



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



European
Union
Democracy
Observatory

INCLUSIVE DEMOCRACY IN EUROPE

Edited by Kristen Jeffers

CONTRIBUTIONS FROM THE 2011 EUDO DISSEMINATION CONFERENCE
ON INCLUSIVE DEMOCRACY IN EUROPE &

THE EUDO ONLINE FORUM DEBATE ON NATIONAL VOTING RIGHTS
FOR EU CITIZENS RESIDING IN OTHER MEMBER STATES

This eBook has been published by the European University Institute, Robert Schuman Centre for Advanced Studies, European Union Democracy Observatory - EUDO

This eBook includes revised papers which were initially presented at the Conference “2011 EUDO Dissemination Conference: Inclusive Democracy in Europe”, co-funded by the Lifelong Learning Programme, EACEA decision no. 2011-2845/001-001

© European University Institute 2012
Editorial matter and selection © Kristen Jeffers
Chapters © authors individually
Cover image © European Parliament

The European Union Democracy Observatory (EUDO, www.eudo.eu) is an independent and interdisciplinary organisation fully-integrated within the Robert Schuman Centre for Advanced Studies (RSCAS) at the European University Institute. Its declared goals are: to translate scientific and academic research on the key issues of European democracy into policy relevant and publicly-understandable outputs, to produce a permanent and periodic evaluation of democratic practices within the EU and to develop practical suggestions for improving democratic performance in the EU. EUDO wants to serve as a forum where research results, experiences, ideas, and good practices can be exchanged between scholars and policy-makers. The mission of EUDO is above all to gather documentation and data, to provide basic and applied research reports for EU institutions, and to foster dialogue between policy-makers, academics and EU citizens.

Via dei Roccettini, 9
I-50014 San Domenico di Fiesole (FI) – Italy

E-mail: EUDO.secretariat@eui.eu
Website: www.eudo.eu



The European Commission supports the EUI through the European Union budget. This publication reflects the views only of the author(s), and the Commission cannot be held responsible for any use which may be made of the information contained therein.





INCLUSIVE DEMOCRACY IN EUROPE

*Conference on Inclusive Democracy in Europe and the EUDO
online forum debate on national voting rights for EU citizens
residing in other Member States*

Edited by KRISTEN JEFFERS

CONTENTS

6 FOREWORD
*KRISTEN JEFFERS

SECTION I: CONFERENCE PAPERS

14 THE PARTICIPATION OF IMMIGRANTS IN POLITICAL PROCESSES AND INSTITUTIONS
*JAN NIESSEN

28 EXTERNAL VOTING RIGHTS AND THE EUROPEAN POLITY
*DAVID OWEN

38 IMMIGRANT ELECTORAL PARTICIPATION IN THE EUROPEAN UNION: DIFFERENT FROM NATIVES?
*STÉFANIE ANDRÉ

46 THE VOTING RIGHTS OF FOREIGN RESIDENTS IN FRANCE IN 2012
*BERNARD DELEMOTTE

50 MIGRANTS' POLITICAL INTEGRATION IN IRELAND:
LOOKING BEYOND THE RIGHT TO VOTE IN LOCAL ELECTIONS
*FIDÈLE MUTWARASIBO

SECTION II: FORUM DEBATE ON NATIONAL VOTING RIGHTS

66 KICK-OFF CONTRIBUTION
*PHILIPPE CAYLA AND CATRIONA SETH

68 EU CITIZENS SHOULD HAVE VOTING RIGHTS IN NATIONAL ELECTIONS, BUT IN WHICH COUNTRY?
*RAINER BAUBÖCK

72 A EUROPEAN OR A NATIONAL SOLUTION TO THE DEMOCRATIC DEFICIT?
*ALAIN BRUN

76 EU ACCESSION TO THE ECHR REQUIRES ENSURING THE FRANCHISE FOR EU CITIZENS IN NATIONAL ELECTIONS
*ANDREW DUFF

78 HOW TO ENFRANCHISE SECOND-COUNTRY NATIONALS?
TEST THE OPTIONS FOR BEST FIT, EASIEST ADOPTION AND LOWEST COSTS
*DAVID OWEN

82 WHAT'S IN A PEOPLE?
SOCIAL FACTS, INDIVIDUAL CHOICE, AND THE EUROPEAN UNION
*DIMITRY KOCHENOV

- 88 TESTING THE BONDS OF SOLIDARITY IN EUROPE'S COMMON CITIZENSHIP AREA
*JO SHAW
- 92 AN EVER CLOSER UNION AMONG THE PEOPLES OF EUROPE: UNION CITIZENSHIP,
DEMOCRACY, RIGHTS AND THE ENFRANCHISEMENT OF SECOND-COUNTRY NATIONALS
*RICHARD BELLAMY
- 96 FIVE PRAGMATIC REASONS FOR A DIALOGUE WITH AND BETWEEN MEMBER STATES ON FREE
MOVEMENT AND VOTING RIGHTS
*KEES GROENENDIJK
- 100 DON'T START WITH EUROPEANS FIRST. AN INITIATIVE FOR EXTENDING VOTING RIGHTS
SHOULD ALSO PROMOTE ACCESS TO CITIZENSHIP FOR THIRD-COUNTRY NATIONALS
*HANNES SWOBODA
- 104 VOTING RIGHTS AND BEYOND...
*MARTIN WILHELM
- 108 ONE CANNOT PROMOTE FREE MOVEMENT OF EU CITIZENS AND RESTRICT THEIR POLITICAL
PARTICIPATION
*DORA KOSTAKOPOULOU
- 114 SECOND COUNTRY EU CITIZENS VOTING IN NATIONAL ELECTIONS IS AN IMPORTANT
STEP, BUT OTHER STEPS SHOULD BE TAKEN FIRST
*ÁNGEL RODRÍGUEZ
- 118 A MORE COMPREHENSIVE REFORM IS NEEDED TO ENSURE THAT MOBILE CITIZENS CAN
VOTE
*SUE COLLARD
- 122 INCREMENTAL CHANGES ARE NOT ENOUGH -VOTING RIGHTS ARE A MATTER OF DEMOCRATIC
PRINCIPLE
*TONY VENABLES
- 126 MOBILE UNION CITIZENS SHOULD HAVE PORTABLE VOTING RIGHTS WITHIN THE EU
*ROXANA BARBULESCU
- 130 CONCLUDING REMARKS: RIGHTING DEMOCRATIC WRONGS
*PHILIPPE CAYLA AND CATRIONA SETH

FOREWORD

KRISTEN JEFFERS



Kristen Jeffers is a researcher with the EUDO CITIZENSHIP project 'Access to citizenship and its impact on immigrant integration.' In this role, she contributed to the development of the EUDO Citizenship Indicators. She has also been involved with research on immigrant integration in the United States. She is based in University College Dublin in Ireland.

Historically, international migrants in Europe were temporary labourers; their role in society was exclusively economic, precluding consideration of their political interests (Martiniello 2006). Today, changes in the size, characteristics, and rights of the migrant population in Europe have transformed the political capacity of this group, establishing immigrants as legitimate political actors. An estimated 32.5 million people across the European Union, nearly seven per cent of the population, are non-citizens of the country in which they reside.¹ Increases in the number of long-term residence permits issued in most Member States, as well as the shift from employment-based to family-based migration, suggest that a large portion of migrants in Europe have the intention of permanent settlement.

Notwithstanding these trends, requirements for the acquisition of national citizenship remain demanding, making the effective representation of this group an ongoing challenge for Member States. Electoral rights for non-citizen residents in EU Member States are also limited. The 1992 Treaty of Maastricht and 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at the Local Level² provide for the electoral participation of foreign residents at the municipal and European levels³. In 2012, these instruments are the only European legal standards that pertain to the electoral participation of foreign residents. Nineteen Member States have implemented local voting rights for foreign residents beyond the requirements of EU law. Naturalisation continues to be a prerequisite for access to national voting rights in all but three Member

1. Eurostat, Statistics in focus, 34/2011

2. ETS No. 144

3. Only EU citizens may participate in European level elections.

States.⁴ The democratic consequence of this situation is apparent: the presence of a population of permanent residents who are subjected to the rule of law but lack access to legislative representation creates a deficit in the democratic legitimacy of the European Union and its Member States.

In this publication, academics, policy-makers, and representatives of civil society explore the history and nature of migrant political participation in Europe and consider policy options for remedying the democratic deficit in light of the political realities of modern Europe. In what follows, contributors provide a comprehensive discussion of inclusive democracy in the European Union, considering principles of democracy, conceptions of national and EU citizenship, and the political and institutional practicalities of national and European policy change.

Structure of the eBook

The eBook is divided into two sections. The first section brings together contributions from the 2011 Dissemination Conference organised by the European Union Democracy Observatory (EUDO, www.eudo.eu) and co-funded by the European Commission (Lifelong Learning Programme, Jean Monnet action) on **Inclusive Democracy in Europe**. The conference, which took place on 9 and 10 November 2011 in Brussels, disseminated comparative and updated knowledge on external electoral rights for non-resident EU

4. The United Kingdom, Ireland, and Portugal allow for the participation of certain foreign-residents in national elections. Commonwealth citizens and citizens of the Republic of Ireland may vote in all elections in the United Kingdom. Citizens of the United Kingdom may vote in general elections in Ireland. In Portugal, Brazilian citizens with 'special status of equality of political rights' enjoy voting rights in regional and national elections.



© European Union 2012 - European Parliament

citizens and internal electoral rights for non-citizen residents. Speakers also discussed the influence of electoral rights on the evolution and perception of EU citizenship and trends in political participation in the European Union. Contributions in this section focus primarily the nature of migrant political participation in the European Union, aptly framing the debate on the expansion of political rights of foreign residents in the EU.

The second section of the eBook exhibits the EUDO CITIZENSHIP Forum Debate on the voting rights of second-country nationals in the European Union. Contributors to the debate examine the contradictory nature of two of the fundamental rights of EU citizenship: the right to free movement and the right to participate in the political life of one's country of residence. Those who exercise their right to free movement sometimes for-

feit their right to vote in national elections in their country of origin but are also disenfranchised in their country of residence.

EUDO CITIZENSHIP Forum Debates begin with a controversial question of general interest to academic and policy communities. To start the debate on voting rights for second-country nationals, Philippe Cayla and Catriona Seth suggest that all EU citizens should have the franchise to vote in the national elections of their country of residence. The authors propose the creation of a European Citizens' Initiative on the matter, which has since been officially launched. The 'Let me Vote' ECI supports the enfranchisement of all EU citizens residing in another Member State for all political elections in their country of residence on the same conditions as the nationals of that State.

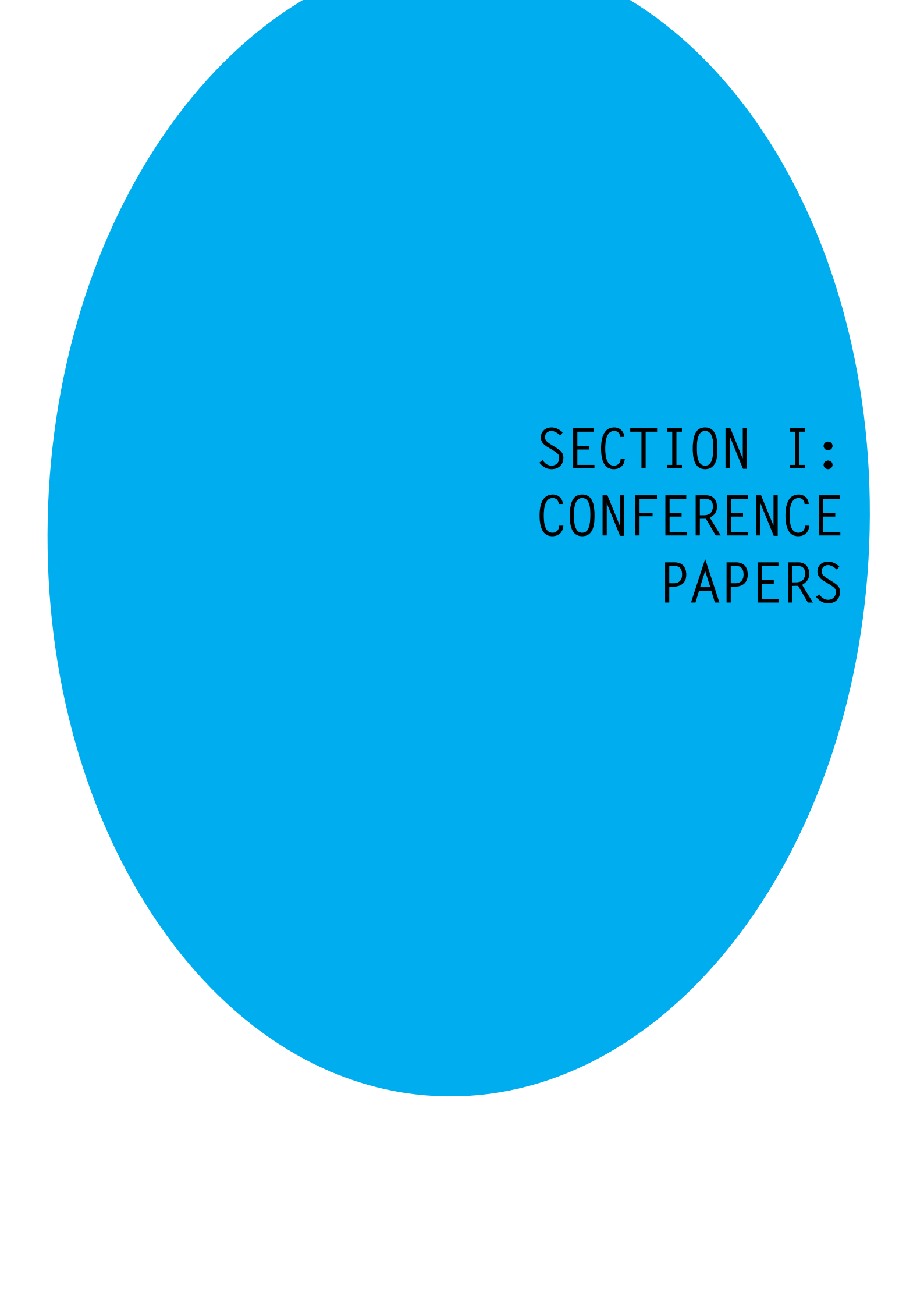
Forum participants respond to Cayla and Seth's proposal, revealing the complexity of the issue of enfranchisement. While all authors agree that the loss of democratic participation rights as the result of free movement is contrary to the spirit of EU citizenship, they have divergent ideas regarding the solution to this problem: 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? Will it be possible to convince a sufficient number of EU citizens of this initiative, given the disappointing turnout rates in European Parliament elections? Forum contributions were published online by EUDO CITIZENSHIP between 24 February and 14 June 2012 (see Bauböck, Cayla, and Seth 2012).

This eBook is equally useful for academics, policy-makers, and the public. It provides valuable information on the political incorporation of migrants and also offers readers the opportunity to engage in an accessible debate on fundamental principles and policies of democracy in the European Union.

References

Bauböck, R., Cayla, P. & Seth, C. (2012). Should EU citizens living in other Member States vote there in national elections? (EUI Working Papers RSCAS 2012/32). Retrieved from EUDO CITIZENSHIP website: <http://eudo-citizenship.eu/commentaries/citizenship-forum>

Martiniello, M. (2006). Political Participation, mobilization and representation of immigrants and their offspring in Europe. *Migration and Citizenship: Legal Status, Rights, and Political Participation*. Ed. Rainer Bauböck. Amsterdam University Press.



SECTION I:
CONFERENCE
PAPERS





1

THE PARTICIPATION OF IMMIGRANTS IN POLITICAL PROCESSES AND INSTITUTIONS

JAN NIESSEN



Jan Niessen is Director of [Migration Policy Group](#) in Brussels, and is a member of the organisation's Board of Directors. He has overall responsibility for MPG's programmes and leads the Diversity and Migration programmes.

This paper identifies the main legal obstacles faced by immigrants to participate in political life by comparing the situation in the European countries covered by the Migrant Integration Policy Index. It also describes organisational barriers for these persons to become actively involved in political parties and institutions and makes proposals for how political parties can mainstream diversity.

A recent survey among immigrants⁵ in fifteen European cities in seven countries demonstrated that they are as much interested in participating in elections as nationals. When asked whether they would vote in tomorrow's general elections if they had the right to, they answered that they would. They also wished for more diversity in politics and said they were willing to vote in support of it, believing elected officials of immigrant backgrounds better understand and represent them (Hudleston & Dag Tjaden, 2011).

The full and equal participation of all members of society in the political decision-making process is crucial for the legitimacy of the democratic political systems of Europe's increasingly diverse societies. The Common Basic Principles on Integration maintain that the participation of immigrants in the democratic process and formulation of integration policies supports their integration (Council of the European Union, 2004). However, immigrants are in many ways marginalized in decision-making processes and institutions. They often do not have (full) voting rights and their political liberties are in many cases not entirely secured. Their participation in elections tends to be lower than that of nationals. They are underrepresented among members, elected officials and leaders of political parties, as well as among employees and suppliers of political institutions.

