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# EUI Working Papers

RSCAS 2012/32

ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES  
EUDO Citizenship Observatory

SHOULD EU CITIZENS LIVING IN OTHER MEMBER STATES  
VOTE THERE IN NATIONAL ELECTIONS?

edited by Rainer Bauböck, Philippe Cayla and Catriona Seth



**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**  
**ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES**  
**EUROPEAN UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP**

*Should EU Citizens Living in other Member States  
Vote there in National Elections?*

**RAINER BAUBÖCK, PHILIPPE CAYLA AND CATRIONA SETH**

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ISSN 1028-3625

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Printed in Italy, July 2012  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)  
[www.eui.eu](http://www.eui.eu)  
[cadmus.eui.eu](http://cadmus.eui.eu)



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Research for the EUDO Citizenship Observatory working papers series has been jointly supported by the European Commission grant agreement JLS/2007/IP/CA/009 and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

For more information about the project please visit the project website at <http://www.eudo-citizenship.eu>

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## **Abstract**

The core right of EU citizenship is freedom of movement within the territory of the Union. But EU citizens who live in a member state other than their homeland cannot vote in the national elections of that country unless they first acquire its citizenship through naturalisation. In several member states they also lose their right to vote in national elections of their country of origin when they have lived abroad for too long. A group of EU citizens has started a European Citizens' Initiative to propose EU citizens should have the franchise to vote in national elections of their country of residence. This working paper collects all the contributions to a EUDO CITIZENSHIP forum debate on this proposal. While all authors agree that the loss of democratic participation rights due to the exercise of free movement rights is contrary to the spirit of EU citizenship, they disagree to a certain extent on what the right answer to this problem is: should EU citizens vote in their countries of origin, of residence, or be given a choice? Should third country nationals be included in a broader electoral reform? How will it be possible to convince a sufficient number of EU citizens of this initiative, given the disappointing turnout rates in European Parliament elections?

## **Keywords**

EU citizenship, voting rights, democratic franchise, national elections, free movement.

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## Kick-off contribution

Philippe Cayla and Catriona Seth\*

Imagine being a law-abiding EU citizen, living in the EU, and having no right to vote for the government whose decisions will impact on your daily life. Does this sound like an Orwellian nightmare? Think again. It is the fate of large numbers of your neighbours or friends. Let us take the case of Alex, a British journalist living in France. He can vote for the local mayor in Paris and for members of the European parliament. He cannot, however, elect the president of France whose policies could influence his tax situation or decide whether a high-speed train station is located in his town. In the same way, Kirsten, who is a Danish teacher residing in Spain has no say in the election of a government whose decisions will impact on her retirement pension and on the educational system in which she works. Surely this is regrettable, to say the least. Should being European in Europe not entitle you to have a say in the way the part of Europe in which you live, work and pay taxes is governed? EU nationals have the right to vote in European and local elections, wherever they live within the EU. Should they not also be entitled to vote in national elections even if they reside in an EU nation other than their home country? Should their lack of a possibility to use the democratic process in order to influence policies by which they will be directly affected not be construed as a potential obstruction to mobility? Who wants to go and live in a country without being able to exercise full democratic rights? Surely it is time for the EU to extend EU citizens' voting rights to national elections: this form of residential right would help integration, encourage mobility and enhance the value of EU citizenship. We feel a European Citizens' Initiative might be a way to achieve this.

Go to the [Letmevote](#) website and to the official description of the "[Let me vote!](#)" ECI on the European Commission website.

Read the [article](#) by Philippe Cayla in Libération 8 December 2011 and his [article](#) written with Catherine Colonna in Le Monde 3 April 2012 (translated in English [here](#)).

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\* Philippe Cayla is member of the Supervisory Board of Euronews S.A. and President of Euronews Development. Catriona Seth is Professor in 18th-century French studies at the Université de Lorraine. Contribution published online on 24 February 2012.



## **EU citizens should have voting rights in national elections, but in which country?**

Rainer Bauböck\*

I will be happy if Philippe Cayla's and Catriona Seth's proposal for a European Citizens' Initiative (ECI) on national voting rights for EU citizens is successful. But I will not sign it myself. I agree that there is a serious democratic deficit in the current regulation of voting rights. It is contrary to the spirit of EU law if EU citizens who take up residence in another member state lose fundamental rights as a consequence of exercising their right of free movement. And it seems particularly perverse that they retain their rights to vote in local and European Parliament elections but can lose the more significant franchise in national elections. The question is: which country should be responsible for letting them vote and under which conditions?

Philippe Cayla and Catriona Seth argue that this should be the country of residence, where citizens pay their taxes and are most comprehensively affected by political decisions. I agree that all long-term residents, and not only EU migrants, should have access to the franchise for these reasons. However, it is not unfair to ask immigrants to apply for their host country's citizenship if they want to fully participate. This will not only provide them with all democratic rights but will also send a signal to the sedentary native citizens that these immigrants have a long-term commitment to their country of residence. After all, national parliaments make laws that affect not only current residents but also future generations. Of course, neither native citizens nor immigrants can be forced to stay for the rest of their lives. But citizenship is generally a life-long status that is neither automatically acquired nor automatically lost when moving to another country. And therefore, acquiring it through a public declaration of consent sends a signal of long-term commitment that residence alone cannot convey.

Let me emphasize that this is not an argument for citizenship tests that punish the less educated immigrants, nor an argument that immigrants must show exclusive loyalties towards their host country by abandoning their citizenship of origin. All immigrants should be offered opportunities to naturalise after they have become long-term residents – which in the EU means after five years – and dual citizenship should be broadly tolerated. Under such conditions, why could EU citizens still claim national voting rights without applying first for citizenship?

One could object to my proposal that it is not realistic that European states will reform their citizenship laws along these lines. But is it really more realistic that they will waive the condition of naturalisation for one large group of migrants altogether? And what if they were forced to do so by some daring judgment of the Court of Justice of the European Union? Would member states then not react by raising even higher the hurdles for naturalisation, which would in turn mean that fewer migrants get access to EU citizenship in the first place?

If for these normative and pragmatic reasons voting rights in countries of immigration remain attached to citizenship status, what can we then do about the democratic deficit? The obvious answer is: make sure that EU citizens who move to another member state do not lose their voting rights in national elections in their countries of origin. In fact, most EU states do allow their expatriates to vote in national elections. The regulations are, however, very different. Ireland still does not grant an external franchise. The Greek constitution guarantees voting rights to Greeks living abroad, but the Greek parliament has never adopted the implementing legislation. Britain withdraws voting rights after fifteen years of residence outside the country. Italy allows those born abroad who have inherited their citizenship from Italian ancestors to vote in Italian elections but not those who have kept their residence in Italy and are merely temporarily absent on election day. Conversely, Denmark has a residence requirement for voting, but has successively extended the franchise to state employees,

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employees of private Danish companies, Danes working for international organisations, Danish students and others living abroad for health reasons as well as to their Danish spouses, as long as they are presumed to be only temporarily absent. By contrast, Belgium has mandatory voting and applies this duty even to Belgium citizens living abroad, although they are not forced to register as voters.

In its judgement in the 2010 [Rottmann case](#)<sup>1</sup> the Court of Justice of the EU has asserted that member states have to take EU law into account when a decision to withdraw nationality implies a loss of EU citizenship. Should the same logic not also apply to a withdrawal of national voting rights in case of exercise of free movement rights?

The promoters of the *letmevote* ECI will object that long-term residents abroad are more strongly affected by the laws of their host country than by those of the state whose citizens they are. But voting rights cannot be determined by a principle of affected interests alone, or else the whole world should have a right to vote in the next US presidential election. We need instead a criterion of genuine ties between voters and the political community where they cast their vote. Migrants often maintain genuine ties to their country of origin while developing at the same time such ties to their country of residence. If they want to fully participate in the latter, they should be able to do so by applying for naturalisation. And if they no longer care about participating in the former, they should be free not to vote in homeland elections or also to renounce their citizenship.

Although there is a strong global trend to grant voting rights to expatriates, I do not think that all citizens who live abroad should have a right to vote. If we care about genuine ties, then those who have inherited their citizenship by birth abroad should not have a say in decisions about the future of a country where they have never lived and are unlikely to ever live. And the current Hungarian government's policy to offer first dual citizenship and now also [voting rights in national elections to ethnic Hungarian citizens of neighbouring countries](#) is a clear example how external voting rights can be abused by nationalists in power.<sup>2</sup> However, second and third generations of immigrant origin as well as native ethnic minorities with neighbouring kin states can be excluded by limiting the external franchise to first generation migrants.

The case for external voting rights is particularly strong in the EU for three reasons. First, because it can be linked to the core of EU citizenship, which is right of free movement; second, because it respects the principle that EU citizenship is derived from member state nationality rather than from residence; and third because it secures that free movers will not lose their indirect representation in EU legislation through the vote of their national government in the Council.

I would therefore make a case for common European standards of access to national and EU citizenship for all immigrants as well as for common standards of external voting rights of EU citizens.

Why will I still be happy if the *letmevote* initiative succeeds in collecting 1 million signatures for national voting rights derived from residence? Because this would finally provide the Commission with a reason to address a serious democratic deficit and to open the debate on how to overcome it.

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<sup>1</sup> See our EUDO CITIZENSHIP Forum Debate: [Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?](#)

<sup>2</sup> See our EUDO CITIZENSHIP forum debate: [Dual citizenship for transborder minorities? How to respond to the Hungarian-Slovak tit-for-tat](#)

## **A European or a national solution to the democratic deficit?**

Alain Brun\*

I agree with Rainer Bauböck on his starting point. It is indeed contrary to EU law if EU citizens who take up residence in another member State lose fundamental rights as a consequence of exercising their right of free movement.

But I fully disagree both with his argumentation and his proposed conclusion which are, in my views, rather disproportionate with the problem to solve.

There are the two ways to solve the problem, the European and the national ones.

As shown by Rainer Bauböck's comments, the national way would lead towards difficult and tricky considerations, like acquisition and loss of nationality both by EU citizens and third country nationals. I agree that those topics will probably have to be considered at EU level sooner or later. I also agree with Rainer Bauböck that all immigrants should be offered opportunities to naturalise after they have become long-term residents, at least if they so wish. Nevertheless for the time being and since the conclusions of the Edinburgh European Council of December 1992, such topics are explicitly considered as outside the EU's competences and no legal basis can be found for them in the present Treaties. I have strong doubts that the case law of the European Court could by itself reverse this consensus and the taboo.

The European way suggested by the 'Let me vote' initiative offers a much lighter solution, much more in line with what European citizenship really is.

I leave the interpretation of the somewhat abstract definition given by the Treaty to lawyers. For me, as a European citizen, I understand European citizenship as the right to be considered as a national by any member state other than the one whose nationality I hold, as soon as I am in relation with its authorities, in one way or another. If, as a German, I drive through the Belgian territory by car at a speed exceeding Belgian limitations, I can of course be fined, but under the same conditions as the nationals of Belgium; if, as a Dane, I reside in France, I have to have the same rights as French nationals and this from the first day of my stay. Even outside the EU, any member state has to give me consular protection, under the same conditions as those applied to its nationals. And, if I receive the rights to vote in municipal and European elections, it is always under the same conditions as the nationals of the state where I reside.

Being considered as if I were a national in my country of residence, where is the need for asking for the nationality of that country, as long as the EU respects diversity? One of my obligations as an EU citizen is to respect my host country and to participate fairly in its social and political life. But why should I ask for its nationality, if I still feel French, German or Polish?

Of course, there is a well-known limited number of exceptions to this national treatment and some discriminations remain.

The purpose of the 'Let me vote' initiative is to abolish one of them.

It is ambitious in its scope, by covering all 'political' elections, regional, legislative, referenda, presidential, etc. Due to the diversity of elections in member states, it would of course not be possible to enter into a precise enumeration. I understand also that the initiative suggests giving the rights to all EU residents, not only to long-term or permanent ones. This is in line with existing rights to vote in municipal and European elections.

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\* Former officer of the European Commission (1976-2011). Contribution published online on 6 March 2012.

Nevertheless, it can be useful to recall that the number of citizens concerned is rather limited. In official documents from the European Commission, the figure of 12 million people is frequently quoted to measure the total number of EU citizens residing in a member state other than their own. This figure covers those citizens, like children, who do not have the right to vote and it can therefore be compared to the total number of the EU population, which is more than 500 million.

