legislation	English name
Abgeordnetenhaus und zu den Bezirksverordnetenversammlungen 1987, GVBl. S. 2370	Representatives and to the District Assemblies
Brandenburg	
Kommunalverfassung des Landes Brandenburg 2007, GVBl. S.286	2007 Municipal Constitution of Brandenburg
Gesetz über die Kommunalwahlen im Land Brandenburg 2009, GVBl. S.326	2009 Law on Local Elections in Brandenburg
Brandenburgische Kommunalwahlverordnung 2008, GVBl. S.38)	2008 Brandenburg Municipal Regulations
Hamburg	
Gesetz zur Durchführung von Bürgerbegehren und Bürgerentscheid in den bezirken 2012, HmbGVBl. S. 28	2012 Law on Citizen Initiatives and Referenda Held in the Districts
Bezirksverwaltungsgesetz 2006	2006 District Administrative Law
Gesetz über die Wahl zu den Bezirksversammlungen 2004, HmbGVBl. 2004, S. 313	2004 Law on Elections to the District Assemblies
Hessen	
Hessische Gemeindeordnung 2005, GVBl. S. 142	2005 Hessen Municipal Regulations
Hessisches Kommunalwahlgesetz 2005	2005 Hessen Local Elections Law
Kommunalwahlordnung 2000, GVBl. S. 198	2000 Local Elections Regulations
Mecklenburg-Vorpommern	
Kommunalverfassung für das Land Mecklenburg-Vorpommern 2011, GVOBl. S. 777	2011 Mecklenburg-Vorpommern Municipal Constitution
Niedersachsen	
Niedersächsisches Kommunalverfassungsgesetz 2010, GVBl. S. 576	2010 Niedersachsen Municipal Constitution
Niedersächsisches Kommunalwahlgesetz 2006 GVBl. S. 91	2006 Niedersachsen Local Elections Law
Niedersächsische Kommunalwahlordnung 2006 GVBl. S. 280	2006 Niedersachsen Local Elections Regulations
Nordrhein-Westfalen	
Gemeindeordnung für das land Nordrhein-Westfalen 1994 (Fn 1, 35)	1994 Nordrhein-Westfalen Municipal Regulations
Gesetz über die Kommunalwahlen im Lande Nordrhein-Westfalen 1998, GV. NW. S.384	1998 Nordrhein-Westfalen Local Elections Law
Kommunalwahlordnung 1993, GV. NW. S.521	1993 Municipal Elections Regulations
Rheinland-Pfalz	
Gemeindeordnung 1994, GVBl. S. 153	1994 Municipal Regulations
Landesgesetz über die Wahlen zu den Kommunalen Vertretungsorganen 1994, GVBl. 137	1994 Local Elections Act
Kommunalwahlordnung 1983, GVBl. S. 247	1983 Local Elections Regulations
Saarland	
Kommunaleselbstverwaltungsgesetz 1964, GVBl. S. 480	1964 Local Self-Administration Law
Kommunalwahlgesetz 2008, GVBl. S. 1835	2008 Local Elections Law

Item of legislation	English name
Kommunalwahlordnung 2009, GVBl. S. 20	2009 Local Elections Regulations
Sachsen	
Gemeindeordnung für den Freistaat Sachsen 2003, SächsGVBl. S. 159	2003 Sachsen Municipal Regulations
Gesetz über die Kommunalwahlen im Freistaat Sachsen 1993, SächsGVBl.S. 937	1993 Sachsen Local Elections Law
Verordnung des Sächsischen Staatsministeriums des Innern zur Durchführung des Gesetzes über die Kommunalwahlen im Freistaat Sachsen 1993, SächsGVBl. S. 191	2003 Sachsen Local Elections Regulations
Sachsen-Anhalt	
Gemeindeordnung für das Land Sachsen-Anhalt, GVBl. LSA 2009, 383	2009 Sachsen-Anhalt Municipal Regulations
Kommunalwahlgesetz für das Land Sachsen-Anhalt, GVBl. LSA 2004, 92	2004 Sachsen-Anhalt Local Elections Law
Kommunalwahlordnung für das Land Sachsen-Anhalt, GVBl. LSA 1994, 338	1994 Sachsen-Anhalt Local Elections Regulations
Schleswig-Holstein	
Gesetz über die Wahlen in den Gemeinden und Kreisen in Schleswig-Holstein, GVOBl. 1997, 151	1997 Law on Municipal and District Elections in Schleswig-Holstein
Landesverordnung über die Wahlen in den Gemeinden und Kreisen in Schleswig-Holstein, GVOBl. 2009, 747	2009 Schleswig-Holstein District Elections Regulations
Gemeindeordnung für Schleswig-Holstein, GVOBl. 2003, 57	2003 Schleswig-Holstein Municipal Regulations
Thüringen	
Thüringer Gemeinde- und Landkreisordnung, GVBl. 2003, 41	2003 Thüringen Municipal Regulations
Thüringer Gesetz über die Wahlen in den Landkreisen und Gemeinden, GVBl 1993, 530	1993 Thüringen District Elections Law
Thüringer Kommunalwahlordnung, GVBl 2009, 65	2009 Thüringen Local Elections Regulations
Greece	
μ	Constitution of Greece
μ . 96 μ μ	Greek Electoral Law
Nomo . 3838	Greek Citizenship Law
μ μ μ μ μ μ	
Hungary	
EU level elections	
2008. évi XCV. törvény az Európai Parlament magyarországi képvisel inek jogállásáról szóló 2004. évi LVII. törvény módosításáról	2008 Amended Law on the Status of Hungarian MEPs
2004. évi LVII. törvény az Európai Parlament magyarországi képvisel inek jogállásáról	2004 Law on the Status of Hungarian MEPs

Item of legislation	English name
2003. évi CXIII. törvény az Európai Parlament tagjainak választásáról	2003 Law on Elections to the European Parliament
National elections	
A Magyar köztársaság alkotmánya	Constitution of the Republic of Hungary
A belügyminiszter 60/2005. (XII.21.) BM rendelete a választási eljárásról szóló 1997. évi C. törvénynek az országgyűlési képviselők választásán történő végrehajtásáról	2005 Law of the Minister of the Interior on the Execution of the 1997 Law on Electoral Procedure
1997. évi C. törvény a választási eljárásról	1997 Law on Electoral Procedure
1989. évi XXXIV. törvény az országgyűlési képviselők választásáról	1989 Law on the Election of Members of Parliament
Regional and local elections	
1990. évi LXV. törvény a helyi önkormányzatokról	1990 Law on Local Self-Government
1990. évi LXIV. törvény a helyi önkormányzati képviselők és polgármesterek választásáról	1990 Law on Local Government Representatives and Mayors
Ireland	
EU level elections	
2009 an tAcht um Pharlaimint na hEorpa (comhaltai thoghcheantair na hÉireann)	2009 European Parliament (Irish Constituency Members) Act
2004 an tAcht um thoghcháin do Pharlaimint na hEorpa (leasú)	2004 European Parliament Elections (Amendment) Act
National elections	
Bunreacht na hÉireann	The Constitution of the Republic of Ireland
1993 tAcht toghchán an uachtaráin	1993 Presidential Elections Act
An tAcht toghcháin: [1992] [1997] [1998] [2001] [2002] [2004] [2005] [2006] [2007] [2009] [2011]	1992 Electoral Act
Local elections	
2001 an tAcht rialtais áitiúil,	2001 Local Government Act
Italy	
EU level elections	
Legge 25 marzo 2009, n. 26: Conversione in legge, con modificazioni, del decreto-legge 27 gennaio 2009, n. 3, recante disposizioni urgenti per lo svolgimento nell'anno 2009 delle consultazioni elettorali e referendarie	Law of 25 March 2009: Conversion into Law, with Amendments, of the Decree of 27 January 2009, Containing Urgent Provisions for the Conduct of Elections in 2009 and a Referendum
Legge 3 agosto 1994, n. 483: Conversione in legge, con modificazioni, del decreto-legge 24 giugno 1994, n. 408, recante disposizioni urgenti in materia di elezioni al Parlamento europeo	Law of 3 August 1994: Conversion into Law, with Amendments, of the Decree of 24 June 1994, Containing Urgent Provisions Relating to Elections to the European Parliament
Decreto-Legge 24 giugno 1994, n. 408: Disposizioni urgenti in materia di elezioni al Parlamento europeo	Law of 24 June 1994: Urgent Provisions Concerning Elections to the European Parliament
Legge 24 gennaio 1979, n. 18: Elezione dei membri del Parlamento europeo spettanti all'Italia	Law of 24 January 1979: Election of the Italian Members of the European Parliament