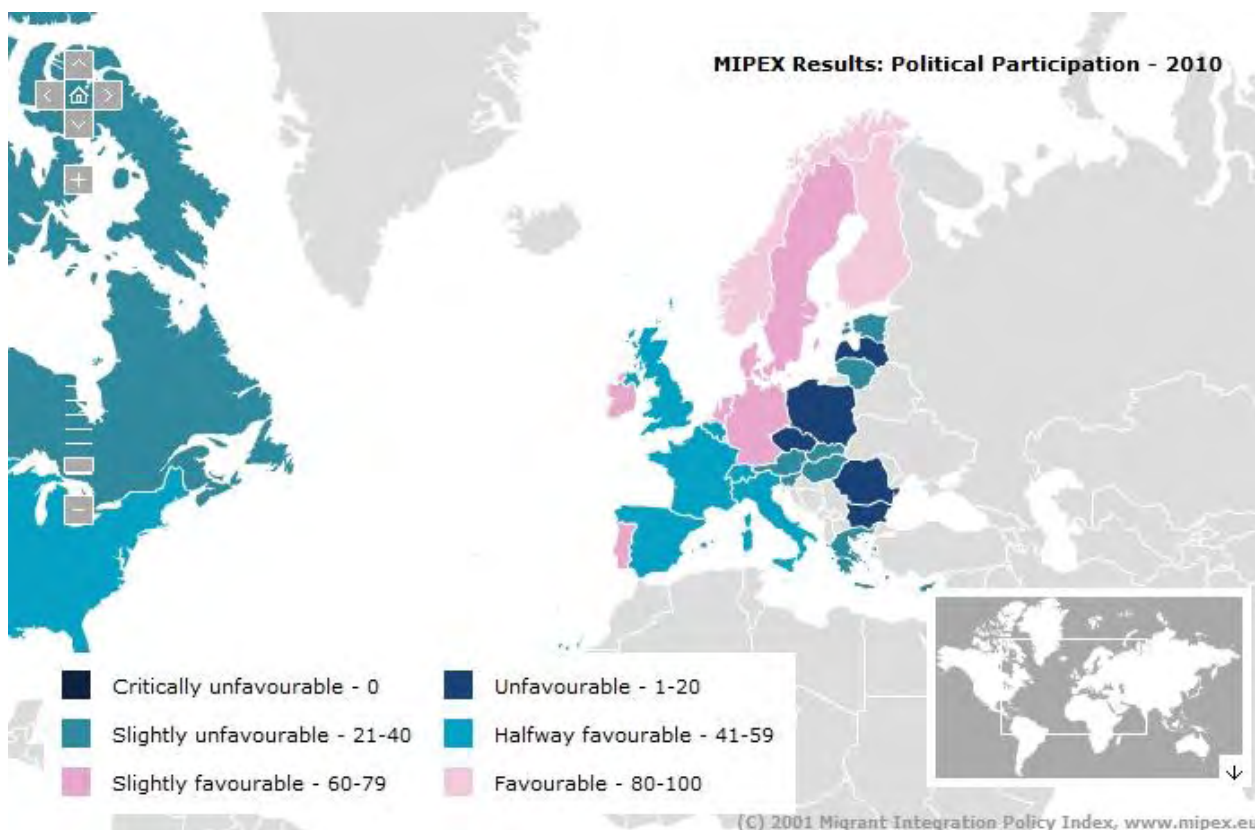
Being the objects of, rather than participants in, decision-making tends to reinforce processes of

5. In this chapter, immigrants are defined as third-country nationals, including refugees.

societal exclusion. Notably in times of economic recession and when populist sentiments are gaining ground, citizens and residents need to be mobilised to counteract marginalisation and exclusion. The propagated mainstreaming of immigrant integration in social, economic, and cultural policies also requires the participation of immigrants in decision-making. Decisions are made at many levels of governance on how budgets are divided among social, economic and cultural programmes, as well as how, and to whom, institutions provide public services. It cannot be taken for granted that the interests of immigrants are considered, nor that policies explicitly aim to prevent or redress their marginalisation. Mainstreaming can become more effective when immigrants have a seat at the table, when their voices are heard and their expertise used. Integrating immigrants into civic life and political institutions thus enhances not only their civic participation and social responsibility but also the effective implementation of policies.

Comprehensive approaches are needed to give immigrants access to decision-making. Generally three types of strategies are applied: (1) the removal of legal barriers for participation by granting political rights and facilitating naturalisation; (2) the mobilisation and empowerment of immigrant communities by providing training and support for immigrants and their organisations, and (3) the removal of organisational barriers for immigrant participation in societal entities by anti-discrimination and diversity mainstreaming. Whereas many projects concern the first two types of action, fewer concern the third type. This applies in particular to political parties and institutions which discuss and adopt and oversee the implementation of general and specific integration policies. However, these entities are less inclined to act on what they can do themselves to include immigrants in their own organisations.

Figure 1: Countries with barriers and opportunities for political participation



Political and civic rights for immigrants

The MIPEX strand on political participation includes four dimensions that measure electoral rights, political liberties, consultative bodies and implementing policies on the basis of some fifteen policy indicators.

Respectively, this strand establishes whether:

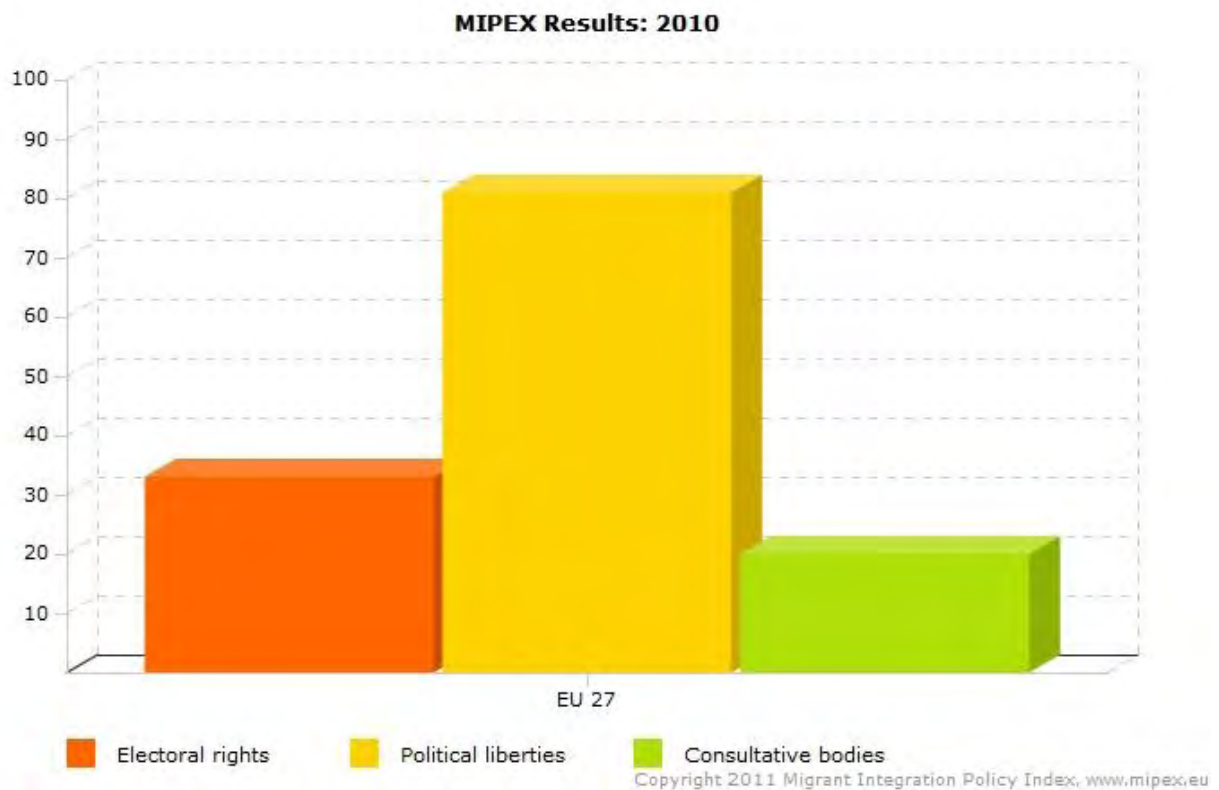
- immigrants have the right to vote in local, regional and national elections, and can stand in local elections;
- they have a right to create associations, political parties and their own media;
- consultative bodies are set up;

- information campaigns exist and immigrant associations are supported.

Figure 1 shows how countries score on these four dimensions and fifteen indicators. In most countries (including traditional immigration countries such as Canada and the United States) the situation is rather unfavourable as they score less than 60 points, with only a handful of European countries with favourable conditions scoring more than 60 points.

Immigrants have limited opportunities to inform and improve policies that affect them daily. They can vote locally in nineteen countries, regionally in seven countries and nationally in two coun-

Figure 2: Electoral rights, political liberties and consultative bodies in the EU



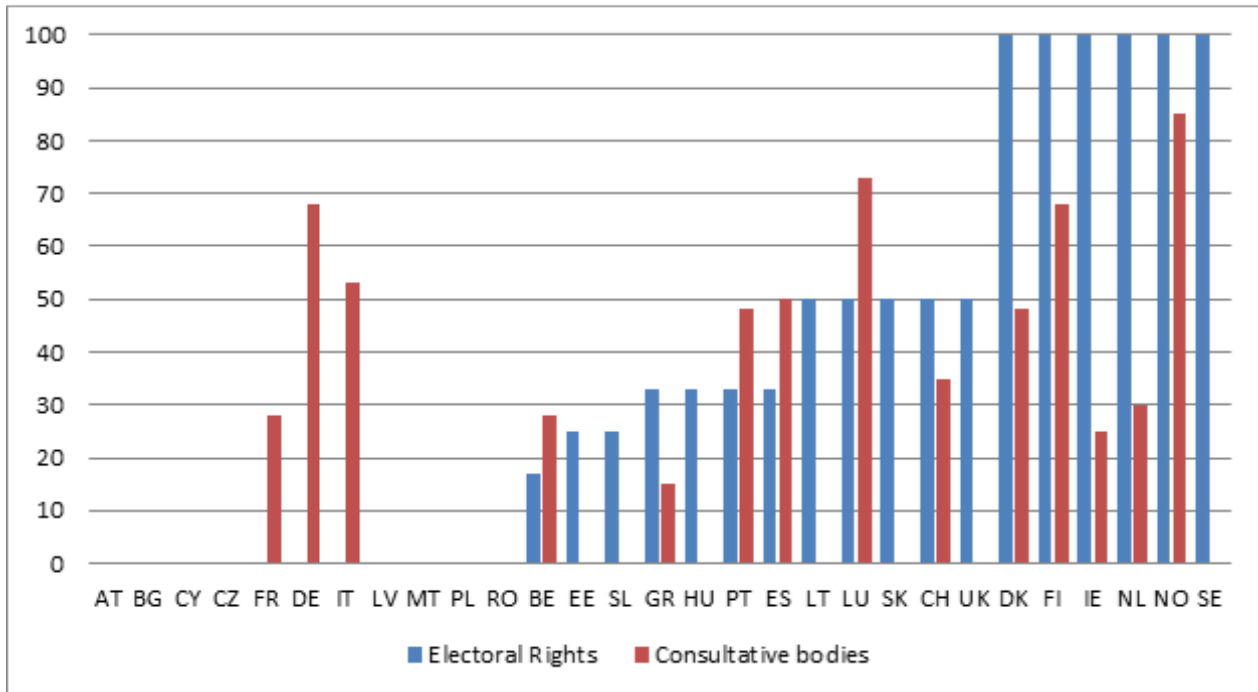
tries. They can stand as municipal candidates in thirteen countries. In eleven mostly Central European countries, laws deny immigrants basic political liberties. Consultative bodies exist at the local level in fifteen countries and at the national level in eleven. About half of the countries fund immigrants' civic activities, while a third inform them of their political rights.

Granting electoral rights and political liberties to immigrants can be considered a sign of confidence that countries of immigration have in their political system and in their capacity to accommodate immigrants. In Europe, established and new countries of immigration diverge significantly, which may point at the fact that this confidence grows over time. Immigrants enjoy nearly none of

these rights in Central Europe, the three Baltic Republics, Cyprus and Malta. Only Ireland and Portugal have opened as many political opportunities as countries in Northern and Northwest Europe. Established countries of immigration with less favourable frameworks, especially on voting rights, need either constitutional changes (such as Austria, Germany, Italy and Spain), or greater political will (France, United Kingdom) (MIPEX, 2012).

Official and structured consultation with immigrants is often presented as an alternative to electoral rights (the first and third dimension of this MIPEX strand, respectively). Such consultation can take different forms. For example, immigrants can participate in an advisory capacity in the deliberations of official committees of public au-

Figure 3: Electoral rights and consultative bodies in the EU, Norway, and Switzerland



thorities. Such committees can also have a mixed membership comprising of nationals and non-nationals. Consultative committees or councils may also have only immigrants as members (Council of Europe, 1992). If consultative bodies are indeed an alternative for granting voting rights, one would expect that such bodies exist where voting rights are not secured and that they do not exist where these rights are secured.

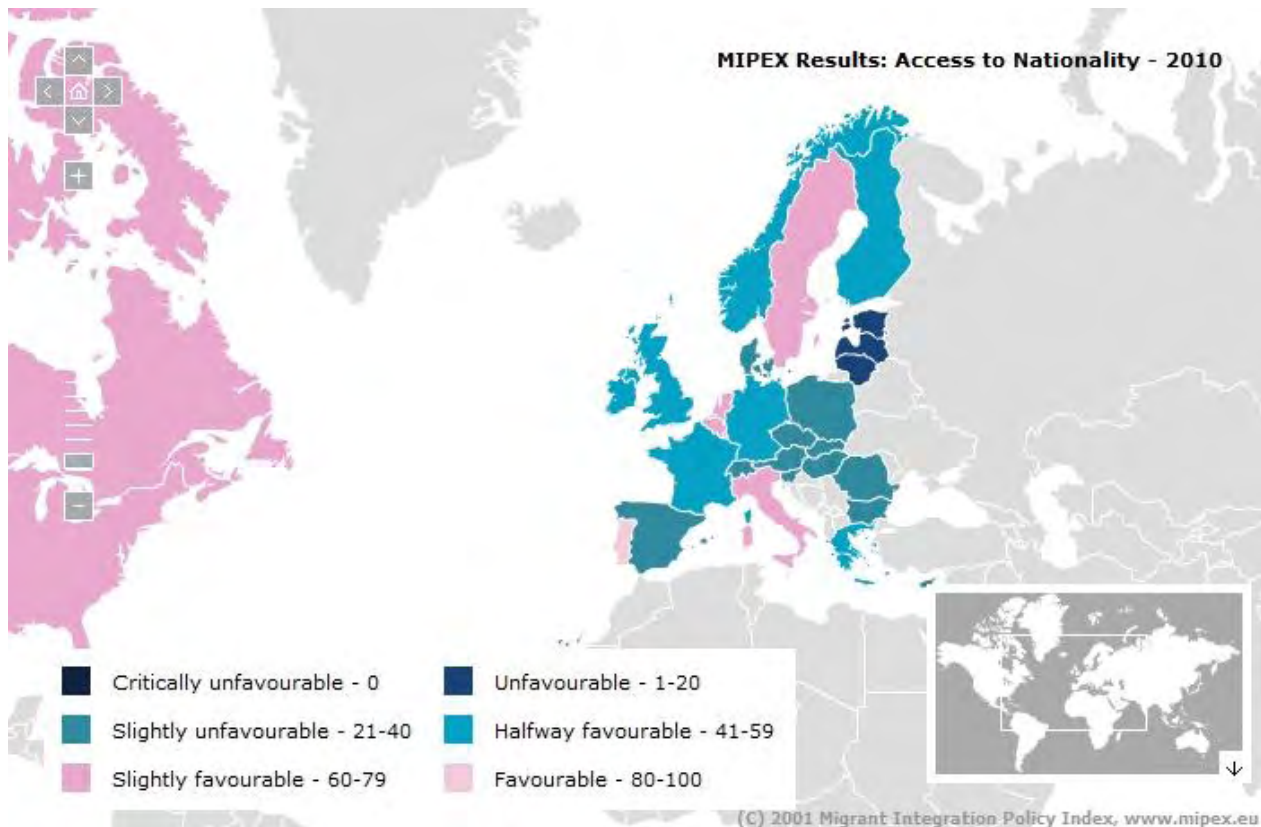
However, looking at the European Union as a whole (figure 2), there does not seem to be a trade-off between electoral rights and consultations. The overall EU MIPEX scores for electoral rights and consultative bodies are almost equally low, around 30 and 20 points out of 100, respectively. Whereas the number of countries granting electoral rights has been increasing over the last ten to twenty years, such a trend cannot be identified for countries establishing consultative bodies. Particularly

in countries where they do not have a strong legal basis, consultative bodies come and go depending on the political mood in the country or at local level.

It is important to note that the absence of electoral rights and consultative bodies does not necessarily mean that political liberties are also denied in individual countries.

A more detailed EU overview (figure 3) demonstrates that eight countries score neither on electoral rights nor on consultation. Seven countries score higher on consultative bodies than on electoral rights, including France, Germany and Italy, which do not score on electoral rights at all. In this case it is important to understand what the mandate of these bodies is and to assess to what extent this mandate compensates for the lack of electoral power. Important issues to consider are

Figure 4: Access to nationality



whether consultation takes place on an ad-hoc or structural basis, whether the members of consultative bodies are appointed or elected, who are the persons leading the bodies and chairing their meetings, and what powers these bodies have (for example, rights of initiative and response, binding or non-binding opinions, etc.).⁶

Fourteen countries score higher on electoral rights than on consultative bodies and the difference can be more or less significant. In these countries the two may be seen as complementary strategies that compensate for their respective weaknesses. Countries with a longer and a shorter history of immigration score in similar ways. Consultative

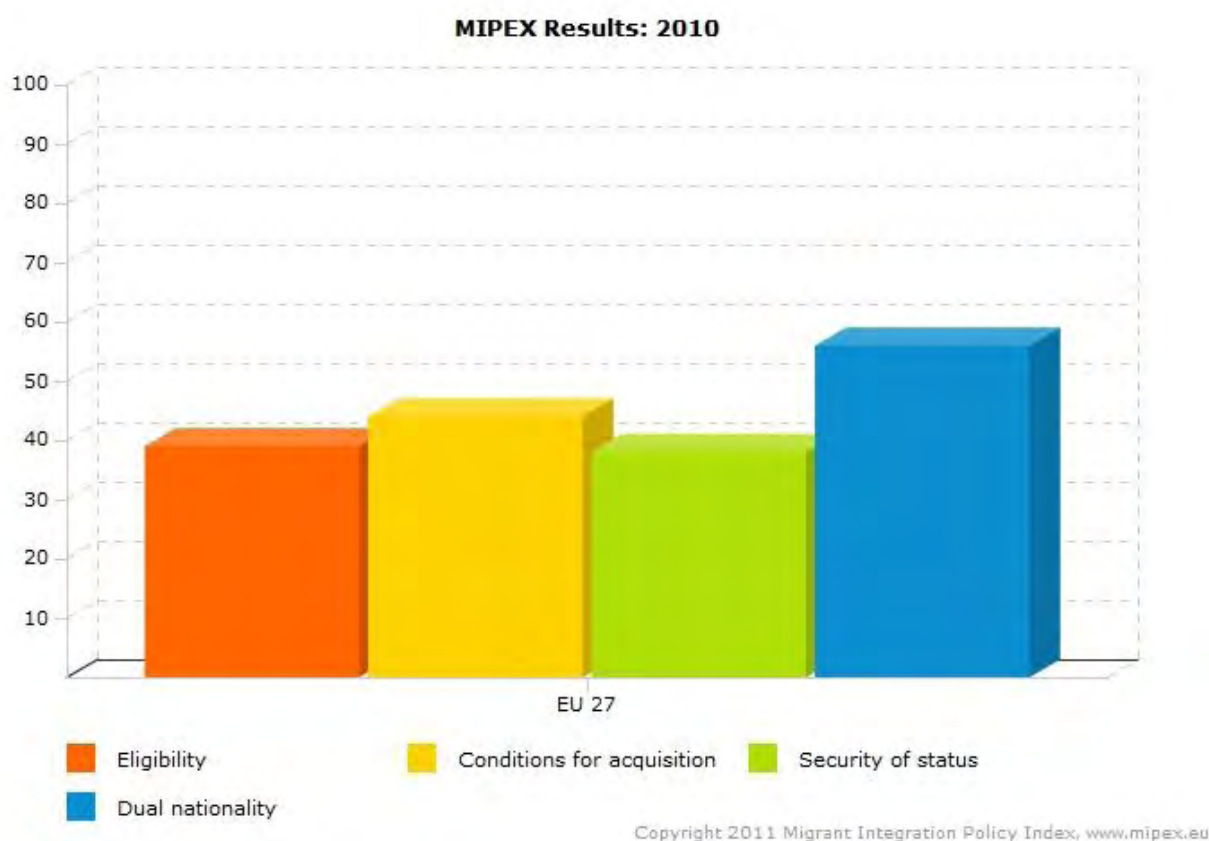
bodies may or may not compensate for the absence of electoral rights; they are nevertheless a testing ground and spring board for immigrants to become engaged with decision-making processes and institutions.