Granting the right to vote to EU citizens will therefore hardly modify the political landscape in any member state, while it will contribute to the respect of EU citizens' fundamental rights, in particular the right to participate in regular elections in the country where they reside as laid down in Article 3 of the First Protocol to the European Convention on Human Rights. It will also contribute to reducing the so-called 'democratic deficit' by fully guaranteeing their representation in EU legislation through the vote of their host country government in the Council and the position taken by national parliaments in EU procedures according to the rules laid down by the Treaty.

Obviously, this representation is not guaranteed in the situation mentioned by Rainer Bauböck where EU citizens lose their voting rights in national elections in their countries of origin.

Probably, mechanisms will have to be considered to prevent EU citizens from having double representation in EU legislation. In the same vein as for the European elections, EU citizens should be given the choice to vote either in their host country or in their member state of origin.

The idea proposed by the 'Let me vote' initiative is not a new one. It has already been discussed in many forums and was even flagged by the European Commission in its 5th Report on European Citizenship in 2004.

As required by Article 25 of the Treaty, 'This report shall take account of the development of the Union.' It is clear that, in the light of developments sustained in fields like the areas of freedom, justice and security, the representation in EU legislation through the Council, as well as through the European Parliament, has to be fully ensured if the Union is to be a democracy. We can simply hope that the Commission will take this proposal on board in its next Report to be submitted in 2013. It is probably the least which can be done for the European year of citizenship.

## **EU accession to the ECHR requires ensuring the franchise for EU citizens in national elections**

Andrew Duff\*

As rapporteur of the European Parliament on electoral reform, I strongly support the launching of this ECI, and will sign it.

Another hopeful event is the prospect of the EU signing up to the ECHR (and its First Protocol). This will, in my view, allow disenfranchised citizens to seek a remedy at the European Court of Justice at Luxembourg and/or the European Court of Human Rights at Strasbourg by demanding that the EU now has a duty to act to guarantee 'conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'.

With that in mind, I recently asked a written question of the European Commission as follows:

"All member states have adopted the first Protocol to the European Convention on Human Rights (ECHR), Article 3 of which states that: 'The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'.

"In view of the imminent likely accession of the European Union to the ECHR and to its first Protocol, what does the Commission intend to do about member states who disenfranchise their own nationals who choose to live in another EU state for an extended period?

"Likewise, what does it intend to do to encourage EU states to extend the right to vote in national elections to their long-term resident EU citizens of another nationality?

"Does the Commission agree that it is unacceptable that a very large number of EU citizens are deprived of their basic civic right to choose the legislature either of the state in which they live or in their original state?

"Will the Commission be ready to take action to ensure that all EU states comply with the provisions of the ECHR which guarantee the right to vote?"

The answer of Commission Vice-President Reding (E-9269/2011, 2 February 2011) was somewhat disappointing. Here it is:

"As already highlighted in its reply to written question [E-7910/2010 by Mr. Jim Higgins](#) and [E-8488/2011 by Mr. Morten Løkkegaard](#), 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.

"The Commission would like to inform that the accession to the ECHR will not extend the European Union competences as defined in the Treaties. In particular, the accession to the First

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\* Liberal Democrat Member of the European Parliament for the East of England since 1999. Contribution first published on 7 March 2012.

Protocol of the Convention neither will extend the right to vote of EU citizens residing outside their member state to national parliamentary elections, nor enable Commission to take actions against Member states' violations of Article 3 of this Protocol."

The point about citizens not being able to 'vote' for their representatives in the Council of Ministers is interesting enough. Furthermore, although the Commission is bound to stick to the letter of the law, the fact is that once the EU signs up to the ECHR the rights prescribed in Articles 39 and 40 of the EU Charter of Fundamental Rights concerning voting and standing in local and European elections will not be as comprehensive as the citizen rightly demands. So wider legal and political action will surely be necessary at the EU level. And changes to both the primary and secondary law of the EU cannot be obstructed for ever.

## How to enfranchise second country nationals? Test the options for best fit, easiest adoption and lowest costs

David Owen\*

The proposal of this ECI by Philippe Cayla and Catriona Seth is a welcome initiative addressing a problem that has already been highlighted by the European Commission (COM(2010)603), namely, that some 'second country nationals' (SCNs) lose their entitlement to vote in the national elections of their state of nationality without having acquired the right to vote at this level in their state of residence. This is a democratic wrong since it is not democratically legitimate that a person lawfully exercising a civil right shall in virtue of such exercise be deprived of a political right. The democratic harm that results is, given the political constitution of the EU, not simply that the disenfranchised individual has no say in who represents them in the national legislature or executive but also, consequently, that they have no say in relation to who represents them at the Council of Ministers. While I share Andrew Duff's view that 'the rights prescribed in Articles 39 and 40 of the EU Charter of Fundamental Rights concerning voting and standing in local and European elections' are not 'as comprehensive as the citizen rightly demands', I see little reason to think that this situation will change with the EU's signing up to the ECHR, not least since 'the people' is one of the more complex and contested terms in the legal and political lexicon.

How, then, is this *demos* problem best addressed? Four simple general rules are available as options for resolving the legitimacy deficit that characterises the status quo:

- 1) All SCNs have national voting rights in the state of residence.
- 2) All SCNs have national voting rights in the state of nationality.
- 3) All SCNs have the choice between (1) and (2).
- 4) All SCNs have a time-differentiated combination of (1) and (2) which starts with (2) and, after a period of residence, switches to (1).

It is notable that (2)-(4) can be, more or less, combined in a more complex rule:

- 5) All SCNs shall have a fair opportunity of acquiring nationality in the member state of residence and all SCNs who do not have nationality in their member state of residence shall be eligible to vote in national elections of their member state of nationality.

Any of these five general rules would suffice to address the democratic wrong but which is the best choice? Or, to tie our discussion back to the proposed ECI, why ought we privilege (1)? There are three dimensions to the issue of which is the *best* choice. First, which rule offers the best fit with the institutional structure of the EU? Second, which rule is easiest to adopt and implement? Third, what are the likely costs and side-effects of the different rules?

On the first score, the ECI proposal doesn't do well because it misconstrues the current composition of the EU as a polity. This claim can be elucidated by contrasting the EU with purely intergovernmental and fully federalised systems that are also committed to free movement within the territorial area that they cover. In the case of a purely intergovernmental structure, the norm of free movement is grounded on a joint commitment to a shared aim or purpose such as, for example, a European market. In terms of the national citizenship of the states involved in this intergovernmental project, the context remains largely equivalent to that of independent states who are not engaged in such a project, but not wholly since the shared purpose brings into play the principle that the partners to this project should not act to frustrate this joint enterprise and should, where compatible with their

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\* Professor of Social and Political Philosophy at the University of Southampton. Contribution published online on 15 March 2012.

distinct national contexts and projects, aim to facilitate it. Such a principle could be expressed by, for example, offering preferential treatment to the citizens of partner states for access to membership rights and for dual citizenship.

In the contrasting case of a fully federalised system, free movement may serve instrumental purposes but fundamentally expresses a basic liberty of citizens as federal citizens which requires that anyone exercising their right to cross state borders must not be disadvantaged at any level of the franchise within the federal structure. An obvious way to respect this democratic commitment is to adopt a residence-based rule for voting rights in the states that comprise the federal union. But the EU is neither a purely intergovernmental nor a fully federalised body. Because it isn't simply intergovernmental it is a democratic wrong for EU citizens who move across state borders to lose national voting rights; because it isn't simply federal the ECI proposal of a residence-based voting rule isn't an ideal fit as a way of ensuring political equality for EU citizens. Option (5), rather than option (1), looks like the best rule here because it aligns responsibility for political rights of nationals in the right way, that is, to the member states through which EU citizenship is acquired.

Option (5) does less well though on the second dimension. As Alain Brun rightly observes, it is likely to be 'tricky' and 'difficult' to get all member states of the EU to coordinate their national legislation in this way (particularly if they have constitutional provisions against expatriate voting). Here Brun's suggestion of adopting option (3) and the ECI proposal of option (1) both look more straightforward and exhibit greater continuity with existing EU practices. This matters because it is relevant to ask not just what fits best but how long it will take to remove the democratic wrong and harms at stake here.

On the third dimension, option (1) has both strong positives and negatives. On the positive side, it provides political representation in an SCN's immediate context of governance and it would also resolve the quite radical disparities between the implementation of the EU rule on local voting rights (consider the comparison of France and the UK, for example, where in France local voting rights are restricted to the level of the commune, while in the UK they include not only local and county council elections but also extend to voting in devolved assembly elections in Scotland, Wales and Northern Ireland) since it would remove any constraints that pertain to the linkage of local and national representation (as occur, for example, in France where members of the Senate are chosen through an electoral college comprised on locally-elected officials). On the negative side, option (1) completely severs the *political* relationship between citizen and their state of nationality and also breaks the widely held link between citizenship of the state and voting rights (although this link does not hold universally even between EU member states, as the mutual granting of voting rights between the Republic of Ireland and the UK illustrates). Option (3) is, arguably, worst here since it provides the choice of *either* political representation in the immediate context of national rule *or* maintaining a political link with one's state of nationality without resolving disparities in relation to local voting and while breaking the citizenship-franchise link at national level. Option (5) delivers neither the strong positives nor the negatives of option (1). It maintains the linkage between national citizenship and suffrage at national level, and is likely to support a general easing of access to nationality of the state of residence for third country nationals in the same way that EU rules on local voting have supported their extension to third country nationals in a number of states.

So which option is best? Although I share Rainer Bauböck's preference for option (5), I think that there is still a strong case for option (1) – and for this reason I would sign the ECI.

## What's in a People? Social Facts, Individual Choice, and the European Union

Dimitry Kochenov\*

Joining the majority of other contributors to this forum I fully support the useful and timely initiative for national voting rights for EU citizens, which has been overdue.

My argument builds around well-known but much ignored effects of the European integration project on the member states and their societies which require adjusting our understanding of who is a foreigner in today's Europe, *i.e.* what is a 'people' in the context of the European project. Given the wording of Article 25 TFEU, which allows the Commission to propose additional rights of EU citizenship but requires unanimity in the Council and approval by the member states, the change will not be easy. However, this would be a bad reason for not trying.

Should it not be up to the individual to decide who will participate in political life rather than up to the state with its random naturalisation procedures and nonsensical tests created to divide societies instead of uniting them (see my [EUDO CITIZENSHIP Working Paper 2011/06](#))? Hailing from a totalitarian regime myself I cannot overstate the value of being left alone, free from the state's critique, endorsements, or ideas about 'good life'. The criterion of genuine ties that Bauböck preaches in his contribution to the present debate starts from the presumption of people's inability to take responsible decisions for themselves whether they have such ties or not, superimposing thus their judgement with a state-mandated one. Given that those who do not have any interest in the state of residence are highly unlikely to participate in political life there, Bauböck's contribution struggles hard with a non-existent problem. He does his best to justify the state-mandated selection of those who 'have the ties' profoundly mistrusting those who actually feel sufficiently affected to demonstrate that politically. As if the ties depended on state-mandated blessings! It seems that only the 'official' certificates are meaningful, not the actual reality they are summoned to certify, reminding me of the absurd official documents issued by the cat Behemoth in Bulgakov's *The Master and Margarita*. Differently from Bulgakov's hellish world of Stalinist Moscow, the EU has been built specifically to curtail states' ability to improve 'their' peoples' lives at the expense of those across the border. Questions such as 'Should a Polish worker be deported from the UK to free a place for a Scot?' have been answered with the interests of *all* in mind, *against* state thinking or nationalist visions.

### I.

From the very first steps of European integration it was clear that the consequences of the European project for the states participating in it will be far-reaching. Whether we like it or not, supranationalism and the voluntary conferral of competences by member states to the EU have led to profound changes of the legal-political landscape in Europe. Even if the references to *la fédération européenne* in the 1950 Schuman Declaration are ignored, the initial goals of the project are undisputed. They included a trade off in which some sovereign powers were exchanged for closer interconnectedness and peace. At the heart of the project lay the idea of putting a limit to what states can do.

While this logic is probably uncontroversial in the areas where competences have been expressly conferred on the Union, such as the customs union, the same rationale also affects areas which are not under the control of the supranational institutions. This is as natural as it was predictable from the very beginning, since the core of the notion of the Internal Market on which the contemporary Union is built is teleological in nature. The supranational institutional structure was put in place to enable the

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achievement of the Union's goals, thus putting the teleological rationale at the core of the whole construct, as Judge Pescatore has explained forty years ago (Miscellanea W.J. Ganshof van der Meersch, Vol.2, Bruylant, 1972, 325). A duty to help and not to hinder supranational integration made its way into the text in the form of the principle of Union loyalty. Consequently, any national law at any level, no matter whether it is generally within the exclusive competence of the member states or not, can be squashed, should it stand in the way of achievement of the goals of the Union interpreted teleologically.