Item of legislation	English name
National elections	
La Costituzione della Repubblica Italiana	Constitution of the Republic of Italy
Legge 21 dicembre 2005, n. 270: Modifiche alle norme per l'elezione della Camera dei deputati e del Senato della Repubblica	Law of 21 December 2005: Changes to the Rules for the Election of the Chamber of Deputies and the Senate of the Republic
Legge 27 dicembre 2001, n. 459: Norme per l'esercizio del diritto di voto dei cittadini italiani residenti all'estero	Law of 27 December 2001: Rules for the Exercise of Voting Rights of Italian Citizens Residing Abroad
Decreto del Presidente della Repubblica 20 marzo 1967, n. 223: Approvazione del testo unico delle leggi per la disciplina dell'elettorato attivo e per la tenuta e la revisione delle liste elettorali	Law of the President of the Republic 20 March 1967: Approval of the Consolidated Law for the Regulation of the Active Electorate and for the Maintenance and Revision of Electoral Rolls
Decreto del Presidente della Repubblica del 30 marzo 1957, n.361: Approvazione del testo unico delle leggi recanti norme per l'elezione della Camera dei deputati	Law of the President of the Republic 30 March 1957, 361: Approval of the Consolidated Law Containing the Rules for the Election of the Chamber of Deputies
Latvia	
EU level elections	
Eiropas Parlamenta v I šanu likums: [12.02.2004] [09.05.2006] [27.11.2008] [01.05.2009] [01.07.2009] [11.01.2013]	2004 European Parliament Elections act
V I t j u re istra likums: [05.02.2004] [14.10.2004] [31.05.2006] [12.03.2009] [01.07.2009]	2004 Voter Registry Law
National elections	
Latvijas Republikas Satversme	The Latvian Constitution
Saeimas v I šanu likums: [07.06.1995] [21.04.1998] [12.06.1998] [23.05.2002] [27.06.2002] [01.01.2003] [06.03.2003] [11.09.2003] [06.04.2006] [09.05.2006] [28.06.2007] [01.04.2009] [01.07.2009] [04.05.2010] [24.03.2011] [23.07.2011] [14.09.2011] [11.01.2013]	1995 Saeima Election Law
Par tautas nobalsošanu un likumu ierosin šanu: [04.05.1994] [16.08.1995] [09.09.1998] [05.06.2003] [11.09.2003] [19.09.2003] [09.05.2006] [05.03.2008] [01.04.2009] [01.07.2009] [11.10.2012] [11.12.2012]	1994 Law on Referenda and Legislative Initiatives
Par Centr lo v I šanu komisiju: [20.01.1994] [08.12.1996] [11.06.1998] [29.11.2000] [05.07.2002] [17.03.2004] [09.05.2006] [18.06.2008] [01.01.2009] [01.07.2009] [01.01.2010] [09.06.2010]	1994 Law on the Central Election Commission
Par to bijuš s PSRS pilso ū statusu, kuriem nav Latvijas vai citas valsts pils: [09.05.1995] [09.04.1997] [18.07.1997] [25.09.1998] [07.04.2000] [11.10.2000] [18.06.2004] [01.09.2005] [19.07.2007]	1995 Law on the Status of those Former USSR Citizens who do not have the Citizenship of Latvia or that of any Other State



Item of legislation	English name
Local elections	
Pils tas domes, rajona padomes un pagasta padomes v l šanu likums: [25.01.1994] [19.02.1994] [14.08.1996] [05.12.1996] [07.12.1996] [04.05.2000] [20.12.2000] [23.05.2002] [26.11.2004] [25.05.2007] [14.03.2008] [01.11.2008] [01.07.2009] [11.01.2013]	1994 City Council, District Council and Parish Council Election Law
Lithuania	
EU level elections	
Lietuvos Respublikos, rinkim Europos Parlament statymas (2003 m. lapkri io 20 d. Nr. IX-1837)	2003 Republic of Lithuania Law on Elections to the European Parliament
National elections	
Lietuvos Respublikos Konstitucija	Constitution of the Republic of Lithuania
Lietuvos Respublikos, Seimo rinkim istatymas (2000 m. liepos 18 d. Nr. I-2721)	2000 Republic of Lithuania Law on the Amendment of the Law on Elections to the Seimas
Lietuvos Respublikos Prezidento rinkim statymas (1992 m. gruodis 22 d. Nr. I-28)	1992 Republic of Lithuania Law on Presidential elections
Lietuvos Respublikos referendumo statymas (2002 m. birželio 4 d. Nr. IX-929)	2002 Republic of Lithuania Law on Referenda
Local elections	
Lietuvos Respublikos savivaldybi taryb rinkim statymas (1994 m. liepos 7 d. Nr. I-532)	1994 Republic of Lithuania Law on Elections to Municipal Councils
Luxembourg	
EU level elections	
Loi électorale du 18 février 2003	2003 Electoral Law
National elections	
La Constitution du Grand-Duché du Luxembourg	Constitution of the Grand Duchy of Luxembourg
Loi du 4 février 2005 relative au référendum au niveau national	2005 Law on National Referenda
Loi électorale du 18 février 2003	2003 Electoral Law
Local elections	
Loi communale du 13 décembre 1988	1988 Municipal Law
Malta	
EU level elections	
2004 att dwar elezzjonijiet g all-parlament ewropew	2004 European Parliament Elections Act
National elections	
Kostituzzjoni ta' malta	Constitution of Malta
1973 att dwar ir-referendi	1973 Referenda Act
Local elections	
1993 dwar kunsilli lokali	1993 Local Councils Act
Netherlands	
National elections	
Grondwet voor het Koninkrijk der Nederlanden	Constitution of the Kingdom of the Netherlands
1989 Kieswet	1989 Elections Law
2010 wet Toelating en Uitzetting BES	2010 Law on Admission and Expulsion

Item of legislation	English name
Wet van 16 juli 2001, Houdende Tijdelijke Regels Inzake het Raadgevend Correctief Referendum (tijdelijke referendumwet)	2001 Law Containing Temporary Rules Concerning Referenda (Temporary Referenda Act)
Local elections	
Wet van 14 Februari 1992, Houdende Nieuwe Bepalingen met Betrekking tot Gemeenten	1992 Law Containing New Provisions Relating to Municipalities
Poland	
EU level elections	
Ustawa z dnia 23 stycznia 2004 roku ordynacja wyborcza do Parlamentu Europejskiego	2004 Law on Elections to the European Parliament
Rozporz dzenie ministra spraw wewn trznych i administracji z dnia 6 kwietnia 2004 roku w sprawie spisu wyborców w wyborach do Parlamentu Europejskiego	2004 Law of the Minister of Internal Affairs and Administration on the Register of Electors in Elections to the European Parliament
Rozporz dzenie ministra spraw zagranicznych z dnia 14 kwietnia 2004 roku w sprawie spisu wyborców sporz dzanego dla obwodów głosowania utworzonych za granic w wyborach do Parlamentu Europejskiego	2004 Law of the Minister of Foreign Affairs on the Electoral Register for the Ward of Granic w for Elections to the European Parliament
National elections	
Konstytucja Rzeczypospolitej Polskiej	Constitution of the Republic of Poland
Ustawa z dnia 12 kwietnia 2001 roku ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do senatu Rzeczypospolitej Polskiej	2001 Law on Elections to the Polish Sejm and the Polish Senate
Ustawa z dnia 27 września 1990 roku ordynacja wyborze Prezydenta Rzeczypospolitej Polskiej	1990 Law on the Election of the Polish President
Local elections	
Ustawa z dnia 5 stycznia 2011 roku kodeks wyborczy	2011 Law on the Electoral Code
Ustawa z dnia 20 czerwca 2002 roku ordynacja bezpo rednim wyborze wójta, burmistrza i prezydenta miasta	2002 Law on the Direct Election of the Mayor
Ustawa z dnia 15 września 2000 roku ordynacja referendum lokalnym	2000 Law on Local Referenda
Ustawa z dnia 16 lipca 1998 roku ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw	1998 Law on Elections to Municipal Councils, District Councils and Regional Assemblies
Portugal	
EU level elections	
Lei eleitoral do presidente da república (2005)	2005 Electoral Law of the President of the Republic
National elections	
Constituição da República Português	Constitution of the Portuguese Republic
Lei 47/2008, de 27 de Agosto, Procede à quarta alteração à Lei n.º 13/99, de 22 de Março (estabelece o novo regime jurídico do recenseamento eleitoral) e consagra medidas de simplificação e modernização	Law 47/2008 of 27 August, Making a Fourth Amendment to Law no. 13/99 of 22 March (Establishing New Legal Voter Registration) and Simplifying Measures that Ensure the Continuous Updating of