In conclusion, in a great many countries across Europe there are major obstacles for immigrants to participate in local, regional and national elections and to stand as candidates in such elections. Consultative bodies cannot be considered to be a generally applied alternative for electoral rights.⁷ In many countries political liberties are nevertheless guaranteed.

6. See Huddleston (2011) for further analysis.

7. See also Jacobs, Delmotte & Herman (2009).

Figure 5: Four dimensions of access to nationality in the European Union

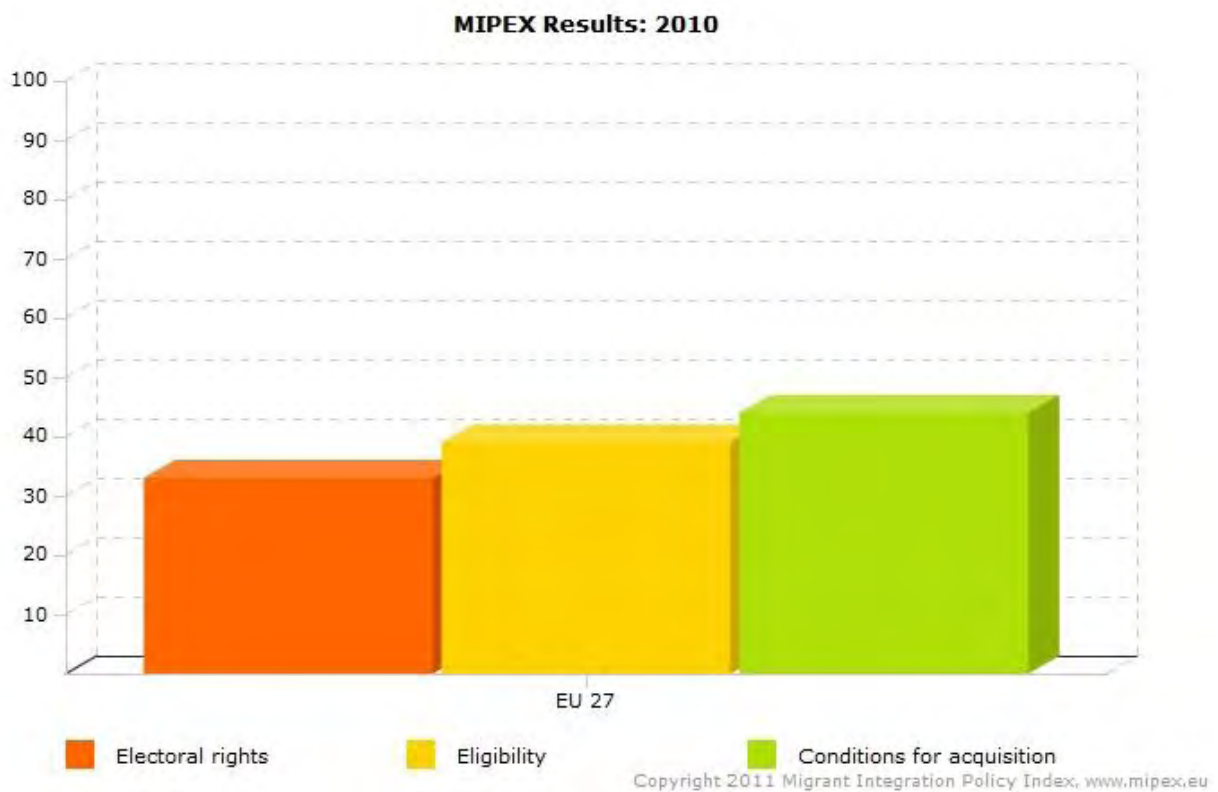


Access to citizenship

Electoral rights are very much associated with citizenship. It can be argued and often is argued that immigrants should become citizens first before they can enjoy full electoral rights. Making citizenship more accessible can then be seen as a means to enhance political participation. The survey among immigrants in 15 cities in seven countries concluded that three out of four immigrants are or want to become citizens. Those who were not interested do not see the difference with their status of long-term resident or face obstacles for naturalisation (such as years of residence before applying, the documentation that must be provided and the non-recognition of dual citizenship).

The four dimensions of the MIPEX strand on nationality deal with questions of eligibility, application conditions, security of the status and dual nationality. Around twenty indicators establish what first generation immigrants, spouses or partners of nationals and second and third generations have to do in order to become a citizen. Are language and citizenship tests taken? What economic resources and documents are required? What is the minimum duration of the procedure and what are the cost involved? The indicators also help to check what the grounds are for refusal and withdrawal of the status and whether dual citizenship is allowed. Figure 4 shows that there are favourable conditions in the North American traditional immigration countries and in a few European

Figure 6: Electoral rights and access to nationality in the EU



countries, but slightly unfavourable to unfavourable conditions in most European countries.

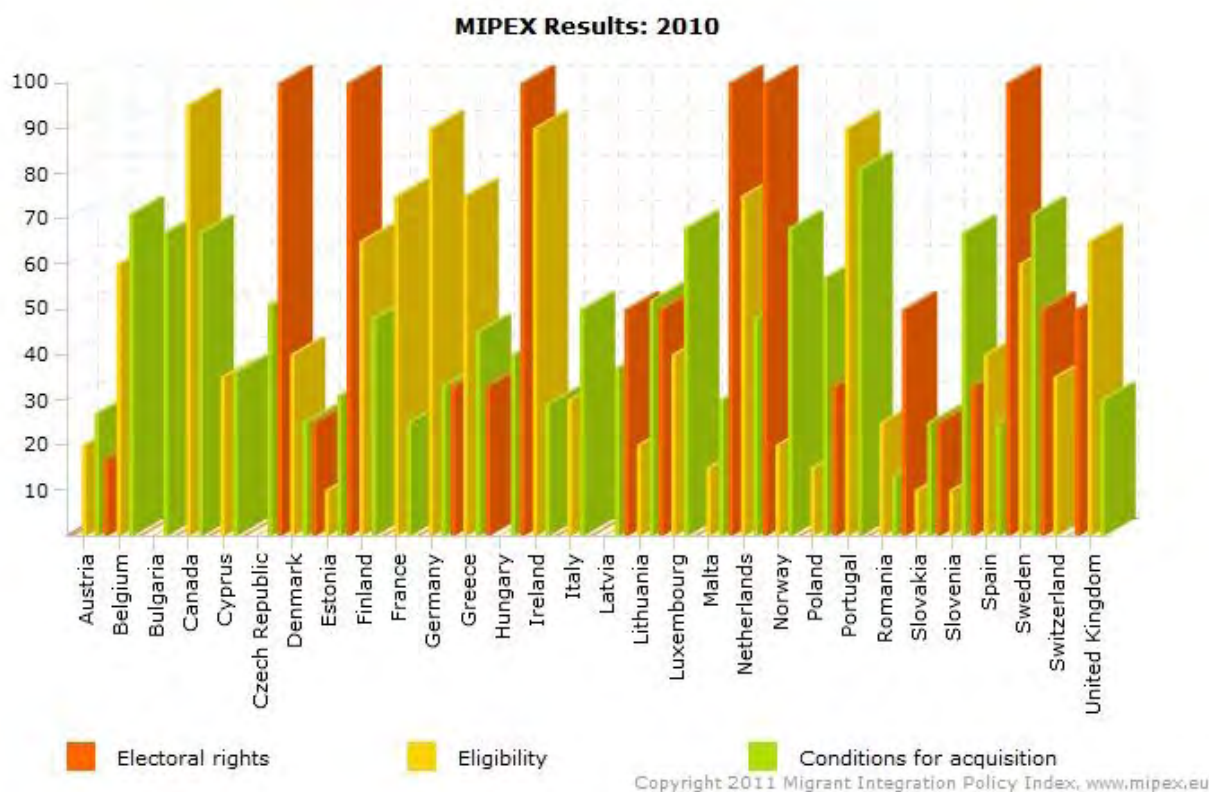
In Europe it takes immigrants on average seven years to become citizens and the procedures are still discouraging many immigrants from applying which may be one of the explanatory factors behind the low numbers of naturalisation in Europe. Half of the European countries surveyed by MIPEx make citizenship conditional upon income and high fees. Applicants are normally required to know the language, but often at high or unclear levels. Naturalisation tests rarely come with the support to pass them. After rather discretionary procedures, applicants can appeal a decision and enjoy some protection against statelessness and withdrawal of citizenship. Dual nationality and jus

solis (birth right citizenship for second generation immigrants) are also slowly becoming the norm in Europe.

Figure 5 summarises European scores for the four dimensions of the MIPEx strand on nationality. It shows low scores for eligibility (who can apply) and the conditions to be complied with (what must this person do), meaning that there are quite a lot of obstacles that immigrants have to overcome. Once acquired, the status is not fully secured and in many cases immigrants have to give up their initial nationality.

Figure 6 compares the scores of electoral rights and access to nationality (eligibility and condi-

Figure 7: Electoral rights and access to nationality in the EU, Norway, and Switzerland



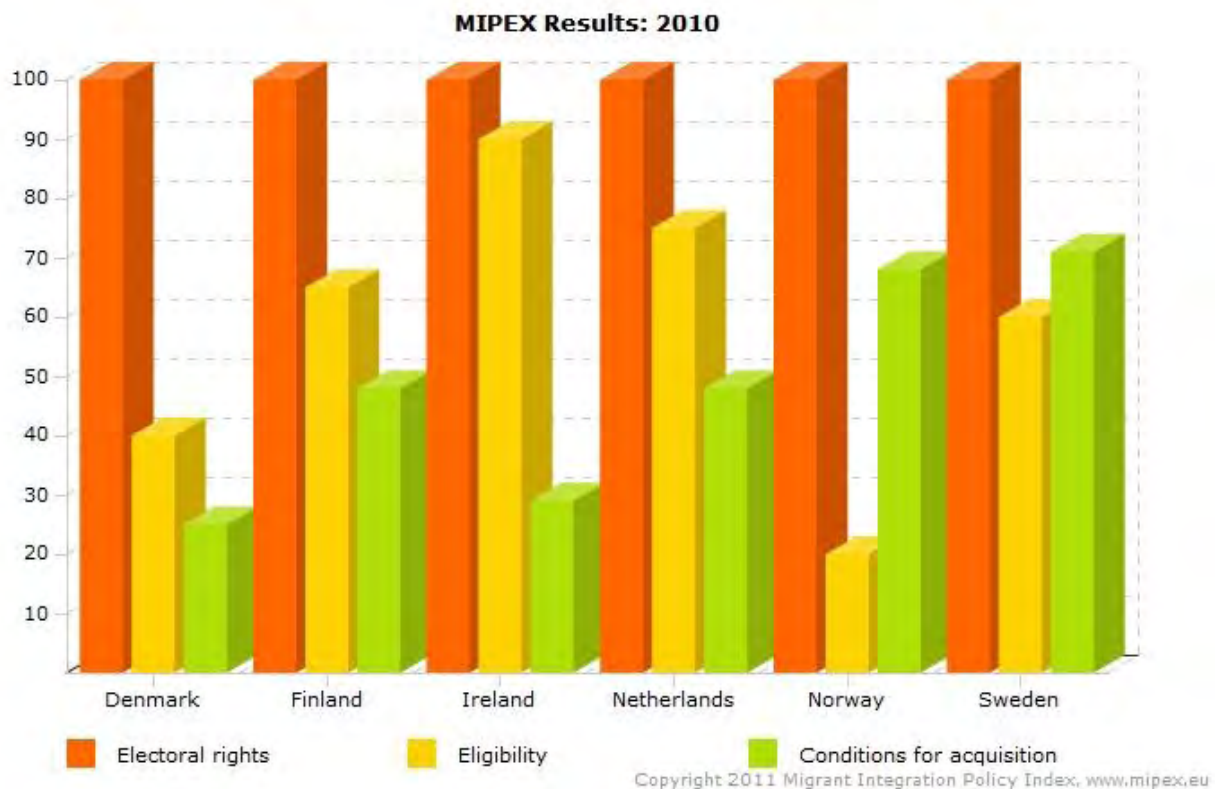
tions) and shows rather low scores for all three dimensions at the European level.

As is the case with electoral rights and consultative bodies, there does not seem to be a trade-off at the European level between electoral rights and access to nationality. Individual countries may promote the acquisition of citizenship and therefore are not prepared to offer full electoral rights. Countries in which it is difficult to become a national may offer electoral rights as an alternative. In this scenario, one could expect that electoral rights are either guaranteed or that the acquisition of citizenship is facilitated by removing legal obstacles. However, analysis of the situation in the EU Member States, Norway and Switzerland suggests that there is no statistically significant correlation between the two complete MIPEX strands of political participation

and nationality. Nevertheless, the results seem to suggest that there is a positive relation, namely the higher the scores for the nationality strand, the higher the scores for political participation. The situation per countries differs considerably. There are countries that combine moderate scores on both, or have higher and lower scores across the strands. There is no negative relationship, which confirms that there is no trade-off between the two complete strands (Jacobs et al., 2009).

Figure 7 provides details for the individual EU Member States, Norway and Switzerland and compares electoral rights (one dimension of the MIPEX political participation strand) with two dimensions of the MIPEX nationality strand, namely those which directly concern access to nationality (eligibility and conditions). Analysis of this

Figure 8: Access to nationality in countries scoring high on electoral rights



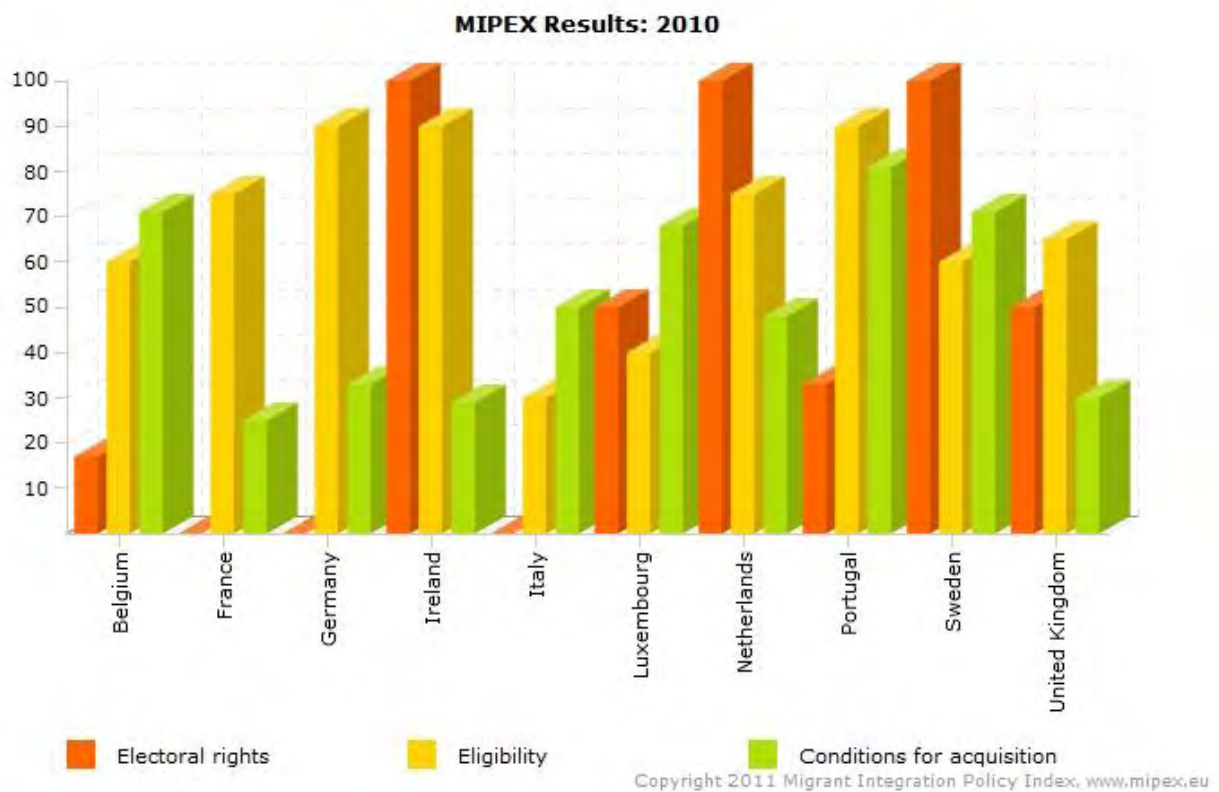
situation by and large confirms the analysis of the relationship between the two complete strands of political participation and nationality. This means that when it comes to policy choices concerning political participation and naturalisation, it is only in exceptional cases a *neither nor* or an *either or* situation.