## II.

To expect that profound self-imposed limitations which the member states took up when designing and ratifying the Treaties would not have any consequences outside of the legal field is naïve as much as short-sighted. Legal change is responsible for social change. That the two are connected is hardly surprising. In fact, this is a testimony to the success of the legal-political endeavour in the first place.

The fact that French men and women cannot imagine a war with Germany is a great sign of the EU's achievements. This is just the tip of the iceberg of change that the EU has brought into state behaviour, which has direct consequences for what is expected of states in Europe today. According to Philip Allott ('The European Community Is not the True European Community' (100 Yale L.J. 1991, 2485), we have witnessed a shift from diplomacy (using all the available means to promote the states' 'own people's' well-being in interaction with others) to democracy (taking the interests of all into account) in inter-state relations in Europe. In other words, selfishness and inward-looking construction of the state at the expense of others, putting the interests of states' 'own people' above everything, gave way to the awareness of the interests and expectations of others. For concrete people the effects of these developments are as important as they are for the states these people inhabit. The fundamental shift from diplomacy to democracy means that favouring 'your own' is prohibited in the majority of cases: a Scot is not and cannot be better in the eyes of the British government than a Slovak. While implementation problems are well-known, the starting point is nevertheless clear. In the words of Gareth Davies (11 ELJ 2005, 55), Article 18 TFEU prohibiting discrimination on grounds of nationality between EU citizens has largely abolished the nationalities of the member states within the scope of application of EU law. Even more, by granting EU citizens free movement rights, the Treaties *de facto* and also *de jure* made it largely impossible for the member states to have any 'immigration' policy concerning EU citizens. In other words, modern EU states cannot give preference to their own nationals compared with other EU citizens and are not entitled to stand in the way of EU citizens exercising their Treaty rights. This means that from container societies of destiny (which is a synonym for the lack of individual choice) the member states have turned into spaces for the expression of free will. EU law grants the majority of EU citizens a right to be welcomed where they think they will feel at home and the Court of Justice of the European Union is ready to step in to protect such rights by defending EU citizens in their supranational capacity against member states' claims. This is a bitter pill for nationalists to swallow. Their nationality, however much glorified in primary school education, means much less in the EU context than it would in a world where there is no Union in Europe. This is one of EU's main achievements.

## III.

The fusion of legal and social dynamics described above is responsible for the peculiarities of European states today, compared with other nations around the world. Although no one would dispute the sovereignty of EU member states, it is abundantly clear that their practical functioning in all the fields they could possibly aspire to influence is profoundly affected by the new socio-legal reality of European integration. This is best illustrated by the interrelation between European states and their 'peoples'. EU member states have been transformed from units of destiny into units of choice and are obliged by law to respect all those willing to leave forever and move to a different member state.

Many harbour now large numbers of individuals who, although they do not possess the local nationality, cannot be stopped at the border, sent away, or treated worse than the locals. These are the EU citizens, *i.e.* the non-nationals who are non-foreigners.

The developments described above are fundamental. Once destiny stops obscuring the view, responsibility and freedom come into sight. This responsibility and this freedom affect the essence of what the ‘peoples’ of the member states are. Crucially, unlike the absolute majority of states outside the EU, member states of the EU cannot shape social facts related to EU citizens’ movements. In other words, from the shapers and custodians of ‘their’ societies, as in Micronesia where those who are not ‘ethnic Micronesians’ are not entitled to anything, or in Quebec where those who speak French are more welcome, the member states have become mere observers of how EU citizens use EU law and their free will when crossing the ephemeral borders in order to organise their lives as they see fit. The strongest appeal of EU member states in the eyes of mobile EU citizens is their relative invisibility – they do not intrude into the lives of EU citizens choosing to settle outside their member state of nationality.

Why is this transformation important? It seems that it has profound implications for the moral reasons of accepting or rejecting social facts in framing policy and law. States actively involved in shaping immigration policy not only help the societies they serve. They also *shape* these societies by not letting some people in or mistreating others. Consequently, once it is known that they have this capacity, legitimate pretexts can be listed for not including some permanent residents into the notion of the ‘people’, such as ‘illegal’ Latinos in the US or, until very recently, aboriginals in Australia. Does the same hold for the states which are merely entitled to *observe* as those who chose them come and go? Once the ability to shape the society is lost thanks to the freedom guaranteed by supranational law invocable against the member states, the member states are bound to face substantial difficulties in defining the ‘people’ convincingly, should they have restrictions in mind. This goes far beyond municipal or EP elections, which the EU Treaties open up for all EU citizens. It goes to the very core of the relationship between the people and the state. The state sanction is not required for any EU citizen to belong *de facto*, and in many respects also *de jure*, to the people of a member state.

Alongside with a handful of exceptions from the main non-discrimination rule, which are irrelevant for the absolute majority of EU citizens, national elections fall outside the realm of EU law. This is impossible to justify in the light of the developments described above. Once the member states, acting via the EU, have effectively transformed themselves from the shapers of society into the observers of how EU citizens use their rights, the exclusion of EU citizens without a local nationality from national elections becomes unjustifiable, as this boils down to ignoring social facts beyond the states’ control. This is exactly why Bauböck’s position is unfounded. It adopts a national model in ignoring social facts as a starting point. Since member state nationalities are in the absolute majority of cases legally inconsequential for EU citizens travelling around the EU, connecting democratic participation with naturalisation amounts to artificially inflating the importance of an ‘abolished’ status.

While it is always easier to argue for not changing anything, in this particular case change is definitely required. Although practically speaking the impact of the initiative, should it be successful, is likely to be very limited, symbolically its significance will be huge.



## Testing the bonds of solidarity in Europe's common citizenship area

Jo Shaw\*

The European Citizens' Initiative proposing the extension of voting rights for resident non-national EU citizens to all elections in the host state is an important and timely initiative. It is to be hoped that it will bring the key question about the normative and practical consequences of the development of the EU as a 'common citizenship area' to the centre of attention. As David Owen's contribution makes clear, the EU struggles with the challenges posed by the question of 'who should vote in which election where' because it is nestled – as a type of special purpose vehicle for the varied projects clustered under the heading of European integration – somewhere between the 'truly' federalised polity and the 'purely' intergovernmental association. The creation of EU citizenship and the remodelling of the treaties according to the 'Lisbon' schema do not provide a definitive normative answer to the question of how voting rights should be organised within this mixed polity in which the states remain significant actors. At the same time clearly the practical consequences of the exercise of free movement demand some sort of response – from the EU institutions and from the member states – to the 'democratic wrong' (as Owen puts it) that arises because many of those who exercise their right to free movement end up, in one way or another, being disenfranchised in relation to all of the elections not covered by Article 22 TFEU, unless they choose the often costly and cumbersome route of acquiring the citizenship of the host state or are lucky enough to have the citizenship of one of the member states which impose no conditions upon the exercise of external voting rights.

Accordingly, I'm instinctively sympathetic to the ECI proposal, and will be happy to sign it, because it seems to me that this would be one of the most effective ways in which this important issue could finally receive the attention it deserves.

Somehow, despite its centrality as the core foundation stone of EU citizenship (even if EU citizenship has a broader constitutional and political potential that has yet to be realised), free movement still tends to be marginalised as a topic within popular and political debate in the member states. The European Commission attests to this when it draws attention to the increasing number of complaints that it hears about via the SOLVIT and the Your Europe Advice systems from aggrieved citizens deprived of the rights that they are currently accorded (e.g. in local or European parliamentary elections), or unable to comprehend why the existing system does not protect them in respect of what is still regarded as the 'gold standard' of political participation, namely the right to vote in national elections. It is indeed reasonable to ask, as does Andrew Duff, why – if persons are mobile – they suddenly seem, as regards national elections, to come out from under the protective umbrella provided by Article 3 of Protocol 1 of the ECHR governing the obligations of states to organise free and fair elections for legislatures.

But for years, the issue of free movement and the rights to which it does, or does not, give rise has rarely been discussed in the media or in popular political discourse. And now that free movement does receive more attention, it is not always welcome. Many host member state governments are too quick to say that free movers can get access to too many rights because apparently they have an unimaginable propensity for 'benefit tourism'. It does seem reasonable to suggest that if the host state's political community were balanced by the presence of socially, politically and economically integrated free moving tax-payers these types of arguments might gain a little less traction within the body politic. It has been clear since 2004 that for some member states the consequences of the free movement of labour are now more closely aligned to mainstream debates about immigration than to debates about the meaning of EU citizenship and the about the constitutionalisation process of the European Union.

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But generally speaking, the member states take depressingly little care to ensure that within the ‘common citizenship area’ the citizenship experience is good for either their own citizens who are mobile or for the citizens of other member states who are resident (or in some other way subject to the jurisdiction of the host state). For over the life course, the incidence of mobility is actually much higher than is the case when we count those who reside in another member state at any given time. Much larger numbers of persons are thus affected directly or indirectly than tends to be assumed. So, in a way, it is good to reinforce the point that solving this particular democratic problem in the EU and its member states is going to require concerted action at both the EU and the member state levels. It cannot be solved at one level, without thinking about the implications at the other level. And no solution is simple. All have significant practical consequences or *caveats*.

Certainly, it is impossible to think about the issue of voting rights for EU citizens without considering its implications in relation to national citizenship. Rainer Bauböck thinks that the proper democratic approach is to make national citizenship much more open to all long term residents who lack it, but who would like to make a sufficient commitment to be entitled to vote. He sees the two things as going hand in hand. But Bauböck also wants to ensure that national citizenship is equally open to EU citizens and to third country nationals. Given the current trend in many states to heap more and more conditions on those acquiring citizenship by naturalisation, unfortunately his wish to use this route towards democratic equality is as far away from political reality as the desire to see EU citizenship rights extended by treaty amendment to include the right to participate in host state national elections. Perhaps more realistic could be a push towards a more generalised acceptance of external voting within the EU, but while this route could potentially offer an avenue for all to participate in one set of elections, it does not necessarily let them participate in the one that they would choose. In other words, from a truly *European* perspective, both of those routes, which prioritise national solutions over supranational ones, do seem suboptimal.

Moreover, they might also seem suboptimal because they assume that the only way of ensuring that democratic participation is not undermined by the use of free movement rights involves direct attempts to persuade the member states either to change their national laws on citizenship and/or external voting in a coordinated way, or to agree – as ‘masters’ of the treaties – to change the terms of EU citizenship itself. In fact, if member states recognised more readily their responsibilities in respect of the common citizenship experience for both *outgoing* and *incoming* EU migrants they might be readier to change their national laws autonomously, or perhaps in concert with other states which provide reciprocity of rights, in order to build a more substantial common electoral area akin to the one that already exists in part between the UK and Ireland. One could then even imagine the circumstances in which the states could agree, with the assistance of the EU institutions, on a facilitative convention structuring these types of reciprocal citizenship relationships.

But the member states should not be the sole focus of attention. It seems to me that the debate about the character of the common citizenship area should be held in conjunction with wider public deliberation about how, and whether, the EU should generate the types of closer bonds of solidarity that seem necessary for the purposes of solving the euro crisis or facing down environmental challenges in the future. In that respect, the ECI should be seen as one strategy alongside others, such as political campaigns at the national level and strategic litigation testing out the potential limits of EU citizenship or the effects of the ECHR. All of these steps are needed to raise awareness of this very important issue.

## **'An ever closer union among the peoples of Europe': Union citizenship, democracy, rights and the enfranchisement of Second Country Nationals**

Richard Bellamy\*

This Initiative is to be welcomed if only for opening up the debate and prompting the discussion here – which I have found most instructive. This is an important issue that - with certain honourable exceptions, among them the earlier participants in this useful dialogue - has hitherto not received much academic or political attention, yet resonates with many EU citizens. To give just one anecdotal example, last year UCL conducted two focus groups among EU citizens from other member states resident in London and the issue of national voting rights proved to be of far more concern to them than votes for the European Parliament. Though not a scientific survey, it expresses in certain respects a key feature of the very idea of Union citizenship which, as a political scientist, I find can be lost in the predominantly legal analysis of this topic: namely, the reliance of citizenship rights, including those associated with Union citizenship, on politics in general and the state – in this case the member states – in particular. It is this political context that makes voting rights such an essential part of citizenship, yet one, given the complexities and peculiarities of the EU's political system, that raises a number of difficulties in the European context.