Item of legislation	English name
que asseguram a atualização permanente do recenseamento	the Census
Lei 15-a/98, lei orgânica do regime do referendo	Law 15-a/98, Organic Law of the Referendum System
Lei 14/79, lei eleitoral para a assembleia da república	Law 14/79 Electoral Law for the National Assembly
Local elections	
Lei 1/2001, lei eleitoral dos órgãos das autarquias locais	Law 1/2001, Law on the Election of Local Bodies
<b>Romania</b>	
EU level elections	
Legea 33/2007 privind organizarea si desfasurarea alegerilor pentru Parlamentul European	Law 33/2007 on the Organization and Conduct of Elections to the European Parliament
Hotararea 16/2007 privind modul de exercitare a dreptului de vot la alegerile pentru Parlamentul European din data de 25 noiembrie 2007 de catre cetatenii romani cu domiciliul in strainatate	Law 16/2007 on the Exercise of the Right to Vote in Elections to the European Parliament on 25 November 2007 by Romanian Citizens Residing Abroad
National elections	
Constituția României	Constitution of Romania
Legea 35/2008 pentru alegerea camerei deputatilor si a senatului	Law 35/2008 on Election to the Chamber of Deputies and the Senate
Legea 68/1992 pentru alegerea camerei deputatilor si a senatului	Law 68/1992 on Election to the Chamber of Deputies and the Senate
Local Elections	
Legea 67/2004 pentru alegerea autoritatilor administratiei publice locale	Law 67/2004 for the Election of Local Authorities
<b>Slovakia</b>	
EU level elections	
Zákon z 10. júla 2003 o vo bách do Európskeho parlamentu	2003 Law on European Parliamentary Elections
National elections	
Ústava Slovenskej republiky	Constitution of the Slovak Republic
Zákon z 21. októbra 2011, o pobyte cudzincov a o zmene a doplnení niektorých zákonov	2011 Law on Aliens and also Amending Certain Laws
Zákon z 13. decembra 2001, o pobyte cudzincov a o zmene a doplnení niektorých zákonov	2001 Law on Aliens and also Amending Certain Laws
Zákon z 18. marca 1999, o spôsobe vo by prezidenta Slovenskej republiky, o udovom hlasovaní o jeho odvolaní a o doplnení niektorých alších zákonov	1999 Law on the Election of the President of the Slovak Republic by Popular Vote
Zákon Slovenskej národnej rady zo 16. marca 1990 o vo bách do Slovenskej národnej rady	1990 Law of the Slovak National Council on Elections to the Slovak National Council
Regional and local elections	
Zákon . 303/2001 zákon o vo bách do orgánov samosprávnych krajov a o doplnení Ob ianskeho súdneho poriadku	Law 303/2001 on Elections to the Bodies of the Self-Government Regions and on Amendments to the Code of Civil Procedure
Zákon . 346/1990 zákon o vo bách do	Law 346/1990 on Municipal Elections

Item of legislation	English name
samosprávy obcí	
<b>Slovenia</b>	
EU level elections	
Zakon o spremembah in dopolnitvah zakona o volitvah poslancev iz Republike Slovenije v Evropski parlament (ZVPEP-B) 2009	2009 Amendment the Law on Elections of the Republic of Slovenia to the European Parliament
Zakon o spremembah in dopolnitvah Zakona o volitvah poslancev iz Republike Slovenije v Evropski parlament (ZVPEP-A) 2004	2004 Amendment to the Law on Elections of the Republic of Slovenia to the European Parliament
Zakon o volitvah poslancev iz Republike Slovenije v evropski parlament (ZVPEP) 2002	2002 Law on Elections of the Republic of Slovenia to the European Parliament
National elections	
Ustava Republike Slovenije	Constitution of the Republic of Slovenia
Zakon o evidenci volilne pravice (ZEVP-1) 2002	2002 Law on the Right to Vote
Zakon o prijavi prebivališ a (ZPPreb) 2001	2001 Law on Residence Registration
Zakon o volitvah v državni zbor (ZVDZ) 2000	2000 Law on the National Assembly Elections
Local elections	
Zakon o lokalnih volitvah (ZLV) 1993	1993 Law on Local Elections
Zakon o lokalni samoupravi (ZLS) 1993	1993 Law on Local Self-Government
<b>Spain</b>	
National elections	
La constitución Española de 1978	Spanish Constitution
Ley orgánica 5/1985, de 19 de Junio del régimen electoral general	Organic Law 5/1985 of June 19 on the General Electoral System
Real decreto 557/1993, de 16 de abril, sobre actuación notarial en el procedimiento de emisión del voto por correo	Royal Decree 557/1993 of 16 April on Notarisation in the Procedure of Voting by Mail
Real decreto 435/1992, de 30 de abril, sobre comunicación al registro Central de penados y rebeldes y a la oficina del censo electoral de las condenas que lleven aparejada privación del derecho de sufragio	Royal Decree 435/1992 of 30 April on the Exclusion from the Right to Vote of Persons with Criminal Offences
Lley organica 2/1980, de 18 de gener, sobre regulació de les diferents modalitats de referèndum	Organic Law 2/1980 of 18 January on the Regulation of Different Types of Referendum
Orden 116/1999, de 30 de abril, por la que se regula el ejercicio del derecho al voto en los procesos electorales del personal de las fuerzas armadas embarcado o en situaciones excepcionales vinculadas con la defensa nacional	Order 116/1999 of April 30 Regulating the Exercise of the Right to Vote in Elections of Staff of the Armed Forces at Sea or in Exceptional Situations Related to National Defence
Real decreto 1621/2007, de 7 de diciembre, por el que se regula un procedimiento de votación para los ciudadanos españoles que se encuentran temporalmente en el extranjero	Royal Decree 1621/2007 of December 7 Regulating the Voting Procedure for Spanish Citizens who are Temporarily Abroad
Regional Elections	
Andalucía	
Ley 5/2010, de 11 de junio, de autonomía local de Andalucía	Law 5/2010 of June 11 on the Local Autonomy of Andalusia

Item of legislation	English name
Ley 19/2007, de 17 de diciembre, de designación de senadores y Senadoras en representación de la comunidad autónoma de Andalucía	Law 19/2007 of 17 December on the Appointment of Senators and Senators Representing Andalusia
Ley orgánica 2/2007, de 19 marzo, de reforma del estatuto de autonomía para Andalucía	Organic Law 2/2007 of 19 March, Reform of the Statute of Autonomy for Andalusia
Decreto 185/2005, de 30 de agosto, por el que se aprueba el reglamento de demarcación municipal de Andalucía y del registro Andaluz de entidades locales	Decree 185/2005 of 30 August which Approves the Regulation of the Municipal Demarcation of Andalusia and the Andalusian Register of Local Entities
Ley 1/1986, de 2 de enero, de elecciones al parlamento de Andalucía	Law 1/1986 of January 2 on Andalusian Parliament Elections
Cataluña	
Ley orgánica 6/2006, de 19 de julio, de reforma del estatuto de autonomía de Cataluña	Organic Law 6/2006 of 19 July, Reform of the Statute of Autonomy of Catalonia
Ley orgánica 4/1979, de 18 de diciembre, de estatuto de autonomía de Cataluña	Organic Law 4/1979 of 18 December, Statute of Autonomy of Catalonia
Real decreto -Ley 14/1979, de 14 de septiembre, por el que se somete a referéndum el proyecto de estatuto de autonomía de Cataluña	Royal Decree 14/1979 of 14 September, on the Subject of a Referendum on the Draft Statute for the Autonomy of Catalonia
Galicia	
Ley 5/1997, de 22 de julio, de administración local de Galicia	Law 5/1997 of 22 July on the Local Government of Galicia
Ley 8/1985, de 13 de agosto, de elecciones al parlamento de Galicia	Law 8/1985 of 13 August on Galician Parliament Elections
Ley orgánica 1/1981, de 6 de abril, de estatuto de autonomía para Galicia	Organic Law 1/1981 of 6 April on the Statute of Autonomy of Galicia
País Vasco	
Ley 5/1990, de 15 de junio, que regula las elecciones al Parlamento Vasco	Law 5/1990, of 15 June, Regulating Elections to the Basque Parliament
Ley Orgánica 3/1979, de 18 de diciembre, estatuto de autonomía del País Vasco	Organic Law 3/1979 of 18 December on the Statute of Autonomy of the Basque Country
Real Decreto -Ley 13/1979, de 14 de septiembre, por el que se somete a referéndum el proyecto de Estatuto de autonomía para el País Vasco	Royal Decree 13/1979 of 14 September, on the Subject of a Referendum on the Draft Statute for the Autonomy of the Basque Country
Local elections	
Real decreto 202/1995, de 10 de febrero, por el que se dispone la formación del censo electoral de extranjeros residentes en España para las elecciones municipales	Royal Decree 202/1995 of 10 February, which Provides for the Formation of the Electorate of Foreign Residents in Spain for Municipal Elections
Sweden	
EU level elections	
Vallag (2005:837)	2005 Elections Law
National elections	
Sveriges grundlagar	Swedish Constitution
Vallag (2005:837)	2005 Elections Law
Lag om brevröstning i vissa fall (2003:84)	2003 Mail Voting in Certain Cases Law
Svensk författningssamling (1979:369)	1979 Referendum Law