On the MIPEX scale, policies are slightly favourable when they score between 60 to 80 percentage points and they are favourable when they score between 80 to 100 percentage points. On electoral rights, there are six countries that score more than 60 points, namely Denmark, Finland, Ireland, the Netherlands, Norway and Sweden. Figure 8 shows how these countries score on access to nationality (eligibility and conditions). Only Sweden receives an (almost) slightly favourable score for condi-

tions and eligibility. Policies to promote political participation and naturalisation seem to reinforce each other. The five other countries receive (almost) favourable scores for eligibility but not for conditions. Electoral rights seem to somewhat compensate for the difficulties to acquire citizenship.

Portugal, Sweden, Belgium, Luxembourg, the Netherlands, Italy, Ireland, France, Germany, and the United Kingdom are the top ten European countries on the MIPEX scale on access to nationality scoring between 58 and 82. Figure 9 shows how they score on electoral rights. France, Germany and to some extent Italy have very similar scores in the sense that immigrants have no electoral rights, with Germany and France scoring high on eligibility but weak on naturalisation

Figure 9: Electoral rights in countries scoring relatively high on access to nationality



conditions. Portugal and Belgium are also similar. These countries are rather weak on electoral rights but strong on access to nationality. Ireland is strong on electoral rights and on who can apply for citizenship but there are difficult conditions to be met. Luxembourg and the UK are rather moderate on all three dimensions but in different ways.

Electoral rights and access to nationality are related but distinct policy questions. There are good reasons to plea for naturalisation as a strategy to enhance political participation as there are for voting rights. Both require fundamental changes in national legislation and the political will to make them, which seems to be lacking in most European countries nowadays. Acquiring citizenship has advantages over enjoying voting rights. The residence of voting non-nationals is not completely

secured, but for citizens it is. Citizens enjoy full citizens' rights. For example, no labour market restrictions apply as is often the case for immigrants in public service jobs. Citizens are also better protected against discrimination in countries where anti-discrimination law does not include nationality as a ground of discrimination. Voting rights are for a special and small category of persons whose stay is considered to be temporary and whose children become citizens over time. Promoting citizenship is the expression of a country's intention to include immigrants and of these persons' intention to become active members of society.

Mainstreaming diversity in political institutions and parties

Even when legal barriers for political participation are removed, measures are required to enhance the actual participation of immigrants in decision-making processes and institutions. To that end policy-making institutions and political parties should consider themselves societal entities and ensure that they respond to and reflect society's diversity. Governments are not only regulators and makers of (integration) policies, but also employers, consumers and providers of services. They are often among the biggest employers in cities, regions and countries. They spend a huge amount of money on buying goods and services and for the construction and maintenance of public infrastructure. They provide directly or indirectly services to a diverse population, from education, to housing and health care. They can incorporate immigrants in what they do and can be guided by diversity principles in how they operate.

The purpose of government is laid down in constitutions, national and international laws and policy statements. As regulators and policy-makers, governments can adopt anti-discrimination and equality law, undertake equality-proofing of existing general policies and laws, and implement policies facilitating equal access to employment, education, health, other public services, decision-making and citizenship. The purpose of non-governmental entities is usually described in acts establishing their legal status and in mission statements. The former provide organisations with a proof of existence and licence to operate as, for example, a commercial firm, a social enterprise, a welfare or community organisation, a sports club, a civic and political organisation, or a cultural and scientific institute. The latter describe an or-

ganisation's aims, the means to achieve them and the values on which these goals are based. Their social commitment can find an expression in the implicit and explicit acknowledgement of society's diversity, which inspires:

- compliance with anti-discrimination and equality policies and laws;
- the screening of by-laws and internal regulations on provisions preventing or facilitating the participation of specific groups of individuals;
- programmes, projects and products that are designed to be beneficial to a diverse population;
- the setting of clear targets for specific categories of people within the population.

While it is a democratic duty for the public sector to act upon and reflect the diversity of the population, for civil society and the private sector this is more a matter of good citizenship. By including diversity considerations in their employment, procurement and service delivery practices, governments at different levels not only demonstrate their commitment to diversity, but also set a powerful example that may attract followers in the private and civil society sectors. Political parties' role in promoting immigrant integration cannot be limited to designing, adopting and reviewing the implementation of public policies. They should also promote their implementation by political institutions (such as parliaments, ministries, agencies, etc.) and by parties (and affiliated organisations) themselves. Parties can be asked whether they reflect the diverse population they want or claim to represent. They can also be asked to demonstrate (a willingness to undertake) a systemic and proactive approach to opening up their organisations to immigrants. This entails the application of diversity principles in electoral strate-

gies, recruitment and training of members, leaders and elected officials, employees and suppliers (Kirchberger, Kefferpütz, Niessen & Friel, 2012).

One of the obstacles making it difficult for immigrants to become politically engaged is the fact that there often exists a disconnect between what political parties promote in terms of public policy and what they adopt as organizational policy. Parties see themselves first and foremost as policy actors wanting to gain or control political power, defending interests and pursuing goals. However, they are also membership organisations in support of their mission. They promote equality and diversity policies for society as a whole, but too often do not apply these principles to their own organisations.

Another impediment is that political parties often seem to want to do something for immigrants but not necessarily with them. Political parties should know and do better. Drafting a programme, mobilising voters, running campaigns, gaining seats and posts are collaborative efforts involving the beneficiaries of policies. Engaging immigrants in shaping parties and their programme enhances not only the quality of democratic processes but also parties' attractiveness among immigrant communities. To that end, parties could collect and better use existing data on the population's diversity with a view to informing their electoral strategy, their membership drives, the selection of their candidates for public office and party leadership, and management of their organisations. They can assess whether certain groups are underrepresented among voters, members, elected officials, party leaders, staff and suppliers. Immigrants are such a group.

On the basis of such an assessment, parties can identify and address the reasons for the underrep-

resentation of immigrants. This can go from the identification of rather simple obstacles for immigrants to become involved, to more serious impediments resulting from differences in tradition and culture of parties and immigrants. It could also point at discrimination and racism within the party. The next step would be the formulation of a strategy, the setting of clear targets and the monitoring of achievements and progress. Not many parties are used to working along those lines, although there may be parties that have done a similar exercise in relation to the underrepresentation of women in the life of a political party. To promote the necessary organisational change, parties can use the same tools and techniques which other societal entities use.⁸

8. For a diversity mainstreaming benchmarking tool, see: http://www.migpolgroup.org/benchmark/politicalparties_en.html.

References

Council of Europe. (1992). Convention on the participation of foreigners at the local level: Explanatory note. Retrieved from: <http://conventions.coe.int/Treaty/en/reports/html/144.htm>.

Council of the European Union, (2004). Press release, 2618th council meeting, Justice and Home Affairs (Council of the European Union Publication 14615/04 Presse 321). Retrieved from: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/82745.pdf#zoom=100.

Huddleston, T. (2011). Consulting immigrants to improve national policies. Retrieved from: http://ec.europa.eu/ewsi/UDRW/images/items/static_38_88303889.pdf

Huddleston, T. & Dag Tjaden, J. (2011). Immigrant citizens survey: How immigrants experience integration in 15 European cities. The King Baudouin Foundation and the Migration Policy Institute. Retrieved from: <http://www.immigrant-survey.org/downloads.html>.

Jacobs, D., Delmotte, F. & Herman, B. (2009). Political participation for migrants: the MIPEX results. In J. Niessen & T. Huddleston (Eds.), *Legal Frameworks for the integration of third-country nationals*. Boston: Martinus Nijhoff.

Kirchberger, A., Kefferpütz, K., Niessen, J. & Friel, A. (2012). Becoming a party of choice: A tool for mainstreaming diversity. Available at: http://www.migpolgroup.com/publications_detail.php?id=338

MIPEX. (2012). Political participation. Retrieved from: <http://www.mipex.eu/political-participation>.

2

EXTERNAL VOTING RIGHTS AND THE EUROPEAN POLITY

DAVID OWEN



David Owen is Professor of social and political philosophy at the University of Southampton. He has published nine books. Most recently, *Nietzsche's Genealogy of Morality* (Acumen, 2007) as well as articles and book chapters on a wide range of topics in social and political theory. Recent articles include 'Transnational Citizenship and the Democratic State', *CRISPP*, 2011 and 'Constituting the Polity, Constituting the Demos', *Ethics and Global Politics*, 2012. He is currently writing a book on migration and political theory.

Franchise rights are the expression of citizenship (understood as equal membership in a self-government polity) insofar as the rules that define entitlement to franchise rights can be justified to all subject to them and are compatible with the requirements of justice. Construed thus, considerations of justice act as a filter, specifying rules that are required or forbidden, but also leaving considerable scope within the range of permissible rules (as well as the institutional structuring of required rules) for the *demos* of the polity to shape its own political character. Such consideration of justice is practice-dependent. That is, determinate specification of the salient principle of justice depends on the character (point, purpose, and function) of the institution or practice with which one is concerned.⁹ Given such a practice-dependent view, we cannot apply the rules of justice relevant for one kind of political entity, states, to a different kind of polity, the European Union.

I have argued elsewhere that, in the case of independent states, external voting rights may be either required or permissible depending on the characteristics of those to whom they apply.¹⁰ On the grounds of subjection to the coercively enforceable political authority of the state, fair opportunities for voting are required for transient absentees (short-term temporary workers and students) and also for those whose externality is a function of state roles (diplomats and members of the armed services). On these same grounds, voting rights are ruled out for those who are merely transiently present (tourists, students, and short-term temporary workers). In the case of long-term expatriates who are not performing state roles, voting rights are permissible for national legislative and presidential elections, and only required in the case of constitutional referenda. They are permissible in

the former cases because inclusion in the *demos* is neither forbidden (residence is not a necessary condition of subjection to political authority) nor required (expatriates are not subject to the comprehensive subjection that characterises residents). In the latter case, they are required since constitutional referenda concern the character of one's legal personality as a citizen or, more generally, the terms of the political association of which one is a member. To give a dramatic example, if the United Kingdom held a referendum on withdrawal from the EU, all UK citizens – no matter where they reside – would be bound by this decision and (if this were their only Member State nationality) their entitlement to EU citizenship would hang on the outcome.

How do such applications of the principles of justice change when we consider not just sovereign states but also the EU and its Member States? In this essay, I consider voting rights and the European Union using a conceptual framework concerned with the transnational European polity composed of the EU and its Member States in their various relations to one another. Such an approach is necessary because issues of external voting rights in national or EU elections generate interaction between EU citizenship and the national citizenship of Member States—a point demonstrated by the *Aruba* case.¹¹ Likewise, the reasoning and decision of the European Court of Justice in the *Rottman* case suggest that clarifying the normative dimensions of membership in the European polity has become a more urgent task.¹²

In what follows, I consider the relationship between EU citizenship and Member State citizenship as a normatively important background issue before turning to focus on three specific issues: (a)

9. For a clear specification of 'practice-dependence,' see Sangiovanni (2008).

10. Owen (2011) provides a defence of these claims.

11. For discussion, see Shaw (2010), to which I am much indebted.

12. Ibid.

the tension between the EU's constitutive commitment to the norm of freedom of movement and the issue of national voting rights; (b) the broader terrain of expatriate voting rights in national elections, and (c) the issue of expatriate voting rights in EU elections.¹³

European Union and Member State citizenship

As a background issue, I wish to consider the following questions: Which individuals are counted in the weighting of state representation in the European Parliament and voting rights in the European Council, and where are they counted? These weightings have been organised in relation to population sizes (albeit not in a directly proportional manner).¹⁴ But there is a prior normative question: why should population sizes be taken to be the relevant consideration? Remember that the distribution of seats in national and local elections is not typically a function of population sizes but of numbers of eligible voters. This practice is based on the idea that it is the *demos* and not the *populos* that is normatively relevant for electoral purposes. The Liberal Democrat MEP Andrew Duff has argued in favour of the use of a *populous* criterion:

13. In this paper, I will use the term 'emigrants' to refer to 1st and 2nd generation emigrants on the grounds that, as I have argued elsewhere (Owen, 2011) following Bauböck (2006), citizenship should not pass beyond the 2nd generation of emigrants (i.e., the 1st generation born abroad) without further qualifications such as residence in the presumptive state of nationality coming into play.

14. There is lively debate about what would constitute a fair rule for the allocation of EU Council votes on this basis, especially when issues of fair decisional and transparent rules for the European Parliament are acknowledged.

The Madisonian approach suggests that the European Parliament represents not only de jure EU citizens (as formally established by the EU Treaty) but that it also represents, and has a duty of care towards, anyone else who abides in the territory of the Union, including minors and denizens. That being the case, the traditional method of distributing seats in the Parliament on the basis of total population – to say nothing of counting votes in the council – is the right one and should not be amended. (as cited in Shaw 2010)

But this claim misses the point entirely. The fact that representatives' duties extend beyond those who can vote for or against them in no way implies that persons other than voters should count in determining constituency and/or seat distributions. Nevertheless, it may be an argument for the differential allocation of resources; a representative whose constituency contains a large vote-ineligible population can reasonably be given greater resources for his representative activities than one whose constituency is not so characterised. Imagine two towns, Procreatia and Condominia, each with 60,000 eligible voters, but where households in Procreatia have an average of two adults and four children, in Condominia the household average is two adults and one child. There are grounds for arguing that Procreatia requires more schools and playgrounds than Condominia and that the elected representative for Procreatia be given additional office staff and other resources to ensure he or she can effectively represent all his or her constituents. Does this provide any democratic grounds for arguing that Procreatia should have more MPs than Condominia? Independent of argument for the enfranchisement of children, it is hard to see why one should think so.¹⁵

15. There is more to be said on this issue, but this will have to await another occasion.

If it is the number of eligible voters that is the salient criterion, this immediately raises a set of further issues for the topic of this paper. *Populos*-based criteria and *demos*-based criteria generate distinct normative dynamics between EU citizenship and Member State citizenship. These distinct dynamics have implications not simply for the issue of external voting, with which I am concerned in this essay, but also for the citizenship policies of Member States more generally. Among these citizenship policies are the rules concerning the acquisition and loss of citizenship, dual nationality and the criteria of eligibility for voting (age and residence criteria, for example). Under a *populos*-based system, due to the institutional design of representation within the EU, Member States have no political incentive to incorporate long-term resident migrants or to promote external voting rights for their own citizens like they do under a *demos*-based system. Moreover, it is not simply a matter of the number of eligible voters who are citizens of a given Member State but also the question of where they should be counted if they reside in another Member State or outside the EU. I return to this matter in the main discussion.

Freedom of movement and voting rights in the European Union

Consider then, in respect of independent states, a normatively plausible position might reasonably be construed thus:¹⁶

1. Lawful immigrants who reside within the state beyond a specified time-period (e.g., five years) should be entitled to access to national voting rights (whether directly or via naturalisation) on the basis of their subjection to the coercive legal authority of the state and/or social membership.

16. See Owen (2011).

2. Lawful emigrants who reside outside the state beyond a specified time-period (e.g., five years) may be permitted to retain national voting rights in legislative (and, where applicable, presidential) elections in virtue of their continuing subjection to the political authority of the state (even if much of its law is not currently applicable to them) and/or the constitutive role of their relation to the home state for their autonomy and well-being.

This position could be defended on the basis of the social membership argument¹⁷ or the stakeholder principle¹⁸. However, once we shift to states within an EU-type polity, the normative context is transformed. This is most obviously demonstrated by the fact that, given the institutional design of the EU, it is not compatible with the civic equality of EU citizens to have voting rights in national or EU elections in more than one Member State, whereas in the case of independent states, there is no breach of civic equality in a person exercising votes in two nationally distinct electoral contests because they are not related through a supranational political architecture. It is important to note that the significance of the transformation depends on the political constitution of the EU, that is, the kind of polity that it is. We can explore this point by comparing 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 political structure, the norm of free movement is grounded on a joint commitment to a common aim or purpose such as a free market area (as was the case in the EEC). In terms of the national citizenship of the states involved in this intergovernmental project, the normative context remains largely

17. See Rubio-Marin (2000) and (2006).

18. See Bauböck (2007).

equivalent to that of independent states who are not engaged in such a project, but not wholly. The shared purpose brings into play the principle of justice and necessitates that partners to this project not act to frustrate this joint enterprise and, where compatible with their 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, the norm of free movement may serve instrumental purposes but is, fundamentally, a basic liberty of federal citizens. As such, state citizenship is subordinate to federal citizenship in the sense that freedom of movement requires that anyone exercising their right to cross state borders must not be disadvantaged at any level of citizenship within the federal structure. An obvious way to institute such a rule of justice is to adopt a residence-based rule for citizenship in the states that comprise the federal union. This is not the only possible way to institute such a rule but, given a territorial mode of governance, it has the advantage of aligning voting rights with primary contexts of governance.

The EU is situated somewhere between these two examples. Its commitment to freedom of movement has moved from an economic model tied to a largely intergovernmental structure to a more civic model, which retains some features of the former and is commensurate with its development of federal as well as intergovernmental features. While the civic model now identifies freedom of movement as a right of citizens of Member States as EU citizens¹⁹ and not simply as workers,²⁰ it

19. Although Article 21(1) TFEU specifies that this right may be subject to certain limitations and conditions.

20. See, for instance, Cases C-413/99 Baumbast and R [2002] ECR I-7091, paragraph 84, and C-200/02, Zhu

remains the case that the EU is a mixed type of governmental entity. Consequently, the relationship between EU citizenship and Member State citizenship cannot be conceptualised simply in terms of the priority of the former or the latter but, rather, as engaging a form of interactive mediation between the two.

In a recent report, the European Commission drew attention to this problematic view of the relationship between EU citizenship and Member State citizenship:

Some EU citizens who move to and reside in another Member State may lose their right to take part in national elections in their Member State of origin. According to the legislation of several Member States (Ireland, Hungary, Denmark, Malta, Austria and United Kingdom), their nationals are disenfranchised if they live in another Member State for a certain period of time. Many EU citizens informed the Commission and the European Parliament that they are not able to participate in any national elections, neither in the Member State of origin nor in the Member State of residence (European Commission, 2010).