There is a growing tendency to see citizenship as simply the artefact of legal rights. This trend is especially prevalent in accounts of Union citizenship, where the key actor has been the Court of Justice of the European Union (CJEU) and the majority of analyses come from legal scholars. Yet, any legal system has to be understood within the context of the wider political system of which it forms a part and on which it ultimately depends. Not only are laws both the product of and administered and made reality through political processes, but also courts belong to that political apparatus and are themselves political actors, whose mode of adjudication and the degree to which their judgements will be followed reflect the character and capacity of the political institutions within which they are embedded. To the extent that we wish the law and those responsible for its administration to have essential democratic qualities – not least in treating all subject to them as political equals, whose interests deserve to be given equal consideration, with the laws applying equally to all – it is important that the law and the rights it embodies should be part and parcel of a democratic polity. It is for this reason that political rights are the defining attribute of citizenship. They form the 'right of rights' since they provide the means whereby citizens can ultimately enact and uphold – both directly and indirectly – all their other rights and assure they have the democratic virtues of showing them equal concern and respect with other citizens. In sum, the very features associated with the rule of law arise from the process of democratization and its accompanying effects on the legal system. It will be objected that rights serve as constraints on democracy and 'majority tyranny'. However, this slogan proves empirically mistaken and overlooks the obvious fact that the main danger to rights comes from minority rule. Democracy has been instrumentally promotive of rights precisely because it obliges rulers to be responsive to as many of the ruled as possible. In so doing, it forces politicians to appeal as far as possible to interests and ideals that are equally and widely shared rather than simply to the narrow sectional interests and ideals of privileged minorities. At the same time, the democratic process engages citizens in reciprocal relations with each other. By endorsing the public policies needed to promote rights – such as a criminal and penal system, health care, schools, pensions, social security and so on – they also sign up to the correlative duties needed to sustain these policies, such as paying taxes.

This argument might seem to lead inexorably to support for the Initiative. Yet, that moves too fast. For, as I noted, the EU political system is notoriously complex and renders the relationship between

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citizenship and political rights more complicated as a result. European citizenship is accessed through national citizenship which, as the Treaty notes, it is designed to be 'additional to' rather than to 'replace'. This position is consistent with the EU's declared ambition to promote 'an ever closer union among the peoples of Europe' rather than to create a 'European people'. Accordingly, Union citizenship does not so much create access to EU level goods and services as ensure that its possessors are not discriminated against on grounds of nationality when they move to another member state. So conceived, Union citizenship serves to promote mutual respect between the citizens of the different member states by making them all potential citizens or dual citizens of all the other member states should they move to any one of them, at least so far as the four freedoms that are central to the EU are concerned. However, for this mutual respect to operate, it is important that Union citizenship does not undermine the democratic systems of the member states on which it is parasitic, and which are needed to deliver those rights agreed upon between them at the EU level. Moreover, two of the main channels of political representation within the EU's own political system – namely, national parliaments and the European Council – are explicitly based on member state citizenship, while even the supposedly direct channel of the European Parliament is based on constituencies designed to give adequate representation to each member state, with elections largely reflecting domestic concerns. So it is important that citizens should be represented through these channels, but not be doubly represented and only to the extent they can commit their representatives to pursuing sustainable policies that show equal recognition to the peoples of Europe.

Two concerns need to be addressed as a result of this multilevel arrangement, therefore, when considering the acquisition of national voting rights in another member state. It must be consistent with:

- 1) those exercising these rights regarding the national laws as applying equally to all and undertaking the reciprocal obligations needed to sustain the public policies on which the continued enjoyment of rights by all citizens within the member state depend, and
- 2) the mutual recognition of the citizenship regimes of all member states and their consequent equal representation within the EU's political system.

David Owen's fifth option in his contribution more or less meets these conditions, if read alongside the caveats noted by Rainer Bauböck in his intervention. Thus, all "second country nationals" (SCNs) should have a fair opportunity of acquiring nationality and hence voting rights in another member state after a minimal period of residence, while all SCNs who do not have nationality in their member state of residence should be eligible to vote in national elections of their member state of nationality. Meanwhile, though dual citizenship should be possible, its holders should only be able to exercise national voting rights in one country. This formula does constrain to some degree member state autonomy over citizenship rules, but only to a minimal degree in ways that in many respects preserve its integrity. On the one hand, it seeks to ensure that those who do vote in national elections are committed to the obligations needed to promote rights equally for all, on the other hand it ensures that there is no double voting for elections that impact on EU policies, so that all are treated equally. It might be argued that naturalisation should not be necessary. Certainly, I can see a case for those within the European sphere to be exempted from citizenship tests, with naturalisation automatic should they so choose. But the choice needs to be a considered one that involves a commitment to the long term interests of the polity if voters are not to engage in rent seeking or free-riding behaviour of a kind that would undermine rights.

In remarking that 'Union citizenship is destined to be the fundamental status of nationals of the member states' the CJEU has made it sound as if this new legal status represents the 'right of rights', and at least one contributor to this debate – Dimity Kochenov - has read it in this way. But this judicial hyperbole ignores the extent to which these very rights rest on the underlying obligations that follow from the exercise of democratic citizenship within the member states. As such, national citizenship necessarily continues to provide the fundamental status of Union citizens. However, as the Court's rhetorical formula continues, Union citizenship does have a key role in 'enabling those who find

themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to the exceptions as are expressly provided for.' What I have suggested above is that the 'same treatment' must respect reciprocity between citizens within and between the member states, and that the proposed limits on access to and the exercise of national voting rights are among those exceptions that should be 'expressly provided for' within a political organisation committed to the 'ever closer Union of (democratic) peoples'. As such, the Initiative raises a key issue but proposes a misguided solution, at odds with the very nature of the EU.



## **Five pragmatic reasons for a dialogue with and between member states on free movement and voting rights**

Kees Groenendijk\*

My first article on political rights of non-citizens immigrants was written together with my late colleague Bert Swart in 1978 for a journal in Rome. Since then my ideas and publications on this issue were guided by three principles: (a) no taxation without representation, (b) the longer an immigrant is resident in a country, the harder it is to justify his exclusion from political rights only on the basis of his nationality, and (c) once voting rights have been granted to non-citizens for municipal elections there are no serious principled arguments against extension to parliamentary elections. The second principle qualifies the first principle. Tourists and seasonal workers pay VAT, but that does not necessarily qualify them for voting rights. They should, however, have at least some other political rights, such as the right to demonstrate or the right to strike.

This being said, I do not support the campaign for extending voting rights of EU nationals to national elections in the member state of residence. Five pragmatic arguments in my view outweigh the three principles mentioned above.

(1) I sincerely doubt whether being unable to vote in parliamentary elections in the ‘host’ member state in real life is a barrier to free movement. Of course, it may be construed as a legal obstacle to free movement. But did many Union citizens decide not to use their right to migrate to another member state or to return permanently to the member state of their nationality, only because they wanted to vote in parliamentary elections in that state? Of course, the unequal treatment has to be justified. And yes, there is the problem of who belongs to the demos or the people(s) of the member state(s). The German Bundesverfassungsgericht in 1989 gave the most restrictive definition of people: only nationals of the country. The Court of Justice in *Eman & Sevinger* stressed that the definitions of the concept “peoples” vary considerably between member states (judgment of 12.9.2006, C-300/04, point 44). I suggest that using the right to free movement brings certain advantages and certain disadvantages. Not having a guarantee that you can vote in national elections in the other member state unless you acquire its nationality is one of the disadvantages. Empirical data indicate that the participation of EU migrants in the municipal elections in the ‘host’ member state is relatively low and that a considerable part of EU migrants hide their migration to another member state from authorities of the member state of their nationality.

(2) Current Union law is clear. Both the TFEU and the Charter guarantee participation of EU migrants only for the EP elections and the municipal elections in the ‘host’ member state. The right to participate in political parties is only guaranteed at “Union level”, not at national level. This was a clear choice of member states during the negotiations on those treaties. The legislator considered that voting at the national level was not within the scope of the Treaty as stipulated in Article 18 TFEU. Only very weighty reason could justify an advice to the Court of Justice to overrule that clear choice of the legislator.

(3) The national legislation of member states on the voting rights of non-citizens and on the right of nationals abroad to vote in the parliamentary elections at home varies a lot. The differences are due to historical, political or other reasons. It is unwise to disregard those differences. The TFEU specifies that the Union shall respect cultural diversity. Differences in political culture are part of that diversity. I would plea to respect this diversity and to learn from the hot political debates, often going on already for decades on the extension of voting rights to long-term resident third-country nationals (also human beings) in Belgium, France, Germany, Italy and Spain. There appears to be a difference in approach to

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this issue between the Southern and the Northern member states. I would expect that in ‘new’ member states there could be more sympathy for the ‘restrictive’ Southern approach than for the more ‘open’ Northern approach. In several member states the debate on extending voting rights to non-citizens or extension of that right to parliamentary elections has been explicitly linked to facilitation of naturalisation of immigrants, e.g. in Belgium, Germany and the Netherlands.

(4) Granting voting rights for elections on the national level will require either amending the TFEU or using the procedure of Article 25 TFEU. In both cases unanimity of all 27 member states is required. Moreover, in many member states it would require amending the constitution and thus broad political consensus. That consensus simply is not available at present in most member states on this issue. The constitutional amendments necessary to introduce voting rights for nationals of other member states in municipal elections were agreed because this issue was one minor point in a large package of changes contained in the Maastricht Treaty. Presenting the extension of voting rights to the national level as an isolated issue to be realised by binding Union law probably will create a lot of opposition and negative publicity for the Union generally.

(5) This proposal will certainly raise the issue of extending voting rights to the national level for long-term resident third-country nationals. Why would a Polish or Portuguese national be allowed to participate in national elections after ten weeks or months of residence in France and a Swiss or a Turkish national be excluded even after ten years of lawful residence in that country?

My first conclusion is: Do not raise this issue in isolation but together with other relevant issues concerning political rights of EU migrants, such as voting rights in national elections for expatriates living in another member state, the right of Union citizens to be a member of or establish a political party in the member state where he lives and the possibility of facilitated naturalisation after having acquired the permanent resident right in another member state (after a minimum of five years of residence).

My second conclusion is: Do not propose binding Union law on this issue or try to make the Court of Justice impose a binding solution for this problem. Rather apply the open method of coordination by starting a structured dialogue with and between member states, possibly combined with the issue of the limits set by free movement law to nationality legislation of member states. We may learn from the experience of the Nordic Union in dealing with the issue of extending voting rights to non-citizen residents, both of the Nordic countries and other countries, during the 1970s and 1980s by structured discussions rather than imposing a common rule from above. With this in mind I would support the fifth option in David Owen’s contribution to this debate.

## **Don't start with Europeans first. An initiative for extending voting rights should also promote access to citizenship for third country nationals**

Hannes Swoboda\*

I am grateful to Philippe Cayla and Catriona Seth for kicking off this debate on the future of EU citizenship and the extension of voting rights in national elections for all EU citizens residing in a second member state.

I believe that the future of EU citizenship, its extension in scope and in nature, is now much more than in the past an essential element of the debate on the future of Europe itself.

The introduction of an EU citizenship - albeit as a complement to nationality of a member state and in a context where nation states remain the main actors - has been an extraordinary symbolic step defining the European Union as a community of values and rights.

The right to vote in local and European elections in the country of residence remains the core of this process, together with the right to move freely across borders. The exercise - albeit imperfect - of these rights has had an enormous symbolic impact on the concept of European identity, leading gradually to the acknowledgement of citizens that moving and residing in a second member state means bringing with you in a big bag almost all the freedoms and rights you enjoy at national level, including the right to participate fully in a community's social, economic and political life.

The whole objective of making the Union an area of freedom, security and justice stems from a dynamic interpretation of the concept of EU citizenship. The now binding Charter of Fundamental Rights embodies the idea that not only EU citizens, but all persons and their rights must be and must remain the core of the European construction.

If persons and their rights have to remain the core of the European construction, then European citizenship must not only be fully exercised but extended in scope.

In this respect - unrealistic as it may seem in times when the Schengen system has polarised the political discourse and nationality has featured prominently in populist electoral programs - I do think that the necessary evolution of EU citizenship leads to a gradually growing relevance of residence as defining criterion for the exercise of related rights.