Item of legislation	English name
Local elections	
Departementsserie (2004:31)	2004 Local Government Law
UK	
EU level elections	
2002 European Parliamentary Election Act	N/A
2001 European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations	N/A
1995 Local Government Elections (changes to the Franchise and Qualification of Members) Regulations	N/A
National elections	
2006 Electoral Administration Act	N/A
2000 Political Parties, Elections and Referendums Act	N/A
1985 Representation of the People Act	N/A
1983 Representation of the People Act	N/A
Regional elections	
England	
1983 Representation of the People Act	N/A
Northern Ireland	
2010 Representation of the People (Northern Ireland) (Amendment) Regulations	N/A
2008 Representation of the People (Northern Ireland) Regulations	N/A
2001 Northern Ireland Assembly (Elections) Order	N/A
1989 Elected Authorities (Northern Ireland) Act	N/A
Scotland	
1998 Scotland Act	N/A
Wales	
2006 Government of Wales Act	N/A
Local elections	
England and Wales	
2000 Local Government Act	N/A
1999 Greater London Authority Act	N/A
1995 Local Government Elections (Changes to the Franchise and Qualification of Members) Regulations	N/A
1983 Representation of the People Act	N/A
1972 Local Government Act	N/A
Northern Ireland	
1989 Elected Authorities (Northern Ireland) Act	N/A
1972 Local Government (Northern Ireland) Act	N/A
Scotland	
1973 Local Government Scotland Act	N/A

## B. Ten Non-EU Member States

Item of legislation		English name
<b>Brazil</b>		
National elections		
Constituição da República Federativa do Brasil		Constitution of the Federative Republic of Brazil
Lei nº 4.737, de 15 de Julho de 1965 institui o código eleitoral		1965 Law Establishing an Electoral Code
Decreto nº 3.927, de 19 de Setembro de 2001: promulga o tratado de amizade, cooperação e consulta, entre a República Federativa do Brasil e a República Portuguesa, celebrado em Porto Seguro em 22 de Abril de 2000		2001 Decree on Cooperation Between Brazil and Portugal
<b>Canada</b>		
National elections		
Loi électorale du Canada 2000, ch.9	Canada Elections Act 2000, c.9	N/A
Loi référendaire 1992, ch.30	Referendum Act 1992, c.30.	N/A
Regional elections		
Alberta		
Alberta Election Act 2000 c.E-1		N/A
British Columbia		
British Columbia Election Act 1996 c.106		N/A
British Columbia Referendum Act 1996 c.400		
Manitoba		
Manitoba Election Act 2006 c.E-40		N/A
New Brunswick		
Loi référendaire du Nouveau-Brunswick 2011 ch.23	New Brunswick Referendum Act 2011 c.23	N/A
Loi électorale du Nouveau-Brunswick 1967 ch.E-3	New Brunswick Election Act 1967 c.E-3	N/A
Newfoundland and Labrador		
Newfoundland and Labrador Election Act 1991 c.E3.1		N/A
Northwest Territories		
Northwest Territories Elections And Plebiscites Act 2006 c.15		N/A
Nova Scotia		
Act Respecting the Election of Members to the House of Assembly and Electoral Finance 2011 c.60		N/A
Nunavut		
Nunavut Elections Act 2002 c.17		N/A
Nunavut Plebiscite Act 1988 c.P-8		N/A
Ontario		
Ontario Electoral System Referendum Act 2007 c.1		N/A
Ontario Election Act 1990 c.E-6		N/A

Item of legislation		English name
Prince Edward Island		
Prince Edward Island Election Act 1996 c.E1.1		N/A
Prince Edward Island Plebiscite Act 1996 c.P10		N/A
Québec		
Loi électorale du Québec 1989 ch.1		Quebec Election Act 1989 c.1
Loi référendaire du Québec 1978 ch.6		Quebec Referendum Act 1978 c.6
Saskatchewan		
Saskatchewan Election Act 1996 c.E-6.01		N/A
Saskatchewan Referendum and Plebiscite Act 1991 c.R-8.01		N/A
Yukon		
Yukon Election Act 2002 c.63		N/A
Yukon Plebiscite Act 2002 c.172		N/A
Local elections		
Alberta		
Alberta Local Authorities Election Act 2000 c.L-21		N/A
Alberta Municipal Government Act 2000 c.M-26		N/A
British Columbia		
British Columbia Local Government Act 1996 c.323		N/A
Manitoba		
Manitoba Municipal Councils and Local School Boards Act 2005 c.M257		
Manitoba Municipal Act 1996 c.M225		N/A
New Brunswick		
Loi sur les élections municipales du Nouveau-Brunswick 1979 cM-21.01	New Brunswick Municipal Elections Act 1979 c.M-21.01	N/A
Loi sur les municipalités de la Nouvelle-Brunswick 1973 ch.M-22	New Brunswick Municipalities Act 1973 c.M-22	N/A
Newfoundland and Labrador		
Newfoundland Municipal Elections Act 2001 c.M-20.2		N/A
Newfoundland and Labrador Municipalities Act 1999 c.M-24		N/A
Northwest Territories		
Northwest Territories Local Authorities Elections Act 1988 c.L-10		N/A
Nova Scotia		
Nova Scotia Municipal Government Act 1998 c.18		
Nova Scotia Municipal Elections Act 1989 c.300		
Nunavut		
Nunavut Local Authorities Elections Act 1988 c.L-10		N/A



Item of legislation	English name
Ontario	
Ontario Municipal Elections Act 1996 c.32	N/A
Prince Edward Island	
Prince Edward Island Municipalities Act 1983 c.M-13	N/A
Quebec	
Loi sur les élections et les référendums dans les municipalités 1987 Ch.E-2.2	Act Respecting Elections and Referendums in Municipalities 1987 c.E-2.2
Saskatchewan	
Saskatchewan Municipalities Act 2005 c.M-36.1	N/A
Saskatchewan Local Government Election Act 1982 c.L-30.1	N/A
Yukon	
Yukon Municipal Act 2002 c.154	N/A
India	
National elections	
The Constitution of India	N/A
Registration of Electoral (Amendment) Rules 2011	N/A
Representation of the People (Amendment) Act 2010	N/A
Conduct of Elections Rules 1961	N/A
Representation of the People Act 1951	N/A
Representation of the People Act 1950	N/A
Local elections	
Gujarat	
Gujarat Municipalities (Amendment) Act 2005	
Gujarat Panchayats Act 1993	
Gujarat Municipalities Act 1963	N/A
Sikkim	
Sikkim Panchayats Act 1993	N/A
Tamil Nadu	
Tamil Nadu Panchayats Act 1994	N/A
Uttar Pradesh	
Uttar Pradesh Panchayat Raj Act 1947	N/A
Morocco	
National elections	
Le projet de Constitution adopté par référendum le 1er juillet 2011	Draft Text of the Constitution of Morocco adopted by the Referendum of 1 July 2011
Loi organique n° 27-11 relative à la Chambre des Représentants	Organic law 27-2011 on the House of Representatives
Loi n° 9-97 formant le code électoral	Electoral Code of Morocco 1997
Constitution du Maroc 1996	Constitution of Morocco 1996
Local elections	
Loi n° 78-00 portant sur la Charte Communale	Law 78-2000 concerning the Communal Charter
New Zealand	

Item of legislation		English name
National elections		
Constitution of New Zealand		N/A
Electoral Act 1993		N/A
Citizens Initiated Referenda Act 1993		N/A
Regional elections		
Abolition of Provinces Act 1875		N/A
Local elections		
Local Electoral Act 2001		N/A
Serbia		
National elections		
		Constitution of the Republic of Serbia
.99/2011		2011 Law Altering and Amending the Law on the Single Electoral Register
. 104/2009		2009 Law on the Single Electoral Register
.35/2000		2000 Law on the Election of Members of Parliament
Regional elections		
o . 5/2010		2010 Law on the Assembly of the Autonomous Province of Vojvodina
17/2009		2009 Law on the Autonomous Province of Vojvodina
99/2009		2009 Law on the Competence of the Autonomous Province of Vojvodina
12/2004		2004 Law on Elections in the Autonomous Province of Vojvodina
Local elections		
. 34/2010 ( )		2010 Law Amending the Law on Local Elections
. 129/2007		2007 Law on Local Elections
Switzerland		
National elections		
Bundesverfassung der Schweizerischen Eidgenossenschaft	Constitution fédérale de la Confédération suisse	Federal Constitution of the Swiss Confederation
Bundesgesetz über die Ausländerinnen und Ausländer vom 16. Dezember 2005 (142.20)	Loi fédérale sur les étrangers du 16 décembre 2005 (142.20)	2005 Federal Law on Foreigners
Verordnung über die Politischen Rechte der Auslandschweizer vom 16. Oktober 1991 (161.51)	Règlement sur les droits politiques des Suisses de l'étranger de 16 octobre 1991 (161.51)	1991 Regulations on the Political Rights of Foreigners
Verordnung über die Politischen Rechte vom 24. Mai 1978 (161.11)	Règlement sur les droits politiques des 24 mai 1978 (161.11)	1978 Regulations on Political Rights
Bundesgesetz über	Loi fédérale sur les	1976 Federal Law on Political Rights