The issue here is not simply that Member States have different rules governing access to national voting rights for emigrant nationals in the EU and immigrant EU citizens but also that the authority to determine these rules may remain largely at the discretion of the Member States. It is widely accepted, given their primary function, that residence is the appropriate criterion for participation in local and municipal elections; EU citizenship would hardly be meaningful if EU citizens resident

and Chen [2004] ECR I-9925, paragraph 26. Cited in COM (2010) 603.

in the EU could not vote (or stand for election) in European Parliament elections. Still, in leaving national voting rights out of its requirements for mobile EU citizens, the EU and its Member States avoid having to make a choice between interfering with the national self-constitution of the national demos by requiring Member States either to include resident non-nationals who are EU citizens or to include expatriate nationals. However, with the shift from an economic to a civic grounding of free movement, this position is no longer compatible with the requirements of political equality in the EU. It may be reasonable for there to be some limitations and restrictions on the freedom of movement of EU citizens. It is not reasonable, given this right as a civic right, that such restrictions undermine the point and purpose of civic rights in securing political equality. While it may be relatively straightforward to see that, as a matter of democratic justice, EU citizens resident in the EU should not be required to sacrifice national voting rights to secure the benefits of exercising their right of free movement, this point only raises the question of where EU citizens, who have exercised this right, should be entitled to vote.

There are four options available as simple general rules:

1. National voting rights in the state of residence;
2. National voting rights in the state of nationality;
3. Having a personal choice between (1) and (2);
4. A time-differentiated combination of (1) and (2) which starts with (2) and, after a period of residence, switches to (1).

We have already noted that (1) is the characteristic feature of fully federal systems and has the advantage of ensuring that voting rights track the primary contexts of governance. The normative is-

sue raised by (1) is whether the political autonomy of citizens resident within a Member State is adequately secured if they lack national voting rights in that Member State. This is a serious issue but it should also be noted that (1) has the disadvantage of effectively severing the formal democratic relationship of such EU citizens with their Member State of nationality. By contrast, (2) maintains that relationship but means that such EU citizens cannot vote in what, arguably, remains their primary context of rule. Acknowledging these combinations of advantages and disadvantages may incline us to (3), letting each individual decide for themselves, while (4) may be seen as an attempt to combine the advantages and minimize the disadvantages of (1) and (2) in a way that registers the salience of the 'centre of gravity' of one's life as it changes over time.

In response to (1), insofar an EU citizen enjoys EU political rights, rights to join (or found) political parties or organisations in the state of residence, and other general rights of political participation in the state of residence, the conditions of their political autonomy are sufficiently secured. This is plausible only if such EU citizens also enjoy a right to acquire political membership of the state of residence within a reasonable timeframe. In the absence of such an entitlement they are forced to trade the good of political membership in their context of governance for the good of free movement. This right of membership need not be presented on the same terms as for resident non-EU citizens. One could argue that a longer time-period would be justified for resident non-EU citizens who do not enjoy the same protections as EU citizens. My own preference²¹ would not be to vary the timeframe but to adopt an automatic conferral (with opt-out) for non-EU citizens and an automatic entitlement (with opt-in) for EU citizens

21. See Owen (2011).

as a way of registering the relevant normative distinction between their positions.

The important point here is that this form of objection to (1) entails that (2), if it is appropriately linked to rights of naturalisation for EU citizens in other Member States, effectively accommodates what is valuable in (3) and (4) while ruling out the possible strategic voting complications that an unqualified version of (3) could introduce. Let us call this complex rule composed of (2) plus the right to naturalisation (2+). Notice that whereas (1) arguably both devalues national citizenship in a way that is not consonant with the institutional character of the EU and pre-emptively pushes towards a fully federal conception of the EU, (2+) acknowledges the mixed character of the EU and the mediated character of citizenship in the Euro-polity. Perhaps more fundamentally, (2+) rather than (1) gets the distribution of political responsibility right. Since EU citizenship is acquired through citizenship of a Member State, the primary responsibility for ensuring that an EU citizen is not politically disadvantaged by exercising the right of free movement lies with the Member State of origin rather than the Member State of residence.

If (2+) allows all competent adults to have a fair opportunity to acquire political membership or nationality in the Member State of residence, and also allows all emigrant nationals who are resident in the EU and do not have political membership or nationality in their Member State of residence to be eligible to vote in national elections of their Member State of nationality, does this justify requiring that all Member States institute (2+)? I do not think so, or only as a minimal criterion. For example, a Member State might take a more maximalist position granting voting rights to resident non-national EU citizens and to emigrant national EU residents. Such a rule cannot be generalised (at

least not without turning it into (3) above). But the requirement to ensure political equality cannot, in and of itself, mandate the requirement of a single generalizable rule to be adopted by all Member States. It can only require that Member States ensure that their nationals are not politically disenfranchised.

Almost 12 million EU citizens reside in Member States that are not their Member State of nationality. Approaching 20 per cent of EU citizens report that they consider the option of moving to another Member State to be a real possibility over the course of their lives. While a *populos*-based criteria for the distribution of Council voting weights provide no incentive for Member States to deal with this problem of political equality, a *demos*-based criterion provides an incentive to endorse (2+) and, indeed, even to adopt a more maximalist policy.

Expatriate voting rights in national elections

The issue of external voting rights for emigrant nationals, however, is not simply limited to the case of those nationals resident within the EU. It also concerns the issue of nationals resident outside the EU. The question that now arises, however, is whether the argument of the preceding section has any implications in relation to expatriate voting by EU citizens who are not resident in the EU. To put it more explicitly, does the requirement that otherwise disenfranchised emigrant nationals resident in the EU be granted external voting rights support the extension of external voting rights to emigrant nationals resident outside the EU? Or is the discrimination between these types of emigrant national justified? Not directly. Since the relevant considerations governing the right

to freedom of movement do not apply to Member State citizens resident outside the EU, there is no similarly legitimate basis for the requirement that the relevant class of emigrant nationals enjoy external voting rights. Nor does it appear that the EU has a *prima facie* legitimate interest in intervening with respect to Member State practices in this area. Yet, since voting by emigrant nationals is, at the least, normatively permissible, Member States may legitimately choose to extend external voting practices to emigrant nationals.

A *demos*-based criterion for Council voting weighting provides incentives for the extension of emigrant voting rights but a *populos*-based criterion does not. Notice also that if a *demos*-based criterion were instituted, it would introduce one ground on which the EU could have a legitimate interest in Member State policies: the transmission of voting rights across generations. Such a rule would have implications for the relative voting power of states in the Council, and the EU would have a legitimate interest in ensuring the limitations on the transmission of voting rights (for example, to the first generation born abroad).

Expatriate voting rights in European Union elections

Should EU citizens who are resident outside the EU be entitled to vote in EU elections? And if so, through what kind of electoral mechanism? Should this be a matter for Member States or does the EU have a legitimate interest or role in determining these rules?

Let me return to the social membership and stakeholder principles in relation to this issue. Developing the social membership argument, Rubio-

Marin has argued for the permissibility of expatriate voting:

A country may democratically decide to allow for absentee voting of the first generation, thereby including expatriates in the political process ... in recognition of the fact that it is now easier than ever to remain connected to home state politics from abroad, and thus easier to understand the set of concrete policy options that a country may face ... [and also] in recognition of the fact many emigrants live between two countries, as well as the fact that their return is increasingly becoming a real option because being abroad no longer requires the definite severing of ties that it did in the past. (2006, p. 134)

The basic normative ground for such permissibility following from this account is the presumption that political membership in home states is a source of non-instrumental value for expatriates. Notice, though, that such an argument cannot support expatriate voting rights in relation to the EU since EU citizenship does not appear (as yet) to serve as such a source of non-instrumental value. However, an alternative ground is offered by Bauböck's stakeholder principle:

The notion of stakeholding expresses, first, the idea that citizens have not merely fundamental interests in the outcomes of the political process, but a claim to be represented as participants in that process. Second, stakeholding serves as a criterion for assessing claims to membership and voting rights. Individuals whose circumstances of life link their future well-being to the flourishing of a particular

polity should be recognized as stakeholders in that polity with a claim to participate in collective decision-making processes that shape the shared future of this political community. (2007, p. 2422)

This passage suggests that stakeholders have a legitimate claim to participate. Still, the reach of this claim (i.e., the extent of participation it legitimates) may vary or it may be defeated by other legitimate concerns. In a second set of remarks, Bauböck comments:

In a stakeholder conception of democratic community, persons with multiple stakes need multiple votes to control each of the governments whose decisions will affect their future as members of several demoi. This applies, on the one hand, to federally nested demoi where citizens can cast multiple vertical votes on several levels and, on the other hand, to the demoi of independent states with overlapping membership. (2007, p. 2428)

This suggests the stronger view that the stakeholder principle supports a requirement of inclusion in the *demos* for stakeholders. We may surmise this requirement would be legitimately subject only to (a) the basic constraint that such inclusion does not threaten the stability of the state (i.e., its capacity to reproduce itself as a self-governing polity over time) and (b) feasibility constraints. More particularly, Bauböck's argument has the right shape to address governmental entities such as the EU in a way that Rubio-Marin's does not.

Let us suppose that, on stakeholder grounds, expatriate voting rights are permissible in relation to EU elections for EU citizens resident outside the EU. The next question then is whether the de-

cision to institute such rights is a matter for the EU and/or Member States? We might note here that currently EU elections are conducted on a national basis through votes for nationally-based parties who then engage in coalitions with other nationally-based parties in the European Parliament and that seat allocations are made on the basis of the resident population of each Member State (although the introduction of some element of transnational lists appears probable). In light of these factors, we might claim that the granting of expatriate voting rights in EU elections should be a matter solely for Member States. There are two problems with this claim. First and foremost, it exposes the enjoyment of political equality of EU citizens resident outside the EU to national arbitrariness in a way directly analogous to the arbitrariness confronted by third-country nationals in different Member States which the EU is seeking (non-coercively) to reduce. Second, insofar as we reject a *populos*-based criterion of seat allocation, common rules concerning the limitations on construction of the *demos* are needed. Imagine, for example, that in parallel with the introduction of a *demos*-based criterion of seat allocation, Belgium decides to adopt a rule stating that any EU citizen resident outside of the EU who does not have EU voting rights via their Member State of nationality will be permitted to exercise their vote in Belgium. This would be likely, in the short-term, to increase significantly the number of seats awarded to, and the relative power of, Belgium's political parties in the European Parliament. Should such a rule be permitted? My point here is simply that adopting a *demos*-based criterion of allocation would require that the EU play a role in determining the legitimate range of rules governing the enfranchisement of EU citizens resident outside of the EU.

Conclusion

In this essay I have argued that external voting rights in national elections for emigrant nationals resident in the EU are required for those expatriates that do not have political membership or nationality of the Member State in which they reside. I have also argued that the EU ought to be legitimately entitled to require that Member States adopt such a minimal criterion. Still, the EU should not be entitled to prevent Member States from adopting more maximalist criteria. In the case of expatriate voting rights in national elections for non-EU residents, I have argued that such rights are permissible rather than required and there is no injustice in differentiating between EU-resident and non-EU resident emigrants in this context. I have also suggested that the EU would have legitimate grounds on which to regulate Member State rules in this area insofar as a *demos*-based criterion replaces a *populos*-based criterion for the distribution of European Parliament seats and Council voting weights in the EU. I have argued that expatriate voting rights for EU citizens resident outside the EU are permissible and that political equality supports their general introduction. I have also tried to draw attention to the point that the basis of the criteria governing the institutional distribution of power to Member States also makes a difference to the relationship of the EU and Member States on these issues as well as the dynamic between them – suggesting that a *demos*-based criteria would offer incentives supporting more inclusive politics in Member States and a more significant role for the EU in the articulation of the citizenship of the Euro-polity.

Acknowledgements

I am grateful to Rainer Bauböck, Richard Bellamy and Jo Shaw for their comments on this paper as well as to audiences at the IMISCOE conference on external voting in Rome, the ECPR General Conference in Reykjavik and the EUDO dissemination conference at the European Parliament.

References

- Bauböck, R. (2007). Stakeholder citizenship and transnational political participation: A normative evaluation of external voting. *Fordham Law Review*, 75 (5), 2393-2447.
- European Commission. (2010). *EU citizenship report 2010: Dismantling the obstacles to EU citizens' rights* (COM (2010) 603). Retrieved from: http://ec.europa.eu/justice/citizen/files/com_2010_603_en.pdf
- Owen, D. (2011). Transnational citizenship and the democratic State. Forthcoming.
- Rubio-Marin, R. (2006). Transnational politics and the democratic national-state: normative challenges of expatriate voting and nationality retention of emigrants. *New York University Law Review*, 81, 117-147.
- Shaw, J. (2010). Citizenship: Contrasting dynamics at the interface of integration and constitutionalism (European University Institute Working Paper RSCAS 2010/60). Retrieved from http://www.eudo-citizenship.eu/docs/RSCAS%202010_60.pdf

3

IMMIGRANT ELECTORAL PARTICIPATION IN THE EUROPEAN UNION: DIFFERENT FROM NATIVES?

STÉFANIE ANDRÉ



Stéfanie André is a doctoral student in the Department of Sociology at Tilburg University in the Netherlands. Her PhD project concerns the relationship between housing, inequality and welfare state attitudes. She completed a bachelor's degree in sociology and political science, a master's degree in comparative politics, and a research master's in social cultural science. Her research interests are in comparative research, gender relations, political attitudes, housing and inequality.

Voting as a central element of representative democracy

Electoral participation is an interesting subject to research, especially since there are so many consequences that can be tied to it. Turnout can be seen as an indication of trust in government or politics, and for the individual parties it shows how popular they are with the electorate. Representative democracy is based on the ideal notion that all people in the country are represented equally in parliament. Different types of electoral systems make it harder or easier to accomplish this goal (Gallagher, Laver & Mair, 2006). In a majoritarian system like the United Kingdom, representativeness of all people is lower than in a country with just one electoral district and a representative parliament like the Netherlands. The difference between the votes cast and the votes that are transferred into seats is called the lost vote syndrome (Franklin, 2004). When more votes are transferred into seats, it is easier for new parties to enter parliament and thus for new groups in society to be represented in parliament. If people have the feeling that their vote does not count, they have a lower propensity to vote (Blais & Dobrzynska, 1998).

This makes elections central to representative government and voting an important democratic act for citizens (Gallagher et al., 2006). The importance of high electoral turnout for democracies continues to be a source of debate. Seymour Lipset, writing in 1950s, suggests that non-voting shows that people are content with their situation—they do not need change and thus do not need to vote (1959). Today, the general opinion is that high turnout is essential for representative democracy because it shows the legitimacy and stability of the democracy (Bennet & Resnick, 1990). If people do not vote it is because they are so dissatisfied with the current political parties or

government that they feel voting does not make a difference.

Thus, voting and elections are important to democracy. Yet turnout in national elections has continued to drop in most European democracies since the 1970s. In the Netherlands, for example, electoral participation in national elections has dropped from 83.5 per cent in 1972 to 75.4 per cent in 2010 (International Institute for Democracy and Electoral Assistance, 2012). That turnout in most European democracies has decreased while characteristics that encourage voting (higher educational attainment and higher political trust) have become more common in the population is called the turnout puzzle (Blais & Dobrzynska, 1998; Franklin, 2004; Plutzer, 2002). One explanation of this phenomenon is the increase in the number of non-voters in the lower socio-economic classes.

The democracies in the European Union have been, and will always be, subject to change. One of these changes is the influx of immigrants into many Member States. For a number of years, politicians thought that these labour migrants would eventually return to their countries of origin. We now know that this is not the case. The diversification of the electorate has become a fact. Immigrants, people who are foreign-born and people with foreign-born parents, are overrepresented in the lower social-economic classes. Immigrants in Europe vote less often than natives, which might cause turnout to drop even further and create legitimacy problems for European democracies. That is why we should ask ourselves the question: do immigrants in Europe vote less often in elections than (otherwise comparable) natives?

Voting as political integration

Brady and Leicht (2008) pose the important question, ‘who will be able to participate in the decisions that govern markets and states?’ Migrants will be excluded from these decision-making processes if they do not participate in politics. Voting in national elections, just like other forms of political participation, can be seen as an act of political integration of migrants into their country of destination (Tillie, 2000). We expect that political integration is connected with other forms of integration, like social and economic integration. Unfortunately, immigrants have lower levels of electoral participation than natives (van Londen, Phalet & Hagendoorn, 2004).

Most research on the electoral participation of immigrants comes from the United States (Cho, 1999; Chong & Rogers, 2005; DeFransceco, Soto & Merolla, 2006; Jackson, 2003) and focuses on the difference in voting rates between African Americans, Asian Americans, Latinos and European Americans. In general, this research finds that the explanations that are used to explain majority voting behaviour have only limited value in explaining the voting behaviour of minority groups. This difference between majority and minority voting cannot be explained completely by a compositional effect of socio-economic status. Thus, more immigrant-related explanations should be developed.

Research in Europe concerning migrant voting behaviour has concentrated on the role of social capital of minority groups. As well as migrant social capital (intra-ethnic social capital), contact with natives (inter-ethnic social capital) can foster electoral participation. If you meet with other people, you will likely talk about politics. If you

have more native friends who vote, the chance of voting yourself is higher. In the same fashion, if you are part of an ethnic group that has a high propensity of voting, contact with that group will foster electoral participation. Most of this research examines specific immigrant groups in one or few cities in Western Europe. For example, Jacobs, Phalet, and Swyngedouw (2004) find that Moroccans have higher participation rates than Turkish immigrants in Brussels. This can be explained by familiarity with one of the main languages in Belgium, French, which is an unofficial second language in Morocco. Fennema and Tillie (1999) hypothesise that differences in ethnic social capital lead to differences in the political participation of different ethnic groups. There is some evidence that corroborates this hypothesis (London et al., 2004; Tillie, 2004).

In this research we are interested in determining if explanations for the electoral participation of natives apply to immigrants as well. We consider three indicators that are often used to explain political participation: gender, educational attainment and political efficacy. Political efficacy is the extent to which people feel they can grasp politics. We expect to find that men vote more often than women, that more highly educated people vote more often than people with lower levels of educational attainment, and that people with higher political efficacy vote more often than people with low political efficacy. We hypothesize that the effects of gender, educational attainment and political efficacy on electoral participation are different for natives than they are for immigrants.