For this reason I would support the idea of a citizens' initiative proposing the extension to EU citizens of the right to vote in national elections in the member state of residence. I do not underestimate the complexity of the institutional and constitutional issues that this option would raise, but I am convinced that the initiative would trigger a necessary debate leading possibly to the gradual, temporary, conditional extension of this right in the medium run.

At the same time I do not share the view that we should "start with the Europeans first". Although I am convinced that this could have a spill-over effect on the extension of citizenship rights to third country nationals at national level, I believe that EU policy makers should take up the political responsibility to accompany the initiative for the extension of EU citizens' rights with a strong political initiative at EU level encouraging Member states to facilitate access to national citizenship for third country nationals who are long term residents in a member state, gradually leading to uniform approaches and criteria.

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I consider it particularly urgent to address the situation of second and third generations of third country nationals, i.e. children and youngsters often born and/or raised in a member state, for whom access to citizenship in that member state is often rendered very complicated or even impossible.

I am perfectly aware that rules governing EU competences differ considerably when we address EU citizenship and the extension of citizenship related rights to third country nationals. However I believe that from a political perspective these two processes have to be closely interlinked, in a possibly virtuous dynamic.

## Voting rights and beyond...

Martin Wilhelm\*

Last week, national elections in France and Greece have received unprecedented attention at the European level. At least in Germany, the media have almost obsessively stressed the impact of these elections on domestic politics and European Union policy-making. Some front page authors have wondered why Germans should not have, for example, one fifth of a vote in the Greek and French elections and vice versa “to live up to the principles of democracy” (Die Zeit, No 19). Against the background of such reflections and demands, Catriona Seth's and Philippe Cayla's proposal does not seem all that revolutionary, affecting a rather small minority.

However, those who favour the proposed ECI have more in mind than just granting mobile EU citizens additional voting rights. Their underlying question is what kind of European Union polity they envision, and their underlying motivation is to push towards an ever closer union among a European people. In that sense, we fully support this ECI, but not without emphasizing that, in the long-term, European people must become a post-national and inclusive concept, overcoming the exclusion of third-country nationals.

Many sound legal and political arguments have been put forward in this forum. As an activist NGO, we have limited capacity to conduct scientific research. Inspiring debates as in this forum build the theoretical backbone of our activities, nourish our visions of an inclusive Europe and help justify our projects and campaigns in the field of citizenship, migration and political participation in Europe. That said, because we work “on the ground,” we are in a position to conduct reality checks; that is, we can detect the practical limitations of theoretical constructs and where they clash with the daily concerns of citizens. It is from this point of view, an activist's point of view, that I want to contribute to this debate.

An ECI is a very resource intensive undertaking. International partnerships need to be built. Language barriers need to be overcome. A communication strategy and hundreds of volunteers are needed to mobilise citizens. There is also the financial burden that NGOs will face, and the technical challenges involved when registering the ECI or its online collection system for signatures. Additionally, an ECI has a high legal uncertainty concerning its content (admissibility) and a small probability of turning into legislation. (However, its potential for indirect impact through the creation of a European public debate should not be underestimated and is perhaps the true value of the ECI.) The proposed ECI demanding national voting rights for mobile EU citizens is especially challenging.

Authors in this forum have already discussed the ECI's legal uncertainty; whether or not the ECI on residential voting rights will be accepted by the European Commission for further procedure; and the possibility of its legal implementation (unanimity in the Council). Another challenge is this one: Statistically speaking, every twelfth citizen who would benefit from the ECI would need to sign it. More dramatically, every single second country national in Romania would need to sign it, if Romania was to be one of the seven countries (1 million signatures, minimum seven countries, variable minimum of signatures per country). Hence, the ECI would already fail to collect one million signatures if it only addressed the mobile elite. The initiators and we as NGOs need to address the public at large and construct an ECI narrative that concerns all European citizens in three ways. First, because voting rights are not as mobilising as genetically modified food or nuclear power, the ECI narrative needs to go beyond the mere possibility of casting a vote in national elections. It needs to convey the European vision and state why this ECI can effectively realise the vision. Second, the narrative needs to include positive spill-over effects for third-country nationals to counter the

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argument that this ECI would further discriminate non-EU citizens and enlarge the emotional and legal gap between them and EU nationals. The case has already been made that the ECI proposed by Catriona Seth and Philippe Cayla would affect a rather small number of citizens compared to the many million third-country nationals deprived of many more, and in some member states of all, political rights. Third, the ECI narrative needs to be designed in a way that does not trigger nationalistic or anti-EU resentments based on fears of loss of political control at the domestic level. It needs to address the ECI's importance for the future of the EU and at the same time emphasize its marginal impact on domestic politics (for Luxembourg, with 37% second-country nationals, this would of course be difficult). These are pretty tough conditions.

Besides public support, political support is crucial, especially among national parliamentarians, as they are ultimately affected. Strategically speaking, one could sketch out which candidates and parties are most likely to benefit from the new constituency and win their support by relying on their notorious quest to keep their seats. In cities, districts and regions with large ratios of second-country nationals, candidates for the national parliaments are likely to be responsive. From running campaigns on electoral rights, we know that politicians are most responsive and even get seduced to go beyond their party lines. National parliamentarians may play also a crucial role in generating support for the ECI in the EU Council. However, their influence on the government as well as the respective minister sent to the Council varies strongly. In which way European parliamentarians could act as multipliers to support the policy process depends on the role of the European Parliament in areas where the Council decides unanimously. Yet the ECI narrative should include substantial arguments that would win them over, too.

The above points are of course not all-encompassing. They are meant to be a guide to the initiators and to complement the academic debate. We have already taken steps to support the ECI by developing the online tool [www.vote-exchange.org](http://www.vote-exchange.org), which allows for cross border debates on domestic policies among second-country nationals and their indirect participation in national elections in their country of residence. A French citizen residing in Germany votes for her or his German counterpart living in France, and vice versa. It is a tool to trigger the public debate and more than a playground for all who already today want to live up to the goal of creating a European people.

## **One cannot promote free movement of EU citizens and restrict their political participation**

Dora Kostakopoulou\*

The contributions to the EUDO debate on whether EU citizens should have voting rights in national elections in the country of their residence are both enlightening and thoughtful. They have provided a number of valuable reflections on matters of principle, policy, strategy, and tactics in the light of contemporary political developments at both European Union and domestic levels. By clarifying matters of principle as well as issues of politics, they have outlined several trajectories and shed ample light onto the pros and cons of the European Citizens' Initiative.

Given the horizon of possibilities open to us, we are now obliged to exercise our liberty to decide whether we would support the proposal for a European Citizens' Initiative on national voting rights. Let me state at the outset that I fully support it; after all, since the mid-1990s my work has consistently defended the grant of electoral rights in national elections to European Union citizens in the member state of residence. Believing that circumstances do not decide (and should not decide) and that deciding not to decide is not a credible option, the above line of decision has been prompted by the following four considerations.

### **1) The weight of principles**

The contradiction between belonging fully to a polity as a contributor, collaborator, and burden-sharer and at the same time being deemed as not fully belonging to it with respect to the enjoyment of certain benefits, including national voting rights, is unsustainable from a democratic point of view. Robert Dahl and Carlos Santiago Nino have convincingly pointed out that democracy requires inclusion and, most certainly, the inclusion of all those who have a long-term interest in a country and its institutions. In this respect, the full enfranchisement of Union citizens in the member state of their residence is the only corrective to the existing 'democratic wrong', as Owen has put it.

True, some might argue, here, that admission of Union citizens to the 'national community' of citizens would undermine the distinction between nationals and aliens and dilute the national character of parliamentary elections. Others might be quick to point out here that such a reform might undermine national interests. Although such objections are reasonable from the standpoint of liberal nationalism, they need reassessment in light of the current state of European integration and the fundamental status of European Union citizenship. For in the eyes of European as well as national laws, Community nationals are neither 'aliens' nor 'strangers'; they are, instead, Union citizens endowed with a number of rights that the member states must affirm. The Citizenship Directive (2004/38) has recognised this and has strengthened Union citizenship by establishing an unconditional right of permanent residence for Union citizens and their families who have resided in a host member state for a continuous period of five years. Accordingly, limiting the political rights of permanent resident Union citizens, who are already members of the demos at the local level and permanent members of the community, hinders democratic participation by depriving them of an effective voice in the legislative arena.

In addition, as the American philosopher John Dewey has pointed out, 'democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience' (John Dewey, *Democracy and Education*, New York: Macmillan, 1964 [1916], p. 87). And this experience becomes dwarfed when national voting rights become a good reserved for co-nationals

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while EU citizens who are long-term residents are relegated to the status of the subject. They look at their everyday lives and the levels of the contribution, the homes they have created and the homes they have abandoned in the member state of origin and cannot understand why they should be viewed as 'guests' or foreigners' in the community they call 'their own' and the country they have 'chosen' to make the hub of their lives. With the passage of time, their voices, initially inarticulate and gentle, are bound to become more noisy as they see their taxes diverted into policy choices for which they have had not even a simple invitation to express an opinion for.

Once the weight of principles is appraised, the space of ordinary experience and expectation is surveyed and measured and the rationale of European integration of creating true associates by making the tag of nationality irrelevant when decisions about how people should be treated are made is given the importance it deserves, then the proposed idea of extending political rights to national parliamentary elections in the member state of residence does not give rise to a difficult dilemma.

## **2) Tackling the democratic deficit without the methodological privileging of the state**

Once the democratic deficit is acknowledged, questions of how best to correct it come into play. These questions, and their answers, have been discussed very eloquently by the contributors to this debate. The options on the table include the horizontal opening of national citizenship or the extension of Union citizenship. By opting for the former, we implicitly recognise (i) that it is the member states' business to correct the wrong; (ii) the national character of domestic citizenship should be preserved, and (iii) that naturalisation should be the means of full participation in the national as well as European demoi. All three assumptions, however, clearly privilege the state and, by so doing, conceal the fact that the national state is called upon to resolve a wrong that its own constituent organising ideas have created in the first place. All three assumptions also superimpose two different logics and realities; namely, the logic of non-discrimination on the grounds of nationality and thus equalisation (full equality of treatment irrespective of nationality throughout the EU) (the logic of equality) and the national statist logic of turning aliens into nationals via naturalisation along with the underpinning rationale of cultural homogenisation in some form or another (the nationcentric logic). However, these logics are very different and must be kept apart. Certainly, European integration has been premised on non-discrimination and to assume that the state and its (national) ways should be given a theoretical and methodological priority with respect to the future development of EU citizenship denotes an ideological point of view. After all, why should not the citizens' everyday lives, lived encounters and expectations matter as much as states' interests in perpetuating the national citizenship narratives? And why should not the fundamental status of European Union citizenship place itself inside states' political domain and affirm its right to existence?

True, electorates in the member states may not welcome the extension of EU citizenship to national parliamentary elections. They may react negatively and right-wing extremism might capitalise on it in order to mobilise people against the governing political elites and the EU. But this is something that can happen anyway with respect to any real or imagined policy reform. Can political imagination and socio-political change remain captive of conservative interests which seem to fix their gaze firmly on the past and on the artificial commonalities of race, ethnicity, language and national culture thereby underscoring not only commonalities of interests, commitment to a shared institutional framework and of shared collective practices, but also the boundary crossings that preceded all the above commonalities, both real and imagined, and the crossings that take place continuously around us? Can we afford to become the subterfuge of a historical process that robs us of judgment?

## **3) The road travelled thus far**

Having to decide which trajectory to follow with respect to voting rights in national elections and to reflect on the concerns outlined by the contributors to this debate is not without precedent. It is

important to remember that in the 1970s and 1980s the same debate took place with respect to the so-called 'special rights', which included the right of Community nationals to vote and to stand as a candidate in local elections in the member state of residence. 'Equal treatment of Union citizens in the political field', 'strengthening the feeling of belonging to one legal community', 'complete assimilation with nationals as regards political rights', 'creating a people's Europe' and 'responding to the expectations of Community nationals' were the rationales underpinning the grant of local electoral rights to EU citizens without a prior activation of national naturalisation procedures. Brave thinking at that time captured the dilemmas, weighed member states' concerns and, following such reflections and negotiations, the option that was favoured was 'special rights' rather than naturalisation because it was important that Community nationals were treated in host member states as if they were citizens of those states. Promoting greater equality with nationals was more beneficial than the opening up of the naturalisation gates because 'the emphasis should remain on residence rather than nationality' (European Commission Report on 'Towards European Citizenship' 1975, Bull. EC, Supplement 7, p. 32).