Item of legislation		English name
die politischen Rechte vom 17. Dezember 1976 (161.1)	droits politiques des 17 décembre 1976 (161.1)	
Regional elections		
Appenzell Ausserrhoden		
Verfassung des Kantons Appenzell Ausserrhoden vom 30. April 1995 (131.224.1)	Constitution du canton d'Appenzell Rhodes-Extérieures, 30 avril 1995 (131.224.1)	1995 Constitution of the Canton of Appenzell Outer Rhodes
Basel-Stadt		
Verfassung des Kantons Basel-Stadt vom 23. März 2005 (111.100)	Constitution du Canton de Bâle-Ville, 23 mars 2005 (111.100)	2005 Constitution of the Canton of Basel-Stadt
Freiburg		
Verfassung des Kantons Freiburg vom 16. Mai 2004 (131.219)	Constitution du Canton de Fribourg, 16 mai 2004 (131.219)	2004 Constitution of the Canton of Freiburg
Genf		
Verfassung der Republik und des Kantons Genf, vom 24. Mai 1847 (131.234)	Constitution de la République et Canton de Genève, du 24 mai 1847 (131.234)	1847 Constitution of the Canton of Genf
Graubünden		
Verfassung des Kantons Graubünden vom 18. Mai 2003 (131.226)	Constitution du Canton des Grisons, 18 mai 2003 (131.226)	2003 Constitution of the Canton of Graubünden
Jura		
Verfassung der Republik und des Kantons Jura, vom 20. März 1977 (131.235)	Constitution de la République et Canton du Jura, le 20 mars 1977 (131.235)	1977 Constitution of the Canton of Jura
Neuenburg		
Verfassung von Republik und Kanton Neuenburg vom 24. September 2000 (131.233)	Constitution de la République et Canton de Neuchâtel, 24 septembre 2000 (131.233)	2000 Constitution of the Canton of Neuenburg
Thurgau		
Verfassung des Kantons Thurgau vom 16. März 1987 (131.228)	Constitution du Canton de Thurgovie, 16 mars 1987 (131.228)	1987 Constitution of the Canton of Thurgau
Waadt		
Verfassung des Kantons Waadt vom 14. April 2003 (131.231)	Constitution du canton de Vaud, 14 avril 2003 (131.231)	2003 Constitution of the Canton of Waadt

Item of legislation	English name
<b>Turkey</b>	
National elections	
Türkiye Cumhuriyeti Anayasası	Constitution of the Republic of Turkey
Milletvekili Seçimi Kanunu 1983 (2839)	1983 Law on Parliamentary Elections
Seçimlerin Temel Hükümleri ve Seçmen Kütükleri Hakkında Kanun 1961 (298)	1961 Law on Basic Provision on Elections and Voter Registers
Regional elections	
İl Özel idaresi Kanunu 2005 (5302)	2005 Law on Provincial Administration
Local elections	
Belediye Kanunu 2005 (5393)	2005 Municipal Law
<b>Ukraine</b>	
National elections	
	Constitution of Ukraine
2012 10-11 .73	2012 Law on the Election of Members of Parliament
2004 36 .448	2004 Law on the Central Election Commission
1999, 14 .81	1999 Law on the Election of the President
1991 33 .443	1991 Law on National and Local Referenda
Regional elections	
1999 11 .79	1999 Law on the City of Kiev
Local elections	
.491	2010 Law on the Election of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Town and City Mayors
.382	2004 Law on the Election of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Town and City Mayors
<b>United States of America</b>	
National elections	
Constitution of the United States America	N/A
1986 Uniformed and Overseas Citizens Absentee Voting Act as Amended by the 2010 Military and Overseas Voter Empowerment Act	N/A
1965 Voting Rights Act	N/A
Regional elections	
Arizona	
Constitution of Arizona	N/A
Florida	
Constitution of Florida	N/A
Election Laws of the State of Florida	
Illinois	
Constitution of Illinois	N/A
Maine	
Constitution of Maine	N/A

Item of legislation	English name
Maryland	
Maryland Election Law	N/A
Mississippi	
Constitution of Mississippi	N/A
Wyoming	
Constitution of Wyoming	N/A
Local elections	
Town of Somerset (Maryland) Municipal Charter 2008	N/A
City of Takoma park (Maryland) Municipal Charter 2007	N/A

## ANNEX III

## Glossary

"Active registration"	Any voter registration system that requires eligible voters to apply for registration in the electoral register.
"Active voting rights"	The right to cast a vote (or simply, "the right to vote") in an election (see also: voting rights).
"Candidacy rights"	The right to stand as a candidate (or simply, "the right to stand") in an election.
"Citizenship"	A legal status and relation between an individual and a state that entails specific legal rights and duties. Unless otherwise specified, citizenship is generally used as a synonym for nationality (see: nationality). Except where specifically stated, we do not use broader non-legal interpretations of citizenship, which refer to practices and virtues of individuals and organisations oriented towards the common good or to membership and activities of individuals in civil society associations.
"Citizenship law"	Law regulating the acquisition and loss of the legal status of citizenship. Synonymous with nationality law.
"Citizenship requirements"	Any legal requirements pertaining to the acquisition and loss of citizenship. This refers to birth-right acquisition requirements, naturalisation requirements (see: naturalisation requirements) and conditions for voluntary or involuntary loss.
"Community of Portuguese Language Countries" (CPLC)	The intergovernmental organisation for friendship among Portuguese-speaking nations ("Lusophone nations") in which Portuguese is an official language; these are Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, São Tomé and Príncipe and Timor-Leste.
"Consular protection" (EU law)	The fundamental right of an unrepresented EU citizen to receive protection from any of the diplomatic or consular authorities of another (second or non-home) Member State that is represented in a third country where the EU citizen is located, under the same conditions as its (i.e. the second Member State's) nationals. Such services may include (but are not limited to (see Art. 5 Decision 95/553/EC)): (a) assistance in cases of death; (b) assistance in cases of serious accident or serious illness; (c) assistance in cases of arrest or detention; (d) assistance to victims of violent crime; (e) the relief and repatriation of distressed citizens; (f) issue of emergency travel documents; (g) evacuation in cases of emergency. (See Art. 23(1) TFEU, 46 EU Charter and Decisions 95/553/EC and 96/409/CSFP).
"Consular services"	Services provided by a sending state (including consular protection) involving the exercise of official functions, also electronically (e-government), in accordance with international agreements and practice and the laws of the receiving state, in particular: issuing travel documents, acting as notary and civil registrar and in capacities of a similar kind, performing certain functions of an administrative nature, transmitting judicial and extrajudicial documents, executing rogatory letters or commissions to take evidence for the courts of the

	sending state, establishing a polling station or providing assistance for voting in elections of the sending state.
"Dual citizenship"	The legal status of citizenship held by a person simultaneously in two (dual nationality) or more (multiple nationality) states. Dual citizenship may be acquired at birth or after birth and with or without the knowledge and consent of the states involved. (Some states distinguish, in this context, between citizenship that can only be held by residents of the state and nationality that may also be held by expatriates.)
"EEA/CH citizens"	Citizens of Iceland, Liechtenstein, Norway and Switzerland.
"EU/EEA/CH citizens"	Citizens of states which are members of the European Economic Area (EEA), these are the Member States of the EU plus Iceland, Liechtenstein, Norway and Switzerland.
"Electoral rights"	Include the right to cast a vote ("active voting rights") and the right to stand as candidate ("candidacy rights").
"EU citizens"	Individuals who hold citizenship of any of the EU Member States.
"EU external representation"	An EU delegation in a third country or at an international organisation that represents the EU.
"External EU citizens"	EU citizens located outside of the territory of the EU.
"First country citizen/s" (FCC)	A citizen of an EU Member State in relation to that state (whether residing inside or outside the territory of that state).
"Foreign national residents"	Individuals residing on the territory of a state of which they are not a citizen. In the EU Member States these include Second Country Citizens who are citizens of another EU Member State and Third Country Citizens who are citizens of a state that is not a member of the EU.
"High public office"	Any of the following posts: 1) Head of State (where this is not a monarch); 2) Head of Government (e.g., prime minister); 3) Minister in the executive branch of Government (e.g., minister of defence/minister of foreign affairs/minister of internal affairs); 4) Civil servant in the executive branch of Government (e.g., head of a ministerial department); 5) Judiciary; and 6) High ranking officer in the national army (e.g., general/marshal).
"In-country voting"	The exercise of voting rights from within the territory of the relevant state in which an election is being held.
"Member States' external representation"	A consular or diplomatic mission of an EU Member State in a non-EU Member State
"Mode of citizenship acquisition"	Any mode of becoming a citizen, i.e., by birth or at any time after birth, automatic or non-automatic, based upon attribution, declaration, option or application

"Nationality"	A legal relationship between a person and a state (country) as recognised in international law. Unless otherwise specified, nationality is generally used as a synonym for citizenship (see: citizenship). We do not deal with nationality in a non-legal sense, i.e., membership of a nation sharing a common history, culture, language or descent (which does not necessarily coincide with the totality of persons holding the nationality of a country in the legal sense defined above), or with nationality as referring to membership of a national minority living within a state and/or culturally linked to an external kin-state.
"Naturalisation requirements"	Any legal requirements in relation to the acquisition after birth of a nationality not previously held by a relevant individual.
"Non-resident first country citizens"	First country citizens who reside outside of the EU Member State whose citizenship they hold.
"Non-resident voters/candidates"	Individuals who exercise voting or candidacy rights while residing outside of the territory of the relevant state in which an election is held
"Out-of-country voting"	The exercise of voting rights from outside the territory of the relevant state in which an election is being held.
"Passive registration"	Any voter registration system whereby eligible voters are automatically registered in the electoral register without having to apply.
"Residence requirements"	Any condition (e.g., for acquisition of nationality or exercise of electoral rights), that an individual must have resided on the territory of a state under consideration for a certain period of time or during a relevant period of time or must hold a certain type of residence permit.
"Resident voters/candidates"	Individuals who exercise voting or candidacy rights while residing within the territory of the relevant state in which an election is held.
"Second country citizens" (SCC)	Citizens of an EU Member State in relation to another EU Member State.
"Third country citizens" (TCC)	Citizens of a state that is not a Member State of the EU
"Unrepresented EU citizens"	EU citizens whose home Member State or another state representing them on a permanent basis has no accessible permanent representation or accessible Honorary Consul competent for such matters in a relevant third country where the EU citizens are located.
"Voting rights"	Usually refers to "active voting rights", i.e., the right to cast a vote in an election.