Table 1: Self-reported turnout in national elections

Country	Turnout natives		Turnout immigrants		Difference
	N	%	N	%	%
Austria	2922	84.5	427	80.4	-4.0
Belgium	2605	95.9	333	89.8	-6.2
Cyprus	832	94.8	24	75.0	-19.8
Czech Republic	1368	56.4	147	51.2	-5.2
Denmark	2368	94.0	201	88.5	-5.5
Estonia	1312	68.8	442	62.9	-6.0
Finland	2833	81.7	68	79.1	-2.6
France	2169	79.0	383	73.4	-5.7
Germany	3715	81.8	401	73.2	-8.6
Greece	1833	93.6	211	88.3	-5.3
Hungary	2082	78.2	148	82.7	4.5
Ireland	2769	82.3	153	68.3	-14.0
Italy	1200	88.8	32	84.2	-4.5
Luxemburg	739	94.9	262	94.9	0.0
Norway	2549	87.1	184	79.7	-7.4
Poland	1979	66.8	87	64.0	-2.8
Portugal	2863	75.5	79	64.8	-10.7
Slovakia	1940	72.1	188	74.0	2.0
Slovenia	1628	75.5	322	66.7	-8.9
Spain	2471	83.3	67	70.5	-12.8
Sweden	2718	91.2	440	82.7	-8.5
Switzerland	1725	68.7	404	61.8	-6.9
Netherlands	2609	85.0	317	72.9	-12.2
United Kingdom	2466	72.7	351	68.0	-4.7
Total	51695	81.4	5671	74.9	-6.5

Source: European Social Survey 2004/2005 and 2006/2007

Data and methods

We use the combined data of the second (2004/2005) and third waves (2006/2007) of the European Social Survey for a sample of 8132 immigrants and 66282 natives in 24 European countries.²² We selected those countries whose data

22. For more information on the European Social Survey, see <http://www.europeansocialsurvey.org>.

were available in spring 2008 and had a minimum of 25 immigrants in the sample. We define first generation immigrants as those people born outside of the country of interview. Second generation immigrants are individuals born in the country of interview with at least one of foreign-born parent. Both groups are collapsed into the immigrant variable. We selected respondents who

Table 2. Propensity to vote by immigrant status, gender, education and political efficacy

	Natives (%)	Immigrants (%)	Difference (%)
Immigrant status			
Immigrant status	81 %	73 %	4%
Gender			
Male	81 %	75 %	6 %
Female	80 %	72 %	8 %
Education			
Low	77 %	70 %	7 %
Middle	79 %	71 %	8 %
High	89 %	83 %	6 %
Political efficacy			
Very low	66 %	61 %	5 %
Low	78 %	69 %	9 %
Not high, not low	81 %	75 %	6 %
High	87 %	81 %	6 %
Very high	87 %	80 %	7 %

were 18 at the time of the survey and who did not indicate that they were not allowed to vote in the last election. Since only immigrants who have obtained citizenship are allowed to vote in national elections, we included only immigrant citizens in our analysis.

As a dependent variable we examine self-reported turnout in national elections, measured with the question ‘Did you vote in the last [country] national election in [month/year]?’ In order to explore the factors that influence the voting propensity of immigrants and natives, we use the education, gender, and political efficacy²³ as independent variables.

In our descriptive analysis, we derive voter turnout rates for natives and immigrants (see table 1). We also conduct t-tests and ANOVA tests to determine if the independent variables have a significant influence on the propensity to vote and if this effect is the same for natives and immigrants. If the interaction variable between native and (for example) gender is not significant, this means that there is not a significantly different effect of the independent variable on voting propensity for immigrants compared to natives.

23. Political efficacy is operationalised as the respondents’ response to the question ‘making my mind up about politics is...?’ (very difficult, difficult, neither difficult nor easy, easy, very easy).

Table 3: ANOVA results for propensity to vote

	F	P	Partial η^2
Immigrant status	199.4	0.000	0.003
Gender	3.0	0.082	0.000
Educational level	299.4	0.000	0.009
Political efficacy	252.1	0.000	0.015

Results

In table 1 we present turnout rates for natives and immigrants in national elections in the selected European countries. Turnout among natives is highest in Belgium (95.9 per cent) and among immigrants in Luxembourg (94.4 per cent), most likely due to compulsory voting systems in those countries. Turnout among natives is lowest in the Czech Republic (56.4 per cent); turnout of immigrants is also lowest in the Czech Republic (51.2 per cent). In the last column of table 1 we see the difference in turnout between natives and immigrants. The difference is negative in 21 of the 24 countries and largest in Cyprus (-19.8 per cent). Immigrants vote more often than natives in two countries, Slovakia and Hungary, and there is no difference between the two groups in Luxembourg.

Table 2 presents the propensity to vote by immigrant status, gender, education and political efficacy. On average the percentage of natives that vote (81 per cent) is higher than the percentage of immigrants that vote (73 per cent). This is a significant difference ($t = -14.6, p < 0.001$).

Our results indicate that men have a higher propensity to vote than women, and that this is true for native as well as immigrant respondents. The effect of gender is significant ($F = 10.6, p < 0.01$) and the effect of gender on voting is the same for natives and immigrants.

For native respondents, we find a positive relationship between voting propensity and education. Seventy-seven per cent of respondents in the lowest educational bracket vote compared to 89 per cent of the most highly educated respondents. We find the same pattern for immigrant respondents, although the percentages are lower. Of immigrants with only primary or lower secondary education, 70 per cent vote. Of immigrants with a tertiary education, 83 per cent vote. Although the effect of education on voting propensity is significant ($F = 222.2, p < 0.001$), the effect of education on voting propensity is not significantly different between natives and immigrants ($F = 1.270, p > 0.05$). The ANOVA results also show that education ($\eta = 0.06$) is a far more important determinant of voting than immigrant status ($\eta = 0.03$).

Political efficacy has a significant effect on the propensity to vote ($F = 144.1, p < 0.001$) and this effect is the same for natives and immigrants ($F = 1.8, p > 0.05$). This means that the higher the level of political efficacy is, the higher the propensity to vote is. It is also interesting to see that there is no difference in effect between the highest level of political efficacy and the level below the highest level in both categories. In Table 3 we present the ANOVA results for the model by immigrant status, gender, education and political efficacy without the (non-significant) interactions.

Table 3 shows that gender is not significant when we control for immigrant status, educational level and political efficacy. From the latter three variables we can assess the relative importance based on the partial eta squared. Political efficacy is the most important indicator of voting propensity, followed by educational level and immigrant status. Thus, educational level is a more important predictor of voting than immigrant status.

As indicated in table 2, the percentage of immigrants that vote is on average four per cent lower than the percentage of natives that vote. If we split our data into different groups, we find that these differences are larger for some groups than for others. For example, the difference between the number of native men and immigrant men that vote is six per cent, while for women the difference is eight per cent.

Conclusion and discussion

In this paper we wanted to answer the question: do immigrants in Europe vote less often in elections than (otherwise comparable) natives? Our results suggest that this is indeed the case. We find that immigrants vote less often than comparable natives if we compare them on gender, educational attainment and political efficacy. We find for these three variables that the effects on immigrants and the effects on natives do not significantly differ. Therefore we reject our hypothesis that the effects of gender, educational attainment and political efficacy on electoral participation are different for natives than they are for immigrants.

This means that in future research we can use the same explanatory mechanisms for the voting behaviour of immigrants as we do for natives. How-

ever, these mechanisms should be expanded to include other variables associated with immigrant status, such as the use of a minority language at home or perceived discrimination. This is necessary because the explanatory power of the variables used in our analysis is lower for immigrants than for natives.

There are some limitations that we should address. Earlier research found larger effects of, among others, educational attainment. However, these researchers used local elections to measure political integration. This is a better measurement of political participation because non-citizens can vote in local elections. If comparable cross-national European data on local elections would become available, it would be interesting to repeat this study using the alternative data. Another problem concerns bias in the selection of the sample. Only people who speak the language of the destination country well are interviewed unless a minority group consists of 10 per cent of the population, in which case the survey is also available in the language of that minority. In practice, this only happens in certain Eastern-European countries where Russian versions of the survey are available in addition to the version in the official language(s) of the country. As we progress in the collection of representative comparative data, these and more questions can be answered. For now, we can conclude that governments should invest in the educational attainment of non-natives and minorities, because this is the most powerful way to include non-natives in political processes and legitimise democracy.

Acknowledgements

I would like to thank Professor Jaap Dronkers (Maastricht University) and Professor Ariana Need (Twente University) for their contributions to this research project.

References

- Bennet, S. & Resnick, D. (1990). The implications of nonvoting for democracy in America. *American Journal of Political Science*, 34 (3), 771-802.
- Brady, D. & Leicht, K. (2008). Party to inequality: right party power and income inequality in affluent Western democracies. *Research in Social Stratification and Mobility*, 26, 77-106.
- Blais, A. & Dobrzynska, A. (1998). Turnout in electoral democracies. *European Journal of Political Research*, 33(2), 239-261.
- Cho, W. K. T. (1999). Naturalization, socialization, participation: immigrants and (non-) voting. *The Journal of Politics*, 61(4), 1140-1155.
- Chong, D. & Rogers, R. (2005). Racial Solidarity and Political Participation. *Political Behavior*, 27(4), 347-374.
- European Social Survey. (2004). ESS Round 2: European Social Survey Round 2 Data.
- European Social Survey. (2006). ESS Round 3: European Social Survey Round 3 Data.
- De Francesco Soto, V. & Merolla, J. (2006). Vota por tu futuro: partisan mobilization of Latino voters in the 2000 presidential election. *Political Behavior*, 28(4), 285-304.
- Fennema, M. & Tillie, J. (1999). Political participation and political trust in Amsterdam: civic communities and ethnic networks. *Journal of Ethnic and Migration Studies*, 25(4), 703-726.
- Franklin, M. (2004). *Voter turnout and the dynamics of electoral competition in established democracies since 1945*. New York: Cambridge University Press.
- Gallagher, M. & Mitchell, P. (2008). *The politics of electoral systems*. Oxford: Oxford University Press.
- International Institute for Democracy and Electoral Assistance. (2012). *Voter turnout* [data files]. Retrieved from: http://www.idea.int/vt/view_data.cfm.
- Jackson, R. (2003). Differential influences on Latino electoral participation. *Political Behavior*, 25(4), 339-366.
- Jacobs, D., Phalet, K. & Swyngedouw, M. (2004). Associational membership and political involvement among ethnic minority groups in Brussels. *Ethnic and Migration Studies*, 30(3), 543-559.
- Lipset, S. (1959). Some social requisites of democracy: economic development and political legitimacy. *American Political Science Review*, 53(1), 69-105.
- Londen, van M., Phalet, K. & Hagendoorn, L. (2007). Civic engagement and voter participation among Turkish and Moroccan minorities in Rotterdam. *Journal of Ethnic and Migration Studies*, 33(8), 1201-1226.
- Plutzer, E. (2002). Becoming a habitual voter: inertia, resources, and growth in young adulthood. *American Political Science Review*, 96(1), 41-56.
- Tillie, J. (2000). *De Etnische Stem. Opkomst en stemgedrag van migranten tijdens gemeenteraadsverkiezingen, 1986-1998*. Utrecht: Instituut voor Multiculturele Ontwikkeling.
- Tillie, J. (2004). Social capital of organisations and their members: explaining the political integration of immigrants in Amsterdam. *Ethnic and Migration Studies*, 30(3), 529-541.

4

THE VOTING RIGHTS OF FOREIGN RESIDENTS IN FRANCE IN 2012

BERNARD DELEMOTTE



Bernard Delemotte is Director of Publication of *La lettre de la Citoyenneté*, a French publication concerned with nationality and citizenship.

In 2012, the struggle that has lasted for more than 30 years to guarantee foreign residents the right to vote and to stand in municipal elections in France has come to an end. This short paper reviews the crucial events of this campaign²⁴.

Although there were earlier motions put forth in the congress from left-leaning political parties and human rights and immigrant groups, 1981 can be considered the beginning of the campaign for access to voting rights for resident non-nationals in France. At this time, the presidential candidate, François Mitterrand, included this initiative in his platform of policy proposals. A few months after his election, however, the president came to realise that the current political climate did not allow for the implementation of this proposal. At the time the polls were not favourable; in 1981, 32 per cent of those polled were in favour of extending the right to vote to foreigners; by 1984, the figure had fallen to 21 per cent. Still, many organisations were sympathetic with the issue and from that time on started to campaign for extended voting rights. Indeed, the 1983 March for Equality and Against Racism—one of the most significant pro-immigrant events during that decade—focused on this issue. Finishing in Paris with nearly 100,000 participants, the march is seen to have been an important factor in the creation of the ten-year residence permit.

In 1985, at Mons en Baroeul, near Lille, in 1987 in Amiens and then in five other cities, municipalities chose to involve foreign residents in their municipal bodies, even before they had the right to vote. In these locations, associated councillors were elected to participate in an advisory role in meetings of the municipal councils and committees. The participation of foreign residents was significant. Nearly 1000 of the 4000 foreign resi-

24. Translated from French

dents of voting age voted in the elections of these councillors. The media coverage was effective and these experiments were highly contested by the extreme right who organised protests on the day of the vote and attempted to overturn municipal decisions. The voting experiments were mostly of short duration, the last ending in 2001 when foreigners of European origin were granted the right to vote in municipal elections. Still, these initiatives highlighted the democratic anomaly of denying voting rights to foreign residents, particularly when this group makes up a significant portion of the population of certain municipalities.

In the early 1990s, thanks to the initiative of the League of Human Rights, nearly 100 organisations, parties, unions and associations joined together to create the collective *j'y suis, j'y vote*. The resulting meetings, petitions, and interventions with elected officials once again captured the attention of the media. The legal experts started to wonder whether the Constitution should be amended, but there was not the necessary majority in Parliament to achieve these changes.

The Maastricht Treaty in 1992, the 1993 Directive on European Elections,²⁵ and the 1994 Directives on Municipal Elections²⁶ greatly impacted the debate in France surrounding voting rights for foreign residents. The legal question was settled: France must change its Constitution. The link between nationality and citizenship, an idea present in France since the Revolution of 1789, was no longer relevant for European citizens. Notwithstanding this shift, the parliamentary right resisted access to citizenship for foreigners, even for those of European origin. Its European partners allowed the French government to delay im-

25. Council Directive 93/109/EC

26. Council Directive 94/80/EC

plementation of the provisions of the Maastricht Treaty until after the 1995 municipal elections. As a result, Europeans living in France did not exercise their right to vote in municipal elections until 2001, being the last in the EU to benefit from the rights recognized in the Maastricht Treaty.

In 1993, the Strasbourg municipality installed a council of foreign residents. This initiative would later be replicated by several major cities, including Paris, Grenoble, Bordeaux, Lille, and Toulouse. These boards consisted of representatives of various associations of foreign residents. These associations made the enfranchisement of foreign residents a priority and played an important role in the movement during the following years.

In 1994, *La lettre de la Citoyenneté*, a French publication concerned with nationality and citizenship, conducted its first survey regarding extending the rights given to European non-nationals to non-European residents. Only 32 per cent of respondents were in favour of such an extension. Annual surveys provided insight into the changing attitudes of the public towards voting rights for foreign residents. After 1997, public opinion shifted in a more favourable direction. The results of a poll from the autumn of 2011 indicate that 59 per cent of the respondents supported the right to vote for non-European residents in local and European elections at the time. It is worth noting that although there was an initial difference of more than 20 points between respondents on the left and right, both groups moved towards a more positive standpoint on granting the right to vote to foreign residents. As for supporters of *MoDem*, the centre party, 61 per cent of respondents favoured the extension of voting rights to non-nationals.

Between 1999 and 2001, three congressional committees worked together to change French leg-

islation. The committees focused on the right to vote in municipal elections, the right to residence linked to European citizenship, and the mobilisation of immigrants. On May 3, 2000, the National Assembly passed a bill that provided the right to vote in municipal elections to foreign residents in France. To amend the French Constitution to allow foreign residents to vote, a simple majority vote is required in both the National Assembly and the Senate. The bill failed to come to a vote in the Senate.

In 2002, the League of Human Rights took the initiative to encourage the practice known in Switzerland as *votation*, a new collective made up of parties, unions and organisations. *Votations Citoyennes* were organised in hundreds of cities throughout the country between 2002 and 2011, each involving several thousand voters. These collectives were highly publicized and brought the debate surrounding voting rights for foreign residents once again to a place of prominence.

Mayors and councils of foreign residents contributed to this mobilisation. At the initiative of the mayor of Strasbourg, a petition made by mayors for foreign residents' right to vote in local elections was published in early 2011. Approximately one hundred mayors, including those of most large cities in France, signed this petition. Similarly, ten councils of foreign residents formed a network, *Le Conseil Français de la Citoyenneté de Résidence*, and also lobbied for voting rights for foreign residents in local elections.

In response, the populist right, bringing together parliamentarians from the majority party, *Union pour un Mouvement Populaire*, launched a petition on the internet opposing voting rights for foreign residents, quickly collecting nearly 30,000 signatures. Those in opposition raised the unfounded

argument that countries that grant voting rights to foreign residents are typically ungenerous in their naturalisation policies, unlike France. Others believed that voting rights should only be granted in cases of reciprocity. Of course, this would require that all countries in the world become democracies before France could extend voting rights to foreign residents. The risk of a communitarian vote—when all members of an ethnic group vote for the same party—was also discussed, despite foreign examples showing little risk of this.

Le groupe socialiste, the socialist party parliamentary group, voted in the Senate on December 8 [2011] to approve the bill passed by the National Assembly in 2000 that provided the right to vote in municipal elections to foreign residents in France.

The presidential and legislative elections in the spring of 2012 brought to power a president and majority of MPs that support the constitutional amendment to give the right to vote to foreign residents. President Hollande and Prime Minister Ayrault have promised to prioritise the parliamentary work needed to ensure that the reforms are implemented at the beginning of 2013.