And in the mid-1970s, national electorates' opposition to such an idea was considered, too. As the Commission stated at that time, 'equal treatment of foreigners in the economic and social fields is accepted by public opinion, since this has long been a subject for frequent negotiation between States, the same does not apply to equal treatment of foreigners in the political field. This is a new idea and the public will have to be given an opportunity to get used to it' (European Commission Report on 'Towards European Citizenship' 1975, p. 30).

Additionally, when the Treaty on European Union entered into force, several MS continued to resist the implementation of what was then Article 8b(EC). In fact, by January 1997 of the fifteen member states only eight had made the grant of local electoral rights for EU citizens a reality. Fears of diluting local elections, fears of challenging the primacy of national citizenship, fears of making the European Union a tangible reality and thus contributing to the sidelining of member states were expressed frequently in the public domain, but none of these fears really materialised.

The memory of what has taken place and of the institutional choices on offer in the 1970s, 1980s, and early 1990s is thus a decisive one at this moment. For if turn our gaze from the current initiative toward the past, we can easily gain a glimpse of the solution. I would argue that this solution has created a path dependence which would make any other policy choice with respect to national electoral franchise a deviation and thus requiring a clear justification. The proposed Citizens' initiative thus creates a turning point as far as the maturation of EU citizenship is concerned. The questioning of the idea that political domains should be reserved for states' own nationals is unfolding. And in the same way that the European Community was not afraid to open local political spaces to non-national citizens of other member states in the past, the time has come for the completion of this process and the realisation of equality of treatment by fully enfranchising EU citizens automatically in the member state of their residence.

#### **4) Free movement and EU citizenship are not only about spacing; they are also about timing**

It is true that in both the literature on free movement of persons and the relevant case law spatial matters relating to cross-border are the main focus. Changes of location, border crossings and settlement in another member states activate most (albeit not all) of the advantages that EU law offers to EU citizens. What is completely disregarded in all these 'travelogues' is that exercising EU citizenship rights is also a temporal movement: a movement of 'before' crossing a border and 'after'; a shift from one collective imaginary and personal world to another collective imaginary and new personal world to be constructed; a change in perspective, viewpoint and system of beliefs; and the enjoyment of a sense of freedom and the daring opening of oneself to different rhythms of individual history and social surroundings. In this temporal movement change unavoidably takes concrete

manifestation in the form of the appearance of new interpretations of the social environment, a new frame of mind, new questions, new dilemmas and eventually new answers. member states cannot afford to bracket this temporal movement that shapes the lives of their new residents and their ‘mutating’ individuality either by continuing to subsume them under the fixed categories of home nationalities or by placing them into static and unchanging statuses. For the meanings, interpretations, ideas, interests, expectations and meaningful relations that surround the life of EU citizens are not merely embodied in space; they also unfold in time.

Domestic political domains thus need to acknowledge that a new predicament brings about a receding past, decaying relations and entanglements in the light of new experiences, a new sense of worldliness, new entanglements, new personal journeys, new meaningful relations, new events and new political exigencies requiring responses. The temporal movement characterising settlement in a new environment is not only a process, but is also a variation, that is, change. Accordingly, democratic public spheres must be open to new participants and should be engagement promoters. Similarly, European Union institutions cannot afford to disregard this temporal movement, for they have been instrumental in lifting EU citizens from the imaginary of rooted publics and imparting onto them a sense of freedom and the consciousness of being treated with dignity and equality wherever they go in the territory of the Union. After all, this is what European integration was hoped to be able to accomplish since its early stages.

Arguably, it would be a fundamental contradiction, if, on the one hand, EU citizens were encouraged to move, cultivate new allegiances, form new orientations, have a European consciousness, create new realities, to be part of the fabric of the host societies and be treated as equal collaborators and participants, while European institutions, including the Council of the EU, refused to accept the full consequences, which include that EU citizens would feel themselves as active collaborators and participants in society and politics, on the other. Shutting the gate of political participation in national elections and frustrating the legitimate democratic aspirations of all those who for one reason or another partook of the European project and became valued members of the community of their residence would be tantamount to condemning one of the biggest achievements of the European integration project and making the proclamation to encourage participation in the democratic life of the Union empty rhetoric.

### **Legal norms should reflect social practices and EU citizens’ lived encounters**

Legal norms cannot afford to disregard both principles and social practices. If they do, they will eventually lose credibility. The partial franchise of EU citizens is clearly not adequate. Nor does it provide a frank solution for the future. Its extension to national parliamentary elections is thus necessary and this can only be done by resisting the temptation to shut ourselves up in the present and apply the ‘available’, that is, some stretching or opening up of national citizenship, but by deciding a clear announcement of the future, that is, by removing the existing restrictions in the application of the principle equal treatment and by making national electoral participation available to all those EU citizens who are enmeshed in the member states of their residence and have been sharing their burdens without any complaints for so many years.

## **Second country EU citizens voting in national elections is an important step, but other steps should be taken first**

Ángel Rodríguez\*

History demonstrates that the extension of participation rights is a process. Not only is this true for national populations, who only gained universal suffrage after a struggle in which the percentage of those entitled to this right was growing over many years before reaching universal inclusion. It is also true for voting rights of non-nationals, rights which were extended to foreign residents only step by step, first to a selected group (for instance, those coming from former colonies) which was later on enlarged; or first to those who complied with conditions (for example, years of residence) which were subsequently lightened; or which included first merely the right to vote and only later the right to be stand as a candidate, etc.

Similar processes can be observed with regard to the type of election in which non-nationals have been entitled to participate. From this perspective, granting the right to vote in national elections for second country EU citizens is certainly a test on the bonds of solidarity among EU citizens, as Jo Shaw put it. But it also poses the question of whether, after twenty years of recognition in the EU of the right to vote and be elected for a selected group of non-nationals (European citizens) in selected elections (local and European ones), time has come to include also the right to vote at the national level. In my opinion, we could be still missing some steps that should not be skipped before trying to reach that objective; steps that are of a practical as well as a legal nature.

First of all, if we think that voting in local and EP elections are not the only participation rights we would like to see associated with European citizenship, and if, therefore, the idea is to go further, then the next step should be regional elections, rather than moving on directly to national ones. Certainly, regional elections do not play the same role in all member states, and there are some in which they do not even exist. But they are, nevertheless, quite relevant in those states with a federal or quasi federal territorial organisation. In some of them domestic law actually permits, in one way or another, the participation of foreign residents, so a future EU legislation transforming this into a European fundamental right for EU residents would not have to fill a complete vacuum. After all, EU citizens can already vote in elections for regional assemblies in Scotland, Wales and Northern Ireland. In addition, this right would probably not conflict with domestic constitutional law as much as the participation in general elections would, since general elections, either legislative or presidential, are intimately linked with the core idea of “national sovereignty” (or whatever is left of it). Both political and legal arguments would therefore suggest putting regional elections as the next goal for European citizenship all over the Union.

However, even before embarking on any extension of voting rights for EU citizens, much could be done in order to ensure that existing rights, that is, participation in local and EP elections, can be fully exercised without practical obstacles. The low percentage of second nationals EU citizens who vote in those elections in the state where they reside may have different reasons, but surely the lack of accurate information and, in some cases, the intricacies of the procedure play an important role. Take, for instance, the case of Spain: EU residents must enroll in the electoral census in order to vote, inscription in the municipal registry being insufficient. This is not only a crucial difference with national voters (who are automatically included in the electoral census once they are registered in a municipality) but implies a number of practical problems, from linguistic ones to the incorrect, but common, belief that an EU citizen can only vote in local elections in Spain after a declaration that he or she will not to do so in a municipality of his country of origin. That declaration is neither an exigency of Directive 94/80/EC nor of Spanish law, but it exists nevertheless in the form that EU

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citizens have to fill in to be included in the Spanish electoral census. The reason is that, according to Directive 93/109/EC, a declaration by a second country national that he or she will refrain from voting in the state of origin is a requirement for voting in EP elections in the state of residence. Since in Spain the procedure for EU citizens to vote is the same for EP and local elections, potential EU voters – and, what is worse, the Spanish electoral board as well – think that the declaration to refrain from double voting applies to both. There is a significant number of EU ‘[gerontoinmigrants](#)’ who reside in Spain on a permanent basis but generally spend the summer months in their countries of origin and may be legitimately interested in voting both in host and origin countries’ local elections).

As the last [Report from the Commission on the application of the Directive 94/80/EC](#) shows, practical problems like this one may be found in a number of member states, revealing that much can still be done in order to increase the percentage of second country nationals who actually exercise their right to participate in local elections. A similar conclusion may be drawn from the Commission Report on the application of the Directive 93/109/EC regulating EP elections, the modification of which is currently under discussion although unfortunately the debate in the EU institutions has not yet reached the consensus necessary to make it possible.

The question of what to do with third country nationals, as posed by Rainer Bauböck’s and Hannes Swoboda’s contributions, also deserves much attention. Non-EU citizens who are permanent residents in a member state should be entitled by EU law to the right to vote in local elections before granting EU citizens additional rights to participate in national or even regional ones. The fact that this right is a part of EU soft law (as an ingredient of the idea of a civic citizenship) and that it is, subject to conditions, actually recognised by domestic law in a majority of member states would surely facilitate the introduction of EU legislation regulating it in the near future.

Last, but not least, there is of course the problem of the lack of legal competence of the Union to establish the right of second country nationals to vote in national election in the state of residence. Given the practical impossibility that that right could be “discovered” by judicial action – even once the EU has acceded to the European Convention on Human Rights, the European Court of Human Rights would hardly rule that such a right derives from the Convention – a modification of the Treaties and of the Charter of Fundamental Rights would be necessary. The political (and economic) state of the today’s EU does not give rise to much hope that this idea could have any chance of finding its way into European politics, even applying the method of a cooperation among member states, as Kees Groenendijk’s contribution suggests, instead of trying to produce legislation at the European level.

Of course, the expectation that the “let me vote” ECI promoted by Philippe Cayla and Catriona Seth is unlikely to be successful, or that practical or legal problems might arise if it were, are not strong enough arguments to justify refusing to support it, once you agree with the idea that European citizenship should in the medium term include the right to vote and stand in national general elections. I would undoubtedly sign in. But the energy and efforts that the ECI needs to achieve its goals could probably be better focused helping to ensure better implementation of the stage at which we are now. This means trying to reach a significant level of participation of second country nationals at local or EP elections in the host country, or aiming at participation in regional elections as the next step in the process of strengthening European citizenship.

## **A more comprehensive reform is needed to ensure that mobile citizens can vote**

Sue Collard\*

This initiative is a timely exercise with the upcoming prospect of the European Year of Citizens in 2013, and it has stimulated an interesting and useful debate in which the various contributions have covered most of the key issues at stake in the proposal. There are however a few questions that I would like to raise to add to the discussion.

The first concerns the definitions of residence and mobility: it seems to me that all the contributors have assumed that intra-EU migration is pretty much limited to the movement of citizens from one Member-State to another where they establish residence and then remain there, hence the apparent suitability of Bauböck's proposal of the acquisition of dual nationality as being the optimum scenario for this category of individuals. Yet the reality of mobility for a growing number of EU citizens, especially younger adults, is more fluid and complex than this, often involving a chain of moves from one country to another, with more or less extended periods of residence according to circumstances. I am thinking for example of a German friend, who has lived in the UK for ten years, having lived previously in Spain and France for six years each. How would any of David Owen's options cater for this kind of situation? And what of the young student, already having dual nationality through his/her parents, who decides to settle after a successful Erasmus experience in a third EU country: should he/she be allowed to take a third (or more) nationality? As regards the definition of residence, here too, with the growth of lifestyle migration, the concept has become much more fluid: the circumstances of some of the British residents in France that I interviewed revealed in many cases a highly complex residential status and there was significant evidence of what Groenendijk refers to as 'hiding their migration', either from the host country or that of their nationality, usually for reasons relating to health care or tax issues. How should residence be defined and proven? Fiscal registration? Electoral registration? Medical registration? There is currently no minimum requirement in terms of length of residence for registration for local elections, but for national elections, the five year period would seem to be reasonable; however, ex-pats who typically work to five year contracts, often moving from one country to another, would be constantly going back to square one. The idea of voting rights based on residence is less straightforward than it might appear.

My second question relates to the situation of EU citizens who migrate to non-EU countries of which they are not nationals: if national voting rights were guaranteed for EU citizens resident in other Member-States on the grounds that they should not be disenfranchised, would it then be acceptable for other EU citizens to lose their voting rights if they choose to migrate to a non-EU country, such as British citizens settling in the USA? Would this be their punishment for leaving the haven of the EU?