## ANNEX IV

Member States External Representations and EU Delegations in third countries<sup>182</sup>

Third countries	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	MSs total	EU	
Afghanistan		X	X		X	X	X	X		X	X	X	X		X					X	X			X			X	15	X	
South Africa	X	X	X	X	X	X	X		X	X	X	X	X	X	X					X	X	X	X	X			X	20	X	
Albania	X		X		X	X	X		X	X		X	X		X					X	X		X	X	X		X	16	X	
Algeria	X	X	X		X	X			X	X		X	X		X					X	X	X	X	X			X	16	X	
Andorra																												0		
Angola		X	X			X				X		X			X					X	X	X	X					10	X	
Antigua and Barbuda																												0	X <sup>183</sup>	
Saudi Arabia	X	X		X	X	X	X		X	X	X	X	X	X	X				X	X	X	X	X	X			X	20	X	
Argentina	X	X	X		X	X	X		X	X	X	X	X	X	X	X				X	X	X	X	X	X	X	X	22	X	
Armenia			X			X			X			X			X	X					X		X				X	9	X	
FYROM	X		X		X	X			X	X		X	X		X					X	X		X	X	X	X	X	16	X	
Australia	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	25	X
Azerbaijan	X	X	X		X	X			X			X	X		X	X	X			X	X		X				X	15	X	
Bahamas																												0		
Bahrain						X						X			X												X	4		
Bangladesh						X	X			X					X					X				X			X	7	X	
Barbados																											X	1	X	
Belarus					X	X		X				X	X		X	X	X				X		X	X		X	X	13	X	
Belize																												0	X	
Benin						X	X					X								X								4	X	
Bhutan																												0		
Bolivia	X					X	X			X	X	X	X		X				X	X							X	10	X	
Bosnia & Herzegovina	X	X	X		X	X	X		X	X		X	X	X	X					X	X	X	X	X	X	X	X	20	X	

<sup>182</sup> Source: website of European Commission, DG Justice – Consular Protection of EU citizens, which includes the external representations from the Member States for each third country (<http://ec.europa.eu/consularprotection/index.action>); website of the EEAS, EU delegations in third countries directory ([http://ec.europa.eu/external\\_relations/repedel/edelhrm/index.cfm](http://ec.europa.eu/external_relations/repedel/edelhrm/index.cfm)); websites of the Ministries of Foreign Affairs of the Member States, last accessed 10 January 2013.

<sup>183</sup> EU Delegation to Barbados and the Eastern Caribbean.

Policy Department C: Citizens' Rights and Constitutional Affairs

Third countries	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	MSS total	EU	
Botswana						X						X															X	3	X	
Brazil	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X						X	X	X	X	X	X	X	X	23	X
Brunei Darussalam																												0		
Burkina Faso		X					X					X								X				X				5	X	
Burundi		X				X						X														X		4	X	
Cambodia			X			X	X			X		X												X		X		7	X	
Cameroon		X				X				X		X			X					X						X		7	X	
Canada	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	27	X
Cape Verde											X		X									X						3	X	
Central African Republic												X																0	X	
Chad																												0	X	
Chile	X	X	X		X	X	X		X	X	X	X			X					X	X	X	X	X		X		17	X	
China	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	27	X
Colombia	X	X				X				X		X			X					X	X	X	X	X		X		12	X	
Comoros																												0		
Congo		X										X			X													3	X	
Democratic Republic of the Congo		X				X			X	X		X			X					X		X		X		X		10	X	
Costa Rica		X			X	X				X		X			X					X						X		8	X	
Côte d'Ivoire		X				X				X		X			X													4		
Cuba	X	X	X	X	X	X			X	X		X	X		X					X	X	X	X	X	X	X	X	18	X	
Djibouti												X																1	X	
Dominican Republic						X				X		X			X					X						X		6	X	
Egypt	X	X	X		X	X	X	X	X	X	X		X		X		X		X	X	X	X	X	X		X	X	21	X	
El Salvador						X				X		X			X													4	X	
Ecuador						X				X		X			X					X						X		6	X	
Eritrea						X						X			X					X						X		5	X	
Ethiopia	X	X		X	X	X		X	X	X	X	X		X	X					X	X	X	X	X		X	X	18	X	
Fiji												X														X		2	X	
Gabon						X				X		X			X													4	X	

## Franchise and electoral participation of third country citizens residing in EU and of EU citizens residing in third countries

Third countries	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	MSS total	EU
Gambia																											X	1	X
Georgia			X		X	X		X	X	X		X	X		X	X	X			X	X		X	X			X	16	X
Ghana		X	X		X	X	X			X		X			X					X							X	10	X
Grenada																												0	
Guatemala							X			X	X	X	X			X					X				X		X	9	X
Guinea							X				X		X													X	4	X	
Guinea-Bissau											X		X									X						3	X
Equatorial Guinea										X		X																2	
Guyana																										X	1	X	
Haiti										X		X																2	X
Honduras						X				X		X			X													3	X
India	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	25	X
Indonesia	X	X	X		X	X	X		X	X	X	X		X		X					X	X	X	X		X	X	18	X
Iraq						X	X	X		X	X					X						X				X	X	10	X
Iran	X	X	X	X	X	X	X		X	X	X		X	X	X				X	X	X	X	X	X	X			20	
Iceland						X	X				X	X									X			X		X	7	X	
Israel	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	26	X
Jamaica		X				X	X			X		X															X	6	X
Japan	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X	X	X	24	X
Jordan	X	X	X	X	X	X	X		X	X		X	X		X					X	X		X	X			X	17	X
Kazakhstan	X	X	X		X	X	X		X	X	X	X	X		X		X			X	X		X	X		X	X	19	X
Kenya	X	X		X	X	X	X		X	X	X		X		X					X	X	X	X	X		X	X	18	X
Kyrgyzstan						X						X																2	X
Kiribati																												0	
North Korea			X		X	X															X		X	X		X	7		
South Korea		X	X		X	X	X		X			X		X	X							X		X		X		12	X
Kuwait	X	X	X		X	X		X	X		X	X			X					X	X		X				X	14	X
Laos						X						X																2	X
Lesotho						X								X												X	3	X	
Lebanon	X	X	X	X	X	X	X		X	X		X	X		X					X	X		X				X	16	X
Liberia												X												X				2	X
Libya	X	X	X	X	X	X			X	X			X		X				X	X	X	X	X			X	X	17	X
Liechtenstein																												0	

Policy Department C: Citizens' Rights and Constitutional Affairs

Third countries	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	MSS total	EU
Madagascar						X						X																2	X
Malawi						X																				X		2	X
Malaysia	X	X			X	X	X			X	X			X	X					X	X		X	X		X	X	15	X
Maldives																												0	
Mali						X	X			X										X								4	X
Morocco	X	X	X		X	X	X		X	X	X	X	X		X					X	X	X	X	X			X	18	X
Marshall Islands																												0	
Mauritius												X														X		2	X
Mauritania						X				X																		2	X
Mexico	X	X	X	X	X	X	X		X	X	X	X	X	X	X					X	X	X	X	X		X	X	21	X
Micronesia Federated States																												0	
Moldova			X		X	X					X	X								X		X						7	X
Monaco																												0	
Mongolia			X		X																					X		3	X
Montenegro	X		X		X	X			X			X	X		X						X		X		X	X	X	13	X
Mozambique							X	X			X	X	X	X	X					X		X		X			X	11	X
Myanmar						X						X														X		3	X
Namibia						X				X	X	X														X		5	X
Nauru																												0	
Nepal						X	X				X	X														X		5	X
Nicaragua						X				X	X	X			X			X		X								7	X
Niger						X				X																		2	X
Nigeria	X	X	X		X	X			X	X	X			X	X					X	X	X	X	X		X	X	17	X
Norway	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X	X		X		X	X	23	X
New Zealand						X			X	X		X			X	X				X	X					X		9	X
Oman	X					X	X			X		X			X					X				X			X	9	
Pakistan	X	X	X		X	X	X		X	X	X		X		X					X	X	X	X	X			X	17	X
Palau																												0	
Panama																												0	X
Papua New Guinea												X														X		2	X
Paraguay						X				X		X			X													4	X