5

MIGRANTS’ POLITICAL INTEGRATION IN IRELAND: LOOKING BEYOND THE RIGHT TO VOTE IN LOCAL ELECTIONS

FIDÈLE MUTWARASIBO



Dr. Fidèle Mutwarasibo is the Integration Manager at the Immigrant Council of Ireland, founding member of Africa Centre, and a Transatlantic Forum on Migration and Integration (TFMI) fellow. He was also a board member of ‘We the Citizens’, an initiative in Ireland that brought citizens together in May and June of 2011 to share views on the future of the country.

‘Integration and civic participation are symbiotic, mutually reinforcing, and a necessary condition and by-product of the other’

(Farris, 2003, p.17).

Introduction²⁷

This paper examines the debates and practices in the area of migrants' political participation in Ireland over the last 16 years. The content of this article is informed by the author's research for his doctorate, his involvement in the establishment of the Africa Centre,²⁸ and his work with the African Cultural Project,²⁹ the Canal Communities Partnership³⁰ and the Immigrant Council of Ireland.³¹

All foreigners legally residing in Ireland have the right to vote and be elected in local elections. As most immigrants were eligible to vote, migrant-led organisations as well as mainstream migration NGOs worked hard to promote migrant participation during the run up to the 2004 local elections. As a result, Nigerian candidates, after only four years of residence in Ireland, were elected to the town councils of Ennis and Portlaoise. Rotimi

Adebari went on to become mayor of Portlaoise in 2007. His election to the position of mayor received media coverage in Ireland and far beyond. By the time the 2009 local elections came, there were more targeted initiatives aimed at encouraging migrants' participation in the electoral process. Still, only four migrant candidates were elected among the over 40 migrant candidates who stood, notwithstanding the fact that some migrant candidates ran on mainstream political party tickets.

The centralised nature of Irish politics and the restricted power of the local government place clear limitations on what can be achieved through migrants' participation in local elections in Ireland. To date, only two naturalised citizens have served in the Irish parliament: Moosagee Bhamjee of South Africa elected to the *Dáil* (Parliament) as a Labour candidate in 1992, and Katherine Zapone of the United States nominated by *Taoiseach* (Prime Minister) Enda Kenny to the *Seanad* (Senate) in 2011. In the 2011 general elections, there were four candidates of migrant backgrounds. They all stood as independent candidates and none of them were successful. This paper will look at migrants' political integration in Ireland. It will also explore how Ireland can harness the voting rights of migrants in the local elections and foster political representation of migrants and their descendants in political institutions beyond the local level. The latter objective is particularly relevant for centralised countries like Ireland where the role of the local government is limited.

27. The author's social practices and interest in politics stem from his upbringing, his formative years and interactions with his paternal grandmother. He believes his interest in politics stems from his grandmother's understanding of active participation in society as a way of exercising one's citizenship based on presence. She believed that home is where one finds him/herself at any particular moment in time. She urged the author to look out for *brothers and sisters* anywhere he might find himself on his life journey. In this spirit, active involvement in society has been the hallmark of his life story so far, irrespective of where he happened to be. This philosophy underpins what the author intends to share in this article.

28. The Africa Centre is an organisation of Africans and of people interested in issues pertaining to Africa in Dublin concerned with community empowerment, development education, and policy and research.

29. The African Cultural Project is a network of Africans and others interested in celebrating culture through music and arts.

30. The Canal Communities Partnership is a development NGO working in one of the socially disadvantaged areas of south Dublin.

31. The Immigrant Council of Ireland is an immigrant human rights organisation.

The case for migrants' political participation

There are a number of international instruments that highlight the need for migrants' political inclusion and representation. These include the 1948 Universal Declaration on Human Rights. Article 21(1) states that 'every one has the right to take part in the government of his/her country, directly or through freely chosen representatives'. The civil and political rights of migrant workers are also covered in Articles 11; 12; 13; 14; 15; 16.1, 2, 4, 8; 17; 18; 22; 25; 27; and article 31 of the International Convention on the Protection of All the Rights of Migrant Workers and Members of Their Families. In 1992, the Council of Europe adopted the Convention on the Participation of Foreigners in Public Life at the Local Level with the aim of encouraging active participation of foreign residents in the life of the local community. Article 6 grants foreign residents the right to vote and stand for election in local authority elections after five years of residency. However, Member States can restrict voting rights and can stipulate shorter periods of residence. As of 19 May 2006, only 11 Member States had signed and only eight had ratified the Convention (NGO Network of Integration Focal Points, 2007). Furthermore, the ninth European Union Common Basic Principle on Integration states, 'the participation of immigrants in democratic process and in the formulation of the integration policies and measures, especially at the local level, supports their integration' (Council of the European Union, 2004).

Although the provision to allow migrants to vote and stand in local elections in Ireland pre-dated the significant immigration waves from the mid-1990s onwards, researchers and policy-makers in other jurisdictions have been making a case for migrants' political participation for sometime. In

some European countries the political elites have welcomed migrants to the political system because political integration ensures 'better information about the policy preferences of ethnic groups' (Fennema & Tillie, 1999, p. 704). It is argued that 'early and active participation of migrants in decisions concerning their lives is critical; a well-established dialogue with authorities and civil society at all levels will ensure mutual respect and understanding and help all concerned to live up to their responsibilities' (Society for International Development-Netherlands Chapter, 2002, p. 7). There is no doubt that migrants' participation in local elections helps to strengthen migrants' trust and confidence in the political system of their country of residence. The extension of voting rights in local elections to migrants offers an incentive for involvement in local communities, and also promotes inclusiveness among the wider society. It is argued that 'participation in the political processes is one of the most important elements of active citizenship. Political participation of immigrants provides opportunities for integration and should be supported in its different forms, including acquisition of nationality, local electoral rights and consultative structures' (Niessen & Huddleston, 2004, p. 40). Integration is about learning how to deal with competing interests; it requires a framework that allows all voices to be heard, not only the loudest ones.

The European Inclusion Index suggests that institutions across Europe have failed to keep up with the growing diversity of their societies (Leonard & Griffith, 2003). According to Rudiger and Spencer (2003), special consultation mechanisms for minorities ranging from engaging the minority ethnic voluntary sector to electing or appointing individuals as community representatives to advisory or decision-making roles have been put in place across the EU. Many of these consultative bodies

Table 1: Voting Rights in the Republic of Ireland

Election	Eligibility
General Elections	Irish and UK Citizens
Seanad Elections	Graduates of Trinity College Dublin and the National University of Ireland (NUI), Outgoing Seanad, Incoming Dáil, Members of County Councils
Local Elections	All those who are ordinarily resident in the Irish State of any Nationality
Referenda and Presidential Elections	Irish Citizens only
European Elections	EU Nationals

Source: Mutwarasibo & McCarthy (2002); Kenny (2003)

have held only advisory roles and this has proved to be somewhat frustrating to the participants. In order to move forward, consultations must address the needs of minorities and not merely those of decision-makers. In some countries, ‘advisory councils have been established in which representatives of various ethnic minorities participate and in which an attempt is made to register the preferences of ethnic groups’ (Finnema & Tillie, 1999, p. 704). In multi-ethnic societies it is appropriate to give all members of society say in how the country is run. Migrant networks and mainstream NGOs providing services to migrants ‘are important for the individuals within the groups and for integration activities, bridging the gap between immigrants and wider society’ (Penninx, 2006, p. 129). Ethnic minorities can work directly with politicians; they can do so through intermediaries or so-called alternative facilitators (Zappala 1998). Alternative facilitators are ‘people who emerge from the ‘natural processes of ethnic communities’, and generally play a type of leadership role within their communities because of business or professional success’ (Zappala, 1998, p. 693 as cited in Jupp *et al.*, 1989, p. 5). Historically, trade

unions have also been active in advocating the rights of migrants. According to Martiniello, ‘immigrant presence in unions is an older and better-known phenomenon’ (2005, p. 12). Migrant interests have been represented in civil society in Ireland since the late 1990s. Non-electoral political participation and representation is important, but political participation through the electoral process brings migrants into mainstream political institutions and decision-making circles.

Voting Rights in Ireland

In Ireland, the provision of voting rights for non-nationals reflects a belief in the importance of local integration. According to the Electoral Act of 1992 (part II, section 10), ‘a person shall be entitled to be registered as a local government elector in a local electoral area if he/she has reached the age of eighteen years and he/she was, on the qualifying date, ordinarily resident in that area’ (see Table 1). It should be noted that provisions for the participation of foreign nationals in local elections have existed in Ireland since 1963.

Table 2: Usual residents by ethnic or cultural background

Category	2006	2011	Per cent change
White Irish	3,645,199	3,821,995	4.9
Irish Travellers	22,369	29,495	42.9
Black Irish or Black African	40,525	58,697	44.8
Other Black	3,793	6,381	68.2
Chinese	16,533	17,832	7.9
Other Asian	35,812	66,858	86.7
Other	46,438	40,724	-12.3
Not Stated	72,303	70,324	-2.7
Total	4,172,013	4,525,281	8.5

Source: Central Statistics Office Ireland (2012)

Fifteen European Union Member States allow foreign nationals to vote in the local elections. These are: Belgium, Estonia, Denmark, Finland, Hungary, Ireland, Lithuania, Luxemburg, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Seven of these (Denmark, Hungary, Portugal, Slovakia, Sweden and the United Kingdom) allow non-nationals (EU and third-country nationals) to vote in regional elections. Some of the countries allowing participation in local elections impose a residency condition. In Denmark, Estonia, Portugal and Sweden, migrants are required to fulfil a three-year residence condition. In Belgium, Luxemburg and the Netherlands the residency condition is five years. The United Kingdom and Ireland do not impose a residency condition. Moreover, the Irish, EU and Commonwealth Citizens living in the United Kingdom are specifically named as eligible voters. Similarly, the Czech Republic, Malta, Portugal and Spain apply a reciprocity condition. In terms of the right to stand as candidates in elections, Belgium, Estonia, Hungary, Luxembourg and Slovenia do not allow third-country nationals to stand in municipal elections. Austria, Bulgaria, Cyprus, Czech

Republic, France, Germany, Greece, Italy, Latvia, Malta, Poland and Romania do not allow migrants to participate in local elections. The constitutional law of the Czech Republic, Italy and Malta permits non-nationals to vote, but the necessary national legislation or international agreements have yet to be adopted, preventing migrants from participating in local elections (Groenendijk, 2008, pp. 3-5).

The participation of minorities in Irish politics - a historic perspective

The political participation and representation of the Jewish community in Ireland provides an idea of what might lie ahead for 21st century multi-faith and multicultural Ireland. Katrina Goldstone, a writer on Jewish culture and history in Ireland, suggests that members of the Jewish community have been involved in the Irish civic and political life for some time (personal communication 2004). In the 1981 general election, three members of the Jewish community were elected, each belonging to a different mainstream political par-

ty: Mervyn Taylor, who was the first Minister for Equality and Law Reform and who enacted the Incitement to Hatred Act in 1989, was a member of the Labour Party; Alan Shatter was a member of Fine Gael; and Ben Briscoe was a member of Fianna Fáil. The three largest cities on the island of Ireland, Dublin, Belfast and Cork have had Jewish mayors in the last century. The honour of having the first Jewish mayor in Ireland goes to the town of Youghal in Co. Cork, where Mr. William Annyas was elected in 1555. Since then, Robert Briscoe was elected mayor of Dublin in 1956 and 1961, his son Ben Briscoe became mayor in 1988, and Mr. Gerald Goldberg became mayor of Cork in 1977. According to Carol Briscoe, researcher and spouse of Ben Briscoe, Robert Briscoe was an international activist, being involved in fighting for freedom in India and Israel (personal communication, June 2004). Still, there is anecdotal evidence to suggest that political activism was not encouraged within the Jewish community. Most of the pioneer politicians of Jewish background in Ireland became involved by accident; many immigrated to Ireland from Russia and were determined to keep their heads down. Although the Jewish community has been present in Ireland for many years, they constitute a minority community along with Protestants, members of the Travelling community, and members of the Gay and Lesbian communities. That members of the Jewish community have been successful in Irish politics in spite of the dominance of the Catholic Church is a sign of openness in the Irish political system. Political representation of the Jewish community will inspire migrants who have made Ireland their home to participate. Still, most migrants in Ireland have not naturalised, preventing their electoral participation at the national level. Immigration is new to Ireland. It will take time for the new migrants to settle and create the necessary

foundations for effective involvement in politics at national level.

There have been other prominent people of migrant backgrounds elected to political office in Ireland. Eamonn de Valera, born in New York to an Irish emigrant and a Cuban settler of Spanish descent is a well-known politician who was involved in the war of independence and subsequently served as *Taoiseach* (Prime Minister) and President. Other historic figures of migrant background in Irish politics include Constance Markievicz, the first female TD (*Teachta Dála* or member of parliament) who was born in London to an Anglo-Irish father and later married to a Polish husband; James Connolly, born in Edinburgh to Irish emigrant parents and socialist leader at the origin of the Labour Party; and Erskine Hamilton Childers, born in England to Protestant parents from Glendalough. Most recently, a number of politicians of migrant backgrounds have emerged. These include: Senator Ivana Bacik, whose grandfather moved to Ireland from communist Czech Republic; Senator David Norris was born in the Congo; Dan Boyle, former Green party TD was born in Chicago; and Leo Varadkar, current Fine Gael TD and Minister who was born to an Indian father. In terms of naturalized citizens, the most prominent political representatives are Moosajee Bhamjee and Katherine Zapone. Moosajee Bhamjee served as a Labour TD from 1992 to 1997. Doctor Bhamjee's case was unusual and reflected a specific conjuncture in which the Labour Party made a major breakthrough on numbers. Although he was involved in the community in Ennis through sports and media work, he gained prominence when he stood against the closure of Ennis General Hospital. He had been involved in other campaigns but his resistance of the closure of the hospital attracted the attention of the Labour Party. He was eventually persuaded to stand

for the party and in 1992 he won a seat in the *Dail* (Irish Parliament).

These successes mask on-going challenges in terms of the political representation of members of the Travelling Community in Ireland. According to the 2011 census, there are 29,495 Travellers in Ireland (Central Statistics Office, 2012). Their struggle to be acknowledged as an ethnic group continues. Travellers have never been represented by election to the *Oireachtas* House (Irish parliament and senate). Moreover, the United Nations Declaration on the Right of Persons belonging to National, Ethnic or Religious Minorities suggests that minorities should participate in 'cultural, social, religious, economic and public life' and in decision-making processes on issues that affect them (articles 2(2)-(3)) (United Nations General Assembly, 1992). Furthermore, the Framework Convention on National Minorities suggests that States should 'create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them' (article 15) (Council of Europe, 1995). In the 2011 Programme for Government there is a commitment to a consultation process on political reform, which might help to address the issues of representation of minorities in Ireland (Department of the Taoiseach, 2011). Public institutions that mirror the wider ethnic and religious make-up of society promote integration and inclusion by providing role models for all members of the society. Representation in 21st century multi-ethnic Ireland is a pertinent issue in light of the findings of the 2011 census (see table 2). Furthermore, the fact that 17 per cent of the population of Ireland was born outside the country strengthens the case for developing political processes that result in institutions with which all members of society can identify.

The figures displayed in table 2 highlight a significant increase in the number of members of the ethnic minority communities in Ireland between 2006 and 2011. This increase is notable in the context of a recession that has affected sectors of the labour market where the migrant community is over-represented, such as the construction and service industries. According to the 2011 census, nearly 17 per cent of the Irish population was born overseas and around 12 per cent of the population is foreign. Representing the interest of minority communities in Ireland is paramount at this point in time as the society recovers from the economic crisis. Political participation and representation of migrants is an important vehicle to promote harmony within its diverse population.

The political participation of migrants in Ireland in the recent past

The political participation of migrants in Ireland became part of the public dialogue during the run up to the 2004 local elections thanks to the work of the Africa Centre and other local organisations. The National Consultative Committee on Racism and Interculturalism (NCCRI) and Integrating Ireland played important roles, creating an information pack on voting rights and registration procedures to encourage migrants' participation.³² The Immigrant Council of Ireland, the Irish Refugee Council and Integrating Ireland co-hosted briefing and training sessions for the migrants who expressed an interest in running for office in the 2004 local elections. The publication of the Africa Centre's report 'Positive Politics' in 2003 captured the attention of the media. The research revealed that at the time, no political party had made spe-

32. See National Consultative Committee on Racism & Integrating Ireland (2004).

cific efforts to engage with migrants. With the exception of the Progressive Democrats³³, all parties were, in theory, open to migrants' membership. Still, there was no evidence of a recruitment drive targeting migrants. One consequence of the publication was the calling of an Extraordinary General Meeting by the Progressive Democrats to change the membership criteria of the party, which, up until the time of the publication, excluded non-EU nationals.

Between the 2004 and 2009 local elections, other actors joined the campaign to encourage the political participation of migrants. The Migrant Voters Campaign initiated by the Integration Office of Dublin City Council, launched in 2008, was aimed at raising awareness among migrants of their voting rights, the need to register to vote and how to vote on the day of elections (Dublin City Council, 2008). In the run-up to the 2009 local elections, the *Ceann Comhairle* (Speaker of the Parliament), John O'Donoghue, and the Minister for Integration, John Curran, hosted fourteen candidates from nine countries, including Nigeria, Russia, Colombia, South Africa and Zimbabwe for a seminar on the importance of immigrant participation in politics (MacCormaic, 2009). In his address, John O'Donoghue argued, 'it is also important that ... [ethnic minorities'] views and opinions are aired and their needs addressed' and commended the fact that migrants were taking an active role in politics in Ireland. He went on to say, 'the decision ... to stand for election should serve as an example and encouragement to those from other countries who come to live in Ireland' (MacCormaic, 2009).

Over 40 candidates of migrant backgrounds stood in the 2009 local elections. The majority stood as political party candidates: Fianna Fáil (9); Fine Gael (8); Labour (4) and the Green Party (8). Eight

candidates stood independent of political parties. Migrant candidates came from a wide range of countries of origin including: Nigeria (14), India (1), Poland (8), Russia (2), Colombia (1), Pakistan (1), Lithuania (2), Latvia (2), Zimbabwe (1), USA (1), Moldova (1), Netherlands (1), Congo DRC (1) and South Africa (1). Only one in ten migrant candidates was successful compared to one in three for the established population candidates.³⁴ In one constituency in West Dublin, three Nigerian candidates ran, preventing any of the migrant candidates from receiving enough votes for victory. Idowu Sulyman Olafimihan stood for Fianna Fáil, Adeola Ogunsina for Fine Gael and Ingatius Okafor stood as an independent candidate. It is reasonable to assume that Nigerians who voted for candidates of Nigerian backgrounds as their first preference gave second priority to the candidates of their preferred candidate's political affiliation. Proportional representation means that in a multiple seat constituency, a voter can indicate her/his first and subsequent choices. Those who reach the quota are elected automatically and the votes of those who score lowest are distributed to the remaining candidates until the quota is reached. The cross-transfer of votes helps those with reasonable scores in the first preference count. In the case of the three candidates of Nigerian extraction, their first preference vote did not give them the opportunity to benefit from the tally of second, third and subsequent preferences.