My third question is about third country nationals (TCNs), who are far more numerous than second country nationals (SCNs), as Wilhelm has pointed out: several contributors have made the point that legislation at EU level would be impossible, and that the diversity of Member-States' political and historical circumstances should in any case be respected, yet clearly the link between these two categories of migrants is fundamental to the EU's perception of itself as inclusive or exclusive. There are strong arguments in favour of giving voting rights at local elections to long term TCNs, as many Member-States already do, but this should not be at the price of increased xenophobic reactions. The dilemma is well illustrated by the French case: François Mitterrand's campaign manifesto in 1981 included a pledge to give the right to vote in local elections to all foreigners, but the opposition it aroused, articulated indirectly through the rise of the National Front, meant that this was never implemented. Indeed, France was one of the countries that for various reasons put up strongest resistance in the Maastricht debate to the voting rights enshrined in European Citizenship, but largely because many feared it would be the thin end of the wedge, opening the door to the same rights for

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TCNs. In spite of the electoral success of the National Front in the presidential elections, Socialist President François Hollande has indeed pledged to do just this, and we should watch closely to see if his government has the courage and political support in the new National Assembly to go through with it, in the face of claims by the mainstream Right as well as the National Front, of an implied ‘drift towards communitarianism’ and the spectre of Muslim-dominated local councils organising women only swimming sessions and banning all pork products from school canteens. The false premise on which this scaremongering is predicated (many Muslims already have French nationality and therefore the right to vote at all elections) is all the more unjustified when one considers the low rates of registration and participation in local elections by non-national EU citizens in France, estimated at under 15%. Indeed, all the evidence suggests that if given the right to vote in local elections, only a small percentage of TCNs would actually use it.

Which brings us to the fourth question of the low mobilising value of voting rights, as pointed out by Wilhelm. Cayla and Seth, ask ‘Who wants to go and live in a country without being able to exercise full democratic rights?’, implying that few would; but the reality is surely otherwise, and it is quite clear from my own research in France and the UK that the vast majority of EU migrants do not take up their right to vote in local elections. Rodriguez’s contribution suggests a similar picture in Spain, and I agree that much more could be done to increase participation at this level before moving into demands for national voting rights. Yet many of the non-national EU citizens that I interviewed, both in France and the UK, were far more concerned by the national vote than the local, and felt it impacted more on the reality of their lives: ‘Why can’t I vote if I pay my taxes?’ was a common complaint. Long term French ex-pats at least retain their right to vote in all elections in France, whereas the British lose all voting rights in the UK after 15 years, even if they continue to pay taxes there.

So what answers can be found to all these questions and what contribution could the proposed ECI make here? Clearly, it makes a mockery of the democratic credentials of the EU if the very mobility that it seeks to encourage, brings with it political disenfranchisement. Member-States should have to recognise this, through a process of concerted action between them and EU institutions, as advocated by Shaw, by adapting their national legislations as necessary: all countries should be encouraged to allow the possibility of dual nationality, and those like the UK and Ireland operating restrictive policies towards ex-pats (at least two cases are currently being taken through the European Court of Human Rights by British ex-pats living in Spain and Italy), should be urged to update their laws in line with the first Protocol to the European Convention on Human Rights. Within this more permissive legal framework, citizens should be allowed to choose, depending on their circumstances, whether to vote in their country of residence or of nationality, thereby signifying a voluntary act of consent, and in no circumstances should any EU citizen be disenfranchised.

How could these goals be achieved? It is clear that pressure needs to be exerted by citizens on both EU institutions and national governments to bring about the necessary changes, and in this respect the ECI has the great virtue of launching a debate, albeit so far within a very restricted circle of interested individuals. Whilst I do not think its draft objectives are sufficiently well defined or realistic to be successful as it stands, I would be prepared to sign the petition to get the ball rolling towards a wider audience.

## **Incremental changes are not enough - voting rights are a matter of democratic principle**

Tony Venables\*

It is encouraging to note that the Let me vote European Citizens Initiative is attracting much support. As much has already been said and commented upon, I will limit my contribution to just a few additional points.

1. This initiative launched by Philippe Cayla has my full support and I will sign it. As many have already pointed out, it has been successful in opening a debate around an issue that has been overlooked for too long. More importantly however it has also encouraged the EU institutions to start thinking about citizenship as a developmental or evolutionary concept. So far, there has been an apparent reluctance to use Article 25 of the Treaty on the Functioning of the European Union, which allows introducing additional rights of EU citizens. The fact that this initiative has successfully been registered with the Commission on 1 June 2012 will push citizenship forward beyond the present confines of the Treaties.

2. Secondly, I believe that the right to vote is so fundamental to democracy that any arguments reflecting the difficulties of putting it into effect pale into insignificance. It is simply unacceptable that the 12 million citizens who make full use of their right to move freely around the EU should have to put up with not having their say in their host country. Moreover, an important percentage of these not only do not gain a right to vote, but also lose their voice in their country of origin (here it would be interesting to know just how many are in this situation). Therefore, if one accepts that democracy is based on fundamental principles, it is not possible to claim that the denial of voting rights does not hinder free movement of citizens. Past contributions in this forum have already identified the existing difficulties in gaining voting rights and have also outlined different approaches to solving this problem, which are not necessarily mutually exclusive. What is important is first of all to grant the right to vote to those citizens who have but a partial or no say at all in regional and national elections. Questions around how and when to do this are secondary issues. Indeed, some solutions as to how to make this change have already been proposed in this forum but there are many others. During several citizens' panels organised in the framework of ECAS projects, it was argued that many European citizens would consider using an EU card which would – among other uses to facilitate free movement – allow them to vote in specific elections. This proposition of course raises many issues of data protection but shows that there is a strong desire to counter these practical difficulties.

3. Concerns around timing have been expressed, namely that it may be too early to implement such a change and that it would be rather more beneficial to concentrate on improving the implementation and exercise of existing rights. This is often a very valid argument as civil society organisations, politicians and the EU Institutions tend to create new rights and legislation for their own credit rather than enforcing present ones. Such considerations, however, do not apply here. Launching this debate for the individuals who have no right to vote in their host country will also draw attention to the fact that they have an underused right – that is the right to vote in local and EU elections. It is increasingly apparent that those who have no say at national level lose their interest in political involvement, as they feel sidelined. Indeed, it is perhaps too easily forgotten that an ECI such as this one must be seen, first and foremost, from the very basic perspective of the citizen entitled to sign it. Their lack of participation in European elections in particular has a detrimental effect on citizenship, which is not to be ignored at a time when citizens' attachment to the EU is in decline. According to Eurobarometer, the past couple of years have seen a noticeable 5% decline of citizens who believe that membership of their country in the EU is a "good thing". An incremental approach to European citizenship can work, for example in the case of social rights and entitlements but it is certainly more questionable in the area of political rights where the contradictions are too apparent and become disincentives.

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4. The European Citizen Action Service (ECAS) has been much involved in supporting ECIs having set up several support systems, organised many awareness raising events and disseminated information to ECI initiators and organisers. Presently it is also working on setting up an Online Signature Collection system, which will meet the specified requirements of the European Commission and provide organisers with a secure server. Philippe Cayla has accepted a real challenge, as any ECI which deals with citizenship will by its very nature encounter many difficulties. Indeed, as this debate has shown, intra-EU migration is extremely complex both legislatively and pragmatically. One key obstacle will also arise during signature collection due to the scattered geographical distribution of those most likely to sign it. Increasing evidence here at ECAS has also shown that social media offer no shortcut for this complex and bureaucratic procedure of collecting signatures. It will be no easy task, but given that the ECI will inevitably encounter considerable obstacles, we must do everything to ensure its success. Citizenship needs civil society.

ECAS will be following up on this debate at a conference to be held in Brussels on 5 November 2012 with Philippe Cayla and we will of course send all the relevant details to the participants of this forum when possible, as it would be great to see you there and continue the discussion.

## **Mobile Union citizens should have portable voting rights within the EU**

Roxana Barbulescu \*

The contributions to this forum have mixed two arguments that share some common concerns but do not fully overlap. The first one has to do with Union citizenship and its associated rights, the role of Union citizens for the political project of the European Union and the boundaries of a “Eurodemos”. It is therefore, broadly speaking, an argument about the status of Union citizenship and a particular group of people: the nationals of other EU member states.

The second argument is more encompassing and concerns non-citizens who otherwise obey laws and pay taxes but have no voting rights. One way to enfranchise these people is for member states and the EU to grant residents voting rights and this is what the European Citizenship Initiative letmevote proposes. The other way to achieve this result is by naturalisation - an option for which Rainer Bauböck, David Owen and Kees Groenendijk have argued convincingly. It is important to point out that naturalisation is an individual method of enfranchisement not a collective one. What both these methods seek to accomplish is to transform these persons from subjects into active citizens and thus to redress what Owen calls the democratic wrong. In other words, this argument is primarily about democratic deficit and the tensions and ills it causes in liberal democracies where not all their people have the right to vote.

This is a general argument and it applies not only to Union citizens but to all disenfranchised persons including non-EU migrants. Furthermore, this argument applies not only to EU member states but to all liberal democracies. If political rights need to be extended in order to fix the democratic deficit, then all residents and not only Union citizens should acquire these rights. But doing so one has to be aware that, as Dimitry Kochenov warns, that this exercise would only lead to another problem: the “who are the people” question.

The matter at hands is, however, not about the general democratic deficit in societies of immigration, but about European integration and the pivotal role Union citizenship plays for the European Union project. I propose therefore an argument for portable political rights for mobile Union citizens.

### **Political rights for mobile Union citizens**

Compared with their fellow citizens, mobile Union citizens lose their political rights in the home country and most of the times they do not regain them at destination. This situation produces a cleavage between the mobile and the stationary Union citizens in the member state of origin as well as in the member state of residence. In this context, mobile Union citizens have only limited voting rights at the local level and in elections for the European Parliament while stationary Union citizens enjoy full political rights.

So far my argument is in line with Bauböck’s: mobile Union citizens should not be penalised for exercising free movement right. However, we differ on the solution: voting rights in national elections should be portable across the EU and linked with (legal) residence. This mechanism is not new. It has guided the implementation of the EU rights Union citizens enjoy today: social contributions and pensions, medical insurance, local voting rights, etc.

In this scenario, Union citizens would be the ones deciding where they want to exercise their voting rights. They could register their residence in the destination country and transfer these rights there or they could “hide” their change of residency from their country of origin and continue to enjoy political

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rights there. Sociological studies on the lifestyle of mobile Union citizens show that they skilfully combine rights they have “at home” with rights they have in their new homes. Where Union citizens would choose to vote if they had the opportunity to do it either in their country of origin or of residence remains an open question. But I bet that for most people, social ties and political loyalties will change with the passing of time.

### **Why naturalisation solves too little too late**

When foreigners naturalise, they become citizens with full citizenship rights. They gain not only political rights but also access to a set of privileges reserved to nationals. The most common reserved privileges are public sector employment, service in the army, access to non-contributory social benefits and, of course, the right to vote in national election. It seems that a naturalisation option might actually solve the problem of disenfranchisement. And, it would do so not only for mobile Union citizens but also for their children and children’s children. Why then is naturalisation not the most appropriate solution for Union citizens?

First of all, changing the rules of acquisition of their citizenship in 27 countries in order to make it easier for Union citizens to naturalise will take a lot of time. And, second, even if this happens nationality policies alone would not enfranchise Union citizens with political rights. At best, it would bring stronger incentives for this group of people to acquire citizenship and, with it, voting rights.

What this means is that the democratic deficit would persist until all Union citizens naturalise. This process might again take many decades because the decision to naturalise is ultimately an individual and personal one. Furthermore, judging from the low naturalisation rate amongst Union citizens, this moment might not arrive ever for the first generation of Union citizens.

A common EU directive granting Union citizens such rights directly achieves more and faster than naturalisation. Once implemented, this directive would automatically and simultaneously enfranchise all Union citizens.

Secondly, most contributions in this forum have presented enfranchisement by naturalisation and by voting rights as mutually exclusive alternatives. In fact, the two options tend to go hand in hand with each other. For instance, those member states that have a more open access to citizenship also give long-term residents the right to vote in local elections (the Scandinavian countries and the Netherlands as opposed to Spain, Italy, Greece and most new EU member states).