Third countries	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	MSS total	EU	
Peru	X	X			X	X			X	X	X	X			X					X	X	X	X				X	14	X	
Philippines	X	X			X	X			X	X	X	X		X	X	X			X	X			X	X			X	16	X	
Qatar		X	X	X		X				X		X	X		X					X	X		X				X	12	X	
Russia	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	27	X
Rwanda		X				X						X								X							X	4	X	
St. Kitts-Nevis																												0		
San Marino																												0		
Vatican City State																												0		
St. Vincent and the Grenadines																												0		
Saint Lucia												X														X	2			
Samoa																												0	X	
São Tomé and Príncipe																						X						1		
Senegal	X	X				X				X		X			X			X		X		X	X	X			X	12	X	
Serbia	X	X	X	X	X	X	X		X	X	X	X	X		X	X				X	X	X	X	X	X	X	X	5	X	
Sevchelles																												0		
Sierra Leone																										X	1	X		
Singapore	X	X				X	X		X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	22	X	
Solomon Islands						X						X												X		X	4	X		
Somalia																												0		
Sudan			X												X					X		X	X					5	X	
Sri Lanka						X						X			X					X			X			X	6	X		
Switzerland	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	26	X	
Suriname												X								X								2		
Swaziland																												0	X	
Syria																							X					1	X	
Tajikistan						X																				X	2	X		
Tanzania		X				X	X			X	X	X		X	X					X						X	10	X		
Thailand	X	X	X		X	X	X		X	X	X	X	X		X			X		X	X	X	X	X		X	7	X		
Timor-Leste																						X					1	X		
Togo						X						X															2	X		
Tonga																												0		

Third countries	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	MSS total	EU	
Trinidad Tobago						X				X		X								X							X	5	X	
Tunisia	X	X	X		X	X			X	X			X		X				X	X	X	X	X				X	15	X	
Turkmenistan						X						X									X		X				X	5		
Turkey	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	25	X
Tuvalu																												0		
Uganda	X	X				X	X					X		X	X					X				X			X	10	X	
Ukraine	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X			X	X	X	X	X	X	X	X	X	24	X
United Arab Emirates	X	X	X	X	X	X	X		X	X		X	X	X	X				X	X	X		X	X			X	19	X	
United States of America	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	27	X
Uruguay						X			X	X		X			X					X		X	X				X	9	X	
Uzbekistan			X		X	X						X			X		X				X		X			X	X	10	X	
Vanuatu												X																1	X	
Venezuela	X	X	X		X	X			X	X	X	X			X					X	X	X	X				X	15	X	
Vietnam	X	X	X		X	X	X		X	X	X	X	X	X	X			X		X	X		X	X		X	X	20	X	
Yemen	X	X	X		X	X			X	X		X			X					X	X			X			X	13	X	
Zambia						X	X				X	X		X	X					X				X			X	9	X	
Zimbabwe	X		X		X	X			X	X		X			X					X		X	X				X	12	X	

The above table demonstrates that larger EU Member States have more representations in third countries than smaller EU Member States. As a consequence of the obligation of consular co-operation required under Art. 23(1) TFEU, these larger Member States are more likely to be “providers” of assistance to unrepresented EU citizens (the “supply” side), coming from smaller Member States (“demand” side). There are 26 countries outside of the EU in which no Member State is represented as well as 10 third countries where only one Member State is represented. The EU has a delegation in all of these third countries, with the exception of Sao Tome and Principe. The Member States’ diplomatic and consular representations are especially limited in Central America and the Caribbean, Central Asia and Central and West Africa.

## ANNEX V

EU citizens residing in the 10 selected third countries, Member States external representations and EU delegations in those third countries

Third countries	Brazil	Canada	India	Morocco	New Zealand	Serbia	Switzerland	Turkey	Ukraine	USA
Total number of resident EU citizens	388,303	2,2 million	12,419	6,809	93,451	197,162	1,219,528	1,057,689	46,065	4,914,835
Total number of Member States external representations	23	27	25	18	9	22	26	25	24	27
EU Delegation	X	X	X	X	X	X	X	X	X	X
Austria	X	X	X	X		X	X	X	X	X
Belgium	X	X	X	X		X	X	X	X	X
Bulgaria	X	X	X	X		X	X	X	X	X
Cyprus	X	X	X			X	X		X	X
Czech Republic	X	X	X	X		X	X	X	X	X
Denmark	X	X	X	X		X	X	X	X	X
Estonia	X	X					X	X	X	X
Germany	X	X	X	X	X	X	X	X	X	X
Greece	X	X	X	X	X	X	X	X	X	X
Finland	X	X	X	X		X	X	X	X	X
France	X	X	X	X	X	X	X	X	X	X
Hungary	X	X	X	X		X	X	X	X	X
Ireland	X	X	X					X		X
Italy	X	X	X	X	X	X	X	X	X	X
Latvia		X					X	X	X	X
Lithuania		X	X		X	X	X	X	X	X
Luxembourg		X	X				X			X
Malta		X	X				X	X		X
Netherlands	X	X	X	X		X	X	X	X	X
Poland	X	X	X	X		X	X	X	X	X
Portugal	X	X	X	X		X	X	X	X	X
Romania	X	X	X	X		X	X	X	X	X
Spain	X	X	X	X		X	X	X	X	X
Slovakia	X	X	X			X	X	X	X	X
Slovenia	X	X	X			X	X	X	X	X
Sweden	X	X	X	X		X	X	X	X	X
United Kingdom	X	X	X	X		X	X	X	X	X

## ANNEX VI

Total population and Resident population in EU Member States in 2011 (FCC, SCC and TCC residents)

	Total Population [1000]	Citizen residents		Non-citizen residents					
				Total		EU citizen residents		Third country citizen residents	
		[1000]	(%)	[1000]	(%)	[1000]	(%)	[1000]	(%)
EU-27	502,500	469,000	93.3%	33,300	6.6%	12,800	2.5%	20,500	4.1%
Austria	8,396	7,479	89.1%	907	10.8%	352	4.2%	555	6.6%
Belgium	11,001	9,832	89.4%	1,163	10.6%	749	6.8%	414	3.8%
Bulgaria	7,369	7,331	99.5%	39	0.5%	8	0.1%	30	0.4%
Cyprus	840	669	79.6%	168	20.0%	105	12.5%	62	7.4%
Czech Rep.	10,533	10,116	96.0%	417	4.0%	135	1.3%	281	2.7%
Denmark	5,561	5,215	93.8%	346	6.2%	125	2.2%	221	4.0%
Germany	81,752	74,553	91.2%	7,199	8.8%	2,628	3.2%	4,571	5.6%
Estonia	1,321	1,112	84.2%	208	15.7%	13	1.0%	195	14.8%
Ireland	4,481	4,067	90.8%	362	8.1%	292	6.5%	69	1.5%
Greece	11,310	10,354	91.5%	956	8.5%	153	1.4%	803	7.1%
Spain	46,153	40,498	87.7%	5,655	12.3%	2,329	5.0%	3,325	7.2%
France	65,048	61,224	94.1%	3,825	5.9%	1,340	2.1%	2,485	3.8%
Italy	60,626	56,056	92.5%	4,570	7.5%	1,335	2.2%	3,235	5.3%
Latvia	2,230	1,850	83.0%	380	17.0%	10	0.4%	370	16.6%
Lithuania	3,245	3,211	99.0%	34	1.0%	2	0.1%	32	1.0%
Luxembourg	512	290	56.6%	221	43.2%	191	37.3%	30	5.9%
Hungary	9,986	9,777	97.9%	209	2.1%	127	1.3%	82	0.8%
Malta	418	397	95.0%	20	4.8%	10	2.4%	10	2.4%
Netherlands	16,656	15,895	95.4%	673	4.0%	335	2.0%	339	2.0%
Poland	38,200	38,149	99.9%	47	0.1%	16	0.0%	32	0.1%
Portugal	10,637	10,189	95.8%	448	4.2%	103	1.0%	345	3.2%
Romania	21,414	X	X	X	X	X	X	X	X
Slovenia	2,050	1,967	96.0%	83	4.0%	5	0.2%	77	3.8%
Slovakia	5,435	5,367	98.7%	68	1.3%	42	0.8%	26	0.5%
Finland	5,375	5,207	96.9%	167	3.1%	61	1.1%	105	2.0%
Sweden	9,416	8,782	93.3%	622	6.6%	270	2.9%	352	3.7%
UK	62,499	57,986	92.8%	4,487	7.2%	2,061	3.3%	2,425	3.9%

Source: Eurostat (online data code: migr pop1ctz)