Thirdly, given that these are Union citizens we are talking about, it seems to me disproportionate to ask them to naturalise, and often also to renounce their original citizenship, in order to gain political rights. It is disproportionate for non-EU migrants but even more so for Union citizens.

Why that? Is there anything special about Union citizens who live in the European Union? Are they different from other foreign nationals living in a country other than their own somewhere else on the globe? I believe the answer to this question is yes. Member states and their citizens are partners in a shared European project with a common market, common economy and freedom of movement. Because of the specificity of the situation, alternative ways of political inclusion are preferable to naturalisation.

In addition, supporters of enfranchisement through naturalisation should also consider that by becoming a citizen in the country of residence a naturalised Union citizen would lose some of the substantive EU rights which she would otherwise enjoy as a Union citizen who resides in another member state. A naturalised Union citizen would thus be less a Union citizen than a new national citizen.

## **Political rights for Union citizens reloaded?**

Since political rights at the local level have already been agreed upon and implemented by the member states (many of which had to change their constitutions to allow non-nationals to vote or stand for office) then why is there still a debate on whether or not to enfranchise Union citizens?

Dora Kostakopoulou rightly point out in her contribution that many of the arguments made in this forum had been put forward when these rights were first introduced only two decades ago. This is a road we have walked before. This time, however, it is not a matter of starting afresh but rather a matter of extending the existing political rights to national elections.

If the European Citizens Initiative “let me vote!” proves successful, it would do much good for the development and understanding of Union citizenship. Critics have long argued and for good reasons that this form of citizenship is little more than a legal status that developed in a piecemeal fashion largely through decisions the Court of Justice of the European Union. Nonetheless, a success of the ECI would demonstrate that there are real people, with names and surnames, who support it and claim more rights.

In conclusion, the main question this forum has asked is whether Union citizens should gain voting rights in national elections. While there is some disagreement on the method by which they should achieve these rights - via naturalisation or direct enfranchisement – it is important to highlight that all contributors have argued in favour of full political enfranchisement of Union citizens. None of the contributions considers satisfactory the status quo which limits the voting rights Union citizens have to local and EP elections.



## Concluding remarks: Righting democratic wrongs

Philippe Cayla and Catriona Seth\*

In the space of a couple of months in 2012, France has held four elections, two for the Presidency, two for the National Assembly. One of us voted on all four occasions. The other on none. We are both law-abiding, tax-paying citizens in full-time employment. We are both of voting age. The difference is that one of us is a Frenchman living in France and that the other lives and works in France, thanks to free circulation which is at the heart of the European union, but holds British nationality and can therefore not vote in the country in which she resides, works and pays taxes. It is in order both to foster a true spirit of European nationhood and to correct such lacunae that we launched our 'Let me vote' ECI and the EUDO forum debate. Though neither of us is competent to comment on the finer points of EU and constitutional law, we have both been impressed by the wide-ranging and challenging proposals and demonstrations set out by the different participants and would like to express our deep gratitude to those who have taken the time to make their feelings and ideas known, whether they ultimately come out totally or partially in favour of or against our initiative. We can only agree with Dora Kostakopoulou's opening remarks, when she notes that the different contributions to the forum 'have provided a number of valuable reflections on matters of principle, policy, strategy, and tactics in the light of contemporary political developments at both European Union and domestic levels.' She adds: 'By clarifying matters of principle as well as issues of politics, they have outlined several trajectories and shed ample light onto the pros and cons of the European Citizens' Initiative.' The variety and depth of the comments tend to confirm that, as Jo Shaw states, the ECI is a timely initiative on an important question.

We would like to start by stressing a point which the eminent specialists who have expressed their ideas have perhaps not always taken fully into account, i.e. the limits which the very procedure of ECIs imposes. Our ECI's object has been analysed, but not its starting point: a valiant but fragile citizens' committee. We are neither an institution within the Union, nor a political party, a trades-union or even a powerful lobby. We are a small group of well-meaning citizens, strong believers in the European cause, but with no means other than those afforded by the ECI's procedure. The procedure itself is very restrictive: it only allows us to make suggestions which can lead the European Commission to propose legislative measures within the framework of existing treaties. There is no possibility therefore for us to encourage actions in the field of nationality, for instance, or with regard to the rights attributed to third country nationals, as some contributors like Ángel Rodríguez seem to suggest. We feel strongly that such questions are outside our scope. In addition, it must be noted that the requirement of collecting a million signatures within a year is a very tough one and that the only chance of meeting it is for an ECI to have a simple, clear and ambitious object.

Our contention is that there is a case to be made for Europeans to be granted a form of super-citizenship, in the tradition of the *civis romanus* who was a citizen of Rome without losing his own statehood. We believe that at a time when Europe is increasingly seen as a bureaucratic and costly system with no positive impact on everyday life, a form of European citizenship which would allow one to vote in all elections of one's country of residence when within the EU, could only enhance our feelings towards the Union and serve to foster increased implication in its development. It would be a concrete way of recognising that we share a common culture and that our future lies in a common destiny. David Bellamy can reassure those who see mobile EU citizens as benefits tourists. On the whole, those who are interested in an initiative such as our ECI are quite the opposite: dedicated professionals, open to European cultures and languages, conscious of a shared heritage, desirous to contribute to a peaceful and prosperous future for the EU.

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## **What are our ECI's fundamental objectives? There are three of them:**

***1) To give European citizenship its full meaning by making it grant access to all fundamental rights, including the right to vote, whatever one's country of residence. It is a principle of equality for Europeans.***

Dimitry Kochenov makes a very useful point with his question: 'Who is a foreigner?' Surely an EU national within the EU, whether in his or her home state or elsewhere, is not a foreigner and must not be treated as such. Dora Kostakopoulou adds that it is unsustainable in a democracy to ask people to contribute fully but only to treat them as de facto second-class citizens.

***2) To give mobility (i.e. the principle of free movement within Europe) its full scope.***

There is general agreement amongst the authors that the current situation entails a serious democratic deficit and that it is absurd that this should derive from the exercise of one of the EU's core rights: free movement. As David Owen points out: 'This is a democratic wrong since it is not democratically legitimate that a person lawfully exercising a civil right shall in virtue of such exercise be deprived of a political right.' Is this dysfunction of democracy, as Rainer Bauböck suggests, only the case for those who, like Britons or Danes, do not keep home voting rights permanently wherever they live? Is it not, rather, the case for anyone who is integrated in their country of residence in every respect (working, speaking the language, paying tax etc.) but deprived of the democratic rights granted to those who were born there (or whose parents were born there), but who may, in the most extreme of cases, never go there. When you move from Perpignan to Calais or from Aberdeen to Exeter, you vote for the mayor of the town in which you live. You do not forever cast your vote in the ward in which you were born. In the same way, would it not be logical to consider that you take your voting rights with you when you move overseas but stay within the EU? In a true European Union, living in Vienna or in Seville should be of no more consequence than moving from Genoa to Milan: you should not be disenfranchised because you have chosen to exercise your right to mobility – Roxana Barbulescu's analogy with the portability of pensions or medical insurance across national borders within the European Union is a demonstration of the fact that rights acquired in one EU State can be enjoyed in another. As a matter of consequence, we do not believe that simply ensuring that all EU citizens maintain a permanent right to vote in their home nations is the appropriate solution: we are most directly affected by what happens in the land in which we live and work – if income tax is to increase in Greece, this is less likely to have instant consequences on the everyday existence of Greeks living and working in Brussels, than if it goes up in Belgium. Martin Wilhelm's vote exchange system implicitly recognises that citizens can feel more immediately concerned by the political situation of the state in which they reside than by elections in their home country.

***3) Finally, to give the democratic principle, 'No taxation without representation' its full meaning. This is a consequence of applying the principle of solidarity to all residents.***

This principle, which launched the American Revolution, is already recognised locally, as Kees Groenendijk stresses. It must be extended at regional and national levels too: Europeans resident in the EU pay income tax as well as local taxes. Currently, we are being taxed and some of us, like the pigs in *Animal Farm*, are more equal than others. Even the Commission has to agree that this is the case, as Andrew Duff's recent exchange about the European Convention on Human Rights shows.

In this context, let us take another look at some of the objections set out by certain contributors.

1) The main objection is that a European citizen who resides in another member state must take out its nationality if s/he wants to vote there.

Answer: clearly, if the principle of free circulation is to apply, any European has to be able to move to another EU country whenever s/he wants to – why not every year if the labour market makes this desirable? One can recall here that Olivier Blanchard, the IMF Chief Economist had imagined in 1998 that the Euro zone could fail because of lack of fluidity in the European labour market. Asking EU nationals to acquire another EU nationality in order to be able to vote does not seem to offer an apposite answer: in these changing times, many of us will live and study in several EU states within our lifetime – Sue Collard helpfully gives a couple of examples of people concerned by such moves. Does this mean that each time we take up residence in a country we should pick up the nationality, thanks to simplified procedures? Or would this not debase the concept, were we to end up, routinely, with three, four or five passports? As Rainer Bauböck suggests, citizenship should be seen as a lifelong status. Unlike him we feel that, as a result, one EU passport should be enough for anyone: citizenship of any EU nation should make one an EU citizen, wherever one lives. This is not to preclude anyone from holding a second EU citizenship or to deny anyone dual nationality. Acquiring a country's passport should not, however, be a prerequisite in order to vote in its national elections if one is already an EU citizen within the Union. As Alain Brun puts it in a nutshell: 'I understand European citizenship as the right to be considered as a national by any member state other than the one whose nationality I hold, as soon as I am in relation with its authorities, in one way or another.' Or, to echo Dimitry Kochenov's words: 'Since member state nationalities are in the absolute majority of cases legally inconsequential for EU citizens travelling around the EU, connecting democratic participation with naturalisation amounts to artificially inflating the importance of an *abolished* status.' In addition, Roxana Barbulescu makes a very interesting comment when she opposes the *individual* solution of naturalisation and the *collective* process of enfranchisement of EU citizens.

Obviously, no one is going to change nationalities every year. In addition, on a legal level, questions of nationality are outside an ECI's scope.

2) Second objection: it is more urgent to improve the current situation, viz access to and participation in municipal and European elections, and prudent to limit the demand for new rights for Europeans to regional elections.

Answer: be that as it may, such a proposal would never be attractive enough to collect a million signatures. We fail, in addition, to see the legitimacy of giving limited voting rights to EU citizens. Why should it be all right for them to elect their mayor, but not the member of a legislative assembly or a president? A collateral advantage of our ECI is that granting EU citizens full voting rights in their host country would probably increase general awareness of – and interest in – European elections. This would in turn almost certainly boost the turnout and the visibility of such polls. A bold and supranational step, such as the one we propose, would also give Europe a more definite structure, de facto, rather than leaving it stuck in a halfway house between a confederation and an association.

3) Further amendment: conditions of residence and the question of whether one could potentially vote in two countries need to be envisaged.

Obviously such issues will have to be dealt with, but they are not within our remit.

4) Last objection: dealing with third-country nationals is paramount.

Should they acquire EU citizenship, third-country nationals would of course benefit from our ECI, but their rights are outside its scope.

There are clearly political, philosophical and legal aspects to take into account – there would also be economic consequences to any change in the *status quo*. Debates about EU citizenship are, more than ever, debates about the future of Europe itself – and thus carry huge symbolic value too. Hannes Swoboda rightly affirms that 'the necessary evolution of EU citizenship leads to a gradually growing relevance of residence as [the] defining criterion for the exercise of related rights.' As in clothes shops where 'one size fits all' generally means nothing will be a perfect fit for anyone, our ECI falls short of some people's ideal scenario. The five options David Owen sets out offer unequal advantages, though

he stresses that the ECI ticks a number of boxes. Obviously we are aware that obtaining and implementing voting rights for EU nationals in their country of residence (or allowing them to choose between voting in their home country and their state of residence) will be an uphill struggle. However, Tony Venables hits the nail on the head when he states that ‘the right to vote is so fundamental to democracy that any arguments reflecting the difficulties of putting it into effect pale into insignificance’.

The different cases made for and against our ECI in the EUDO forum debate have but strengthened our resolve. There is broad consensus that the current situation is untenable. The idea that our proposal is ‘timely’ is mentioned several times and we can only see this as an encouragement, along with the fact that most contributors affirm that they will sign it. We are grateful to them for this. We believe, more than ever, that our case is a strong one. The fact that our ECI has been officially validated shows that our proposal does not fall outside the Commission’s scope. Next year (2013) is the European year of citizens. Let us do all we can, together, to right democratic wrongs and endow European citizens with full voting rights wherever they choose to reside within the EU.

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