## REFERENCES

- Achermann, A., C. Achermann, G. D'Amato, M. Kamm and B. von Rutte, (2010), Country Report: Switzerland. EUDO Citizenship Observatory, at: <http://eudo-citizenship.eu/country-profiles>, San Domenico di Fiesole, European University Institute.
- Aleksynska, M., (2011), "Civic participation of immigrants in Europe: Assimilation, origin, and destination country effects", *European Journal of Political Economy* (27): 566-585.
- Barry, K. (2006), "Home and Away: The Construction of Citizenship in an Emigration Context", *New York University Law Review* (81): 11-59.
- Bauböck, R., (2007), "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting", *Fordham Law Review* 75(5): 2393-2447.
- Bauböck, R. (2005), "Expansive Citizenship: Voting Beyond Territory and Membership", *Political Science and Politics* 38(4): 683-687.
- Beckmann, L. (2009), *The Frontiers of Democracy. The Right to Vote and its Limits*. Houndmills, Basingstoke, UK, Palgrave Macmillan.
- Bevelander, P., and R. Pendakur, (2010), "Voting and Social Inclusion in Sweden", *International Migration* (49): 67-92.
- Bhatti Y., and C. Hansen, (2010), "Turnout at the local elections of 17 November 2009: Descriptive analysis of voter turnout based upon register data", Department of Political Science, University of Copenhagen, Working Paper 3.
- Blais, A., Louis Massicote, and Antoine Yoshinka (2001), "Deciding who has the right to vote; a comparative analysis of elections laws", *Electoral Studies* (20): 41-62.
- Brubaker, R., (1997), "Citizenship Struggles in Soviet Successor States", *International Migration Review* (26) 269-91.
- Cain, B.E., K. MacDonald and M.H. Murakami, (2008), "Administering the Overseas Vote", *Public Administration Review*, September/October, 802-814.
- Canham, F. (2012), "An assessment of voter registration in Serbia", IFES, Washington DC.
- Caponio, T., (2010), "Grassroots Multiculturalism in Italy: Milan, Bologna and Naples Compared", in: Tiziana Caponio and Maren Bockert (eds), *The Local Dimension of Migrant Policymaking*, (Amsterdam: Amsterdam University Press: 57-83.
- Collyer, M. and Z. Vathi, (2007), "Patterns of Extra-territorial Voting", *Sussex Centre for Migration Studies Working Papers*, Brighton: Sussex University.
- Doomernik, J., A. Kraler and D. Reichel (2010), "Quantitative Data on Immigrants' Political Participation in Europe", *PROMINSTAT Thematic Working Paper Nr. 8*.
- Dubajic, N., (2007), "Le Vote des Étrangers au Luxembourg: Evolution de 1999 a 2005", *Migrations et Societé* (114): 129-140.
- Duff, A., (2012), "EU accession to the ECHR requires ensuring the franchise for EU citizens in national elections", in: Rainer Bauböck, Philippe Cayla and Catriona Seth (eds), *Should EU Citizens Living in other Member States Vote there in National Elections?*, Robert Schuman Centre for Advanced Studies Working Paper RSCAS 32: 7-8.
- Earnest, D. C. (2008), *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Albany, State University of New York Press.
- Golubeva, M., (May 2011), "Political Participation of Third Country Nationals in Estonia, Latvia and Poland", Centre for Public Policy, PROVIDUS.

Hayduk, R. (2005), *Democracy for All: Restoring Immigrant Voting in the United States*. New York, Routledge.

IDEA and IFE (2007), *Voting from Abroad. The international IDEA handbook*, Stockholm and Mexico City, International Institute for Democracy and Electoral Assistance and Instituto Federal Electoral de Mexico.

Institute for Democracy and Electoral Assistance (IDEA), (2012), "Direct democracy database", <http://www.idea.int/elections/dd/search.cfm>, last accessed 20 December 2012.

Jacobs, D., et al., (2009), "The Challenge of Measuring Immigrant Origin and Immigration-related Ethnicity in Europe", *Journal of International Migration and Integration* (10): 67-88.

Jacobs, D., (1999), "The debate over enfranchisement of foreign residents in Belgium", *Journal of Ethnic and Migration Studies*, 25(4): 649-663.

Just, A., and A. Christopher, (2011), "Immigrants, Citizenship and Political Action in Europe", *British Journal of Political Science*, (42): 481-509.

Kadirbeyoglu, Z., (2012), *Country Report: Turkey*. EUDO Citizenship Observatory, at: <http://eudo-citizenship.eu/country-profiles>, San Domenico di Fiesole: European University Institute.

Kini T., (2005), "Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections", *California Law Review*, (93): 271.

Lafleur, J.-M. (2013), *Transnational Politics and the State. The External Voting Rights of Diasporas*. London and New York, Routledge.

Lafleur, J.-M. (2011), "Why do states enfranchise citizens abroad? Comparative insights from Mexico, Italy and Belgium", *Global Networks*, 11(4): 481-501.

López-Guerra, C. (2005). "Should Expatriates Vote?", *The Journal of Political Philosophy* 13(2): 216-234.

Martiniello, M. (2005), *Political Participation, Mobilisation and Representation of Immigrants and Their Offspring in Europe*, Willy Brandt Series of Working Papers in International Migration and Ethnic Relations (2005/1), Malmö University.

Nohlen, D. and F. Grotz (2000), "External Voting. Legal Framework and Overview of Electoral Legislation", *Boletín Mexicano de Derecho Comparado* (99): 1115-1145.

Owen, D. (2010), "Resident Aliens, Non-resident Citizens and Voting Rights", in: G. Calder, P. Cole and J. Seglow (eds.), *Citizenship Acquisition and National Belonging*, London, Palgrave: 52-73.

Pew Centre on the States, (2007), *Overseas voting – challenges and innovation*, Washington DC, Pew Centre.

Pew Centre on the States, (2012), *Democracy from Afar*, Washington DC. Pew Centre.

Raskin, J. (1993), "Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage", *University of Pennsylvania Law Review* (141): 1391–1470.

Rava, N., (2010) *Country Report: Serbia*, EUDO Citizenship Observatory, at: <http://eudo-citizenship.eu/country-profiles>, San Domenico di Fiesole: European University Institute.

Renshon, S.A., (2008), "The debate over non-citizen voting: a primer", San Diego CA, Center for Immigration Studies.

Rodriguez, C. (2010) "Noncitizen Voting and the Extraconstitutional Construction of the Polity", *International Journal of Constitutional Law* 8(1): 30-49.

Rubio-Marín, R. (2006). "External Citizenship and the Nation-State: Democratic Challenges and Prudential Consideration", *New York University Law Review* 81(1): 117-147.

Sadiq, K., (2009), *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*, Oxford: Oxford University Press.

Schrauwen, A., (2013), "Granting the Right to Vote for the European Parliament to Resident Third-country Nationals: Civic Citizenship Revisited", *European Law Journal* 19 (2): 201-218.

Shaw, J., (2007), *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*, Cambridge: Cambridge University Press.

Shaw J., (2009a), "Citizenship and Electoral Rights in the Multi-Level 'Euro-Polity': the case of the United Kingdom", in: Hans Lindahl (ed), *A Tight to Inclusion and Exclusion?: Normative Fault Lines in the EU's Area of Freedom, Security and Justice*, Oxford: Hart Publishing: 241-259.

Shaw, J., (2009b), "Political Rights and Multilevel Citizenship in Europe", in: E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Farnham, Ashgate Publishing: 29-49.

Spiro, P. (2006), "Perfecting Political Diaspora", *New York University Law Review* 81(1): 101-125.

Tintori, G., (2011), "The Transnational Political Practices of 'Latin American Italians'", (2011) *International Migration* (49): 168-188.

Tintori, G. (2012), *Il voto degli altri. Rappresentanza e scelte elettorali degli italiani all'estero*, Torino, Rosenberg & Sellier.

Tintori, G., (January 2013), "Italian Erasmus Students Protest their Disenfranchisement from the Upcoming Elections of February 24-25", *EUDO Citizenship*, at: <http://eudo-citizenship.eu/news/citizenship-news/781-italian-erasmus-students-protest-their-disenfranchisement-from-the-upcoming-elections-of-february-24-25>, last accessed 3 February 2013.

United Nations Population Division (UNPD), (2012), *Trends in International Migrant Stock: Migrants by Destination and Origin*, New York: UN Department of Economic and Social Affairs.

World Bank (2012), *World Development Indicators and Global Development Finance 2012*, World Bank, Washington DC.

---

<sup>1</sup> Ces quatre États ont procédé à une subdivision géographique par circonscriptions pour leurs citoyens résidant à l'étranger alors que la Croatie n'a défini qu'une seule circonscription pour l'ensemble de ses citoyens qui votent à partir de l'étranger.



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

## POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

### Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

### Policy Areas

- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

### Documents

Visit the European Parliament website: <http://www.europarl.europa.eu/studies>

PHOTO CREDIT: iStock International Inc.



ISBN 978-92-823-4664-8  
doi: 10.2861/30360