The work of immigrant organisations between the 2004 and 2009 local elections was effective at encouraging political parties to engage with migrants in preparation to the 2009 local elections. As a result, most of the migrant candidates ran as members of political parties in the 2009 local elections. Fine Gael and Fianna Fáil went as far as re-

33. The Progressive Democrats' membership was at the time limited to Irish and EU nationals.

34. See Mutwarasibo (2009).

cruiting Polish migrants to help them reach out to migrant communities.

Migrants have been involved in a continuum of civic and political participation that involves electoral and non-electoral political practices.³⁵ Conventional (electoral) politics includes involvement in political parties' activities, voting, canvassing, distributing campaign material, standing for elections and so forth. Infra-politics (non-electoral), on the other hand, include protests, demonstrations, sit-ins, hunger strikes, boycotts, trade union politics, pressure groups, the direct mobilisation of ethnic communities, humanitarian movements, environmentalist movements, neighbourhood committees and customers' associations among others. Infra-politics are particularly relevant in Ireland because politics is dominated by local politics and clientelism. Local politics underpins politics both at the local level and at national level. The use of proportional representation ensures that even within the political parties there is competition at local level. The uniqueness of the Irish political scene may explain why Taiwo Matthew and Rotimi Adebare were elected to the local town council in Ennis and Portlaoise respectively in 2004, having lived in Ireland for four years. In June 2007, his fellow town councillors elected Rotimi Adebare to the position of mayor long before he acquired Irish citizenship. His election did not follow the model of migrant political participation observed by Zappala (1999) in Australia. His research revealed that political representation of migrants in mainstream institutions can take up to twenty years due to the challenges of initial survival and settlement, and the amount of time it takes to fulfil the requirements to apply and acquire citizenship through naturalisation.

35. See Mutwarasibo (2010).

While we should celebrate the achievements of the last decades, we need to continue to ask ourselves the hard questions. Ireland is a multicultural country and we need to ensure that the channels for political claims-making are open in order to achieve a cohesive society in the next decades. We can look to the riots in London in 2011 to see the consequences of excluding sections of the population from mainstream society. The value of economic integration—the focus of Ireland's integration program—should not be overlooked, but it is equally important to remember the social, cultural and political dimensions of the integration process.

Concluding Remarks

As the political euphemism goes, 'a lot done, more to do.' Ireland has made progress in the area of political integration of migrants. The significance of extending voting rights in local elections to migrants should not be overlooked. To exclude long-term residents from voting would not only violate principles of representative democracy, but also would 'foster divisions between natives and migrants and encourage the neglect of migrants' grievances, thus fostering alienation and bitterness' (Layton-Henry, 1991, p. 120). In Ireland, the extension of rights has also had a symbolic impact judging by the publicity that surrounded the election of Rotimi Adebare to the position of Mayor of Portlaoise in 2007. The Immigrant Council of Ireland continues to advocate for the expansion of voting rights for migrants. In the autumn of 2009, the Immigrant Council of Ireland appealed to the parliamentary Joint Committee on the Constitution to continue to examine ways to expand voting rights for migrants who are established residents in the State.³⁶

36. See Immigrant Council of Ireland (2009).

Likewise, the appointment of foreign-born Katherine Zappone to the Senate is an important development. However, if we are to achieve a truly representative democracy, a democracy that includes the 17 per cent of the population born outside the country in the Irish nation, there is more work to be done. Ireland's political powers are centralised and dominated by the mainstream political parties, certain professions (medical doctors, teachers, legal profession, trade unionists, to name just a few) and a number of political families. Effective representation takes place in the *Oireachtas* (Parliament), and the representation of people of migrant backgrounds in the parliament is limited. Furthermore, the four first-generation migrant candidates who ran during the 2011 general elections stood independent of the mainstream political parties, suggesting that migrants continue to work to acquire the cultural and social capital they need to become effective politicians at national level. Irish politics continues to be dominated by the pre-independence and post-independence political conflicts and migrant political activists have to grasp these dynamics in order to develop strategies that suit the Irish culture and political system, particularly at the national level.

Unfamiliarity with the electoral system among migrants also creates a need for increased awareness and voter education. Many promising initiatives have contributed to and continue to work for change such as the voter registration campaign by Dublin City Council and other stakeholders; the recruitment of migrant organisers by political parties (Fianna Fáil and Fine Gael); the recruitment of migrant organisers by trade unions; the campaign for the spousal work permit – initiated by the League of Filipino Nurses and supported by other actors from a wide range of sectors; the voter mobilisation campaign by the Africa Centre and New Communities Partnership in the run up to the 2009 local elections and the Count Us In cam-

paigned run by the Immigrant Council of Ireland in response to complaints by citizens who felt overlooked by political parties and canvassers in the 2011 general elections.³⁷

Above all, there is need for political leadership on the issues of immigration, integration, diversity, discrimination, and anti-racism. It is important to acknowledge the role that migrant activists played in raising awareness on voting rights and encouraging their peers to avail of the political opportunities provided. Considering what is perceived to have happened in Blanchardstown in the 2009 local elections, it is important to remember that political opportunity can also open door for exploitation and dilution of the migrant vote by the political establishment. Politics in Ireland is based on local issues and, by extension, local credentials. Local political integration of migrants does not necessarily lead to political integration at national level. Involvement in national politics is critical in countries like Ireland where power is highly centralised, and migrants need to continue to work towards representation at this level. As Samora Machel, former Mozambican president would say during Mozambique's war for independence, '*a luta continua*' (the struggle continues).

37. See *Cities of Migration* (2011) for details of the campaign.

References

- Central Statistics Office Ireland. (2012). *Population usually resident and present in the state by age group, sex, ethnic or cultural background and census year* [Data file]. Retrieved from <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=CDD27&PLanguage=0>
- Central Statistics Office Ireland. (2007). *Persons, males and females usually resident and present in the State on Census night, classified by ethnic or cultural background and age group* [Data file]. Retrieved from <http://census.cso.ie/Census/TableViewer/tableView.aspx?ReportId=77140>
- Chadamoyo, N., Fanning, B. & Mutwarasibo, F. (2007). Getting into politics. In B. Fanning (Ed.), *Immigration and social change in the Republic of Ireland (185-197)*. Manchester University Press
- Cities of Migration. (2011). *Count Us In* campaign by the Immigrant Council of Ireland. Good ideas, cities of migration, September 2011. Available at: http://citiesofmigration.ca/good_idea/count-us-in/
- Council of Europe. (1995). Framework convention for the protection of national minorities. Retrieved from <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>
- Council of the European Union. (2004). Press release 14615/04 (Presse 321). 2618th Council Meeting, Justice and Home Affairs. Retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf
- Department of the Taoiseach (2011). Programme for the government. Retrieved from http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Programme_for_Government_2011.pdf
- Dublin City Council. (2008). Migrants voter campaign. Retrieved from <http://www.dublin-city.ie/PRESS/PRESSRELEASES/PRESSRELEASES2008/OCTOBER2008/Pages/MigrantVotersCampaign.aspx>
- Fanning, B., Mutwarasibo, F. & Chadamoyo, N. (2003). Positive politics: participation of immigrants and ethnic minorities in the electoral process. Africa Solidarity Centre. Retrieved from <http://www.ucd.ie/mcri/resources/PositivePolitics-03pdf.pdf>
- Fanning, B., Mutwarasibo, F. & Chadamoyo, N. (2004). Negative politics, positive vision: immigration and the 2004 elections. Africa Solidarity Centre. Retrieved from http://www.africacentre.ie/images/publications/negative_politics.pdf
- Fanning, B. & Mutwarasibo, F. (2007). Nationals/non-nationals: Immigration, citizenship and politics in the Republic of Ireland. *Ethnic and Racial Studies*, 30 (3), 439-460.
- Farris, A. (2003). *The house we all live in: A report on immigrant civic Integration*. Carnegie Corporation of New York.
- Fennema, M. & Tillie, J. (1999). Political participation and political trust in Amsterdam: Civic communities and ethnic networks. *Journal of Ethnic and Migration Studies*, 25 (4), 703-726.
- Immigrant Council of Ireland. (2009). Presentation to the joint committee on the Constitution. Retrieved from http://www.immigrantcouncil.ie/images/stories/publications_-_presentation_to_the_Oireachtas_Committee_on_the_Constitution_071009.pdf
- Jupp, J., York, B. & McRobbie, A. (1989). The political participation of ethnic minorities in Australia AGPS, Canberra. *The Ethnic Voice*, 2(1), 3.
- Kenny, C. (2003). Handbook on immigrants' rights and entitlements in Ireland. Immigrant Council of Ireland. Retrieved from <http://www.immigrantcouncil.ie/research-publications/>

[archive/236--handbook-on-immigrants-rights-and-entitlements-in-ireland-2003](http://www.irishtimes.com/newspaper/ireland/2009/0430/1224245682770.html)

Layton-Henry, Z. (1991). Citizenship and migrant workers in Western Europe. In U. Vogel & M. Moran (Eds.), *The Frontiers of citizenship*. London: McMillan.

Leonard, M. & Griffith, P. (2003). European inclusion index: Is Europe ready for the globalisation of people? British Council and Sciences Po.

MacCormaic, R. (2009, April 30). Ceann Comhairle encourages more immigrants to stand for election. *Irish Times*. Retrieved from <http://www.irishtimes.com/newspaper/ireland/2009/0430/1224245682770.html>

Martiniello, M. (2005). Political participation, mobilisation and representation of immigrants and their offspring in Europe. Willy Brandt Series of Working Papers in International Migration and Ethnic Relations. Malmö University.

Mutwarasibo, F. & McCarthy, M. (2002). Making connections: A community directory for the Canal Communities Partnership area. Canal Communities Partnership. Retrieved from http://www.canalpartnership.com/Resources/Making_Connections.pdf

Mutwarasibo, F. (2009). Briefing to migrant candidates in the 2009 local elections. Debriefing session organised by Integrating Ireland, AkiDWA, Africa Centre, Refugee Information Centre, Forum Polonia and Hope Alive

Mutwarasibo, F. (2010). *(New) migrant political entrepreneurs: Overcoming isolation and exclusion through creative resistance in Ireland*. Unpublished doctoral dissertation). University College Dublin, Ireland.

National Consultative Committee on Racism and Interculturalism & Integrating Ireland. (2004). Local elections 2004. Retrieved from http://www.indymedia.ie/article/61540?author_name=NCCRI/

[Integrating%20Ireland&&condense_comments=false](http://ec.europa.eu/ewsi/UDRW/images/items/docl_12892_168517401.pdf)

Niessen, J. & Huddleston, T. (2004). Handbook on integration for policy makers and practitioners. European Commission (Directorate General Justice, Freedom and Security). Retrieved from ec.europa.eu/ewsi/UDRW/images/items/docl_12892_168517401.pdf

NGO Network of Integration Focal Points. (2007). Policy briefing on civic and political participation. Retrieved from <http://www.ecre.org/component/downloads/downloads/171.html>

Penninx, R. (2006). After the Fortuyn and van Gogh murders – is the Dutch integration model in disarray? In S. Delorenzi, (Ed.), *Going Places: Neighbourhood, Ethnicity and Social Mobility* (127-138). Institute for Public Policy Research.


Rudiger, A. & Spencer, S. (2003). *Social integration of migrants and ethnic minorities: policies to combat discrimination*. Paper presented at the Economic and Social Aspects of Migration Conference, Brussels, Belgium

Society for International Development - Netherlands Chapter. (2002). *Declaration of The Hague on the Future of Refugee and Migration Policy* (A/57/693). Retrieved from <http://www.unhcr.org/refworld/docid/3f13c9af4.html>

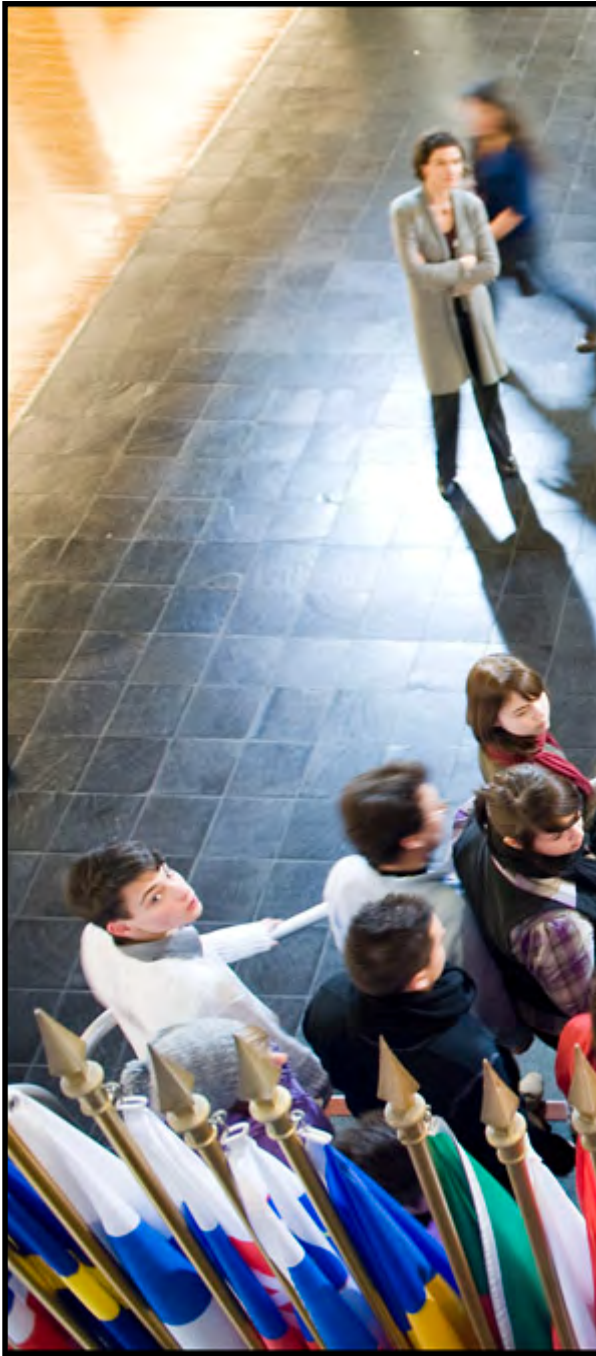
United Nations General Assembly. (1948). *Universal Declaration of Human Rights*. Retrieved from <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>

Zappala, G. (1998). The micro-politics of immigration: Service responsiveness in an Australian 'ethnic electorate.' *Ethnic and Racial Studies*, 21(4), 683-702.

Zappala, G. (1999). Challenges to the concept and practice of political representation in Australia. (Parliament of Australia Research Paper 28 1998-99). Retrieved from <http://www.aph.gov.au/library/Pubs/RP/1998-99/99rp28.htm>



SECTION II:
FORUM DEBATE
ON NATIONAL
VOTING
RIGHTS





© European Union 2012 - European Parliament

6

KICK-OFF CONTRIBUTION

PHILIPPE CAYLA



In April of 2003, Philippe Cayla was appointed Chairman of Société Opératrice de la Chaîne Européenne Multilingue d'Information Euronews (SOCEMIE). In December 2008, he became the Chairman of the Executive Board of Euronews S.A. Since late 2011, he is a member of the Supervisory Board of Euronews S.A. and President of Euronews Development.

CATRIONA SETH



Catriona Seth was brought up in the U.K., in Switzerland, in South America and in Belgium. She attended a number of schools, learning various European languages before studying at Oxford and the Sorbonne. She holds a British passport, but works for the State in France as Professor in 18th-century French studies at the Université de Lorraine. She has published widely on Enlightenment literature and the history of ideas.

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?³⁸ 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.³⁹

38. Contribution published online on 24 February 2012

39. See <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000006> for more information on the Let Me Vote Initiative.

7

EU CITIZENS SHOULD HAVE VOTING RIGHTS IN NATIONAL ELECTIONS, BUT IN WHICH COUNTRY?

RAINER BAUBÖCK



Since January 2007, Rainer Bauböck is Professor in social and political theory in the Department of Political and Social Sciences at the European University Institute in Florence. He is on leave from the Austrian Academy of Sciences in Vienna and has previously taught and researched at the Vienna Institute for Advanced Studies, the Universities of Innsbruck and Vienna, Warwick University, the Institute for Advanced Study, Princeton, Malmö University, Yale University and Central European University in Budapest. His research interests are in normative political theory and comparative research on democratic citizenship, European integration, migration, nationalism and minority rights. Rainer Bauböck has coordinated several comparative research projects on citizenship in Europe and is Co-Director of the EUDO CITIZENSHIP observatory.

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 successful⁴⁰. 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.

40. Contribution published online on 24 February 2012.

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, 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](#),⁴¹ 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 ‘Let me vote’ 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. 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.⁴² 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 citi-

41. See the EUDO CITIZENSHIP Forum Debate: [Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?](#)

42. See our EUDO CITIZENSHIP forum debate: [Dual citizenship for transborder minorities? How to respond to the Hungarian-Slovak tit-for-tat](#)

zenship for all immigrants as well as for common standards of external voting rights of EU citizens.

Why will I still be happy if the 'Let me vote' initiative succeeds in collecting one 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.

8

A EUROPEAN OR A NATIONAL SOLUTION TO THE DEMOCRATIC DEFICIT?

ALAIN BRUN



Alain Brun retired from the European Commission in 2011 after 35 years of service. He worked on a number of different projects concerning value-added tax, the protection of intellectual property, the protection of fundamental rights and personal data. He was involved in the drafting of the Charter of Fundamental Rights, as well as in matters of European citizenship and justice.

I agree with Rainer Bauböck on his starting point⁴³. It is indeed contrary to European Union 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 citi-

zenship 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.

43. 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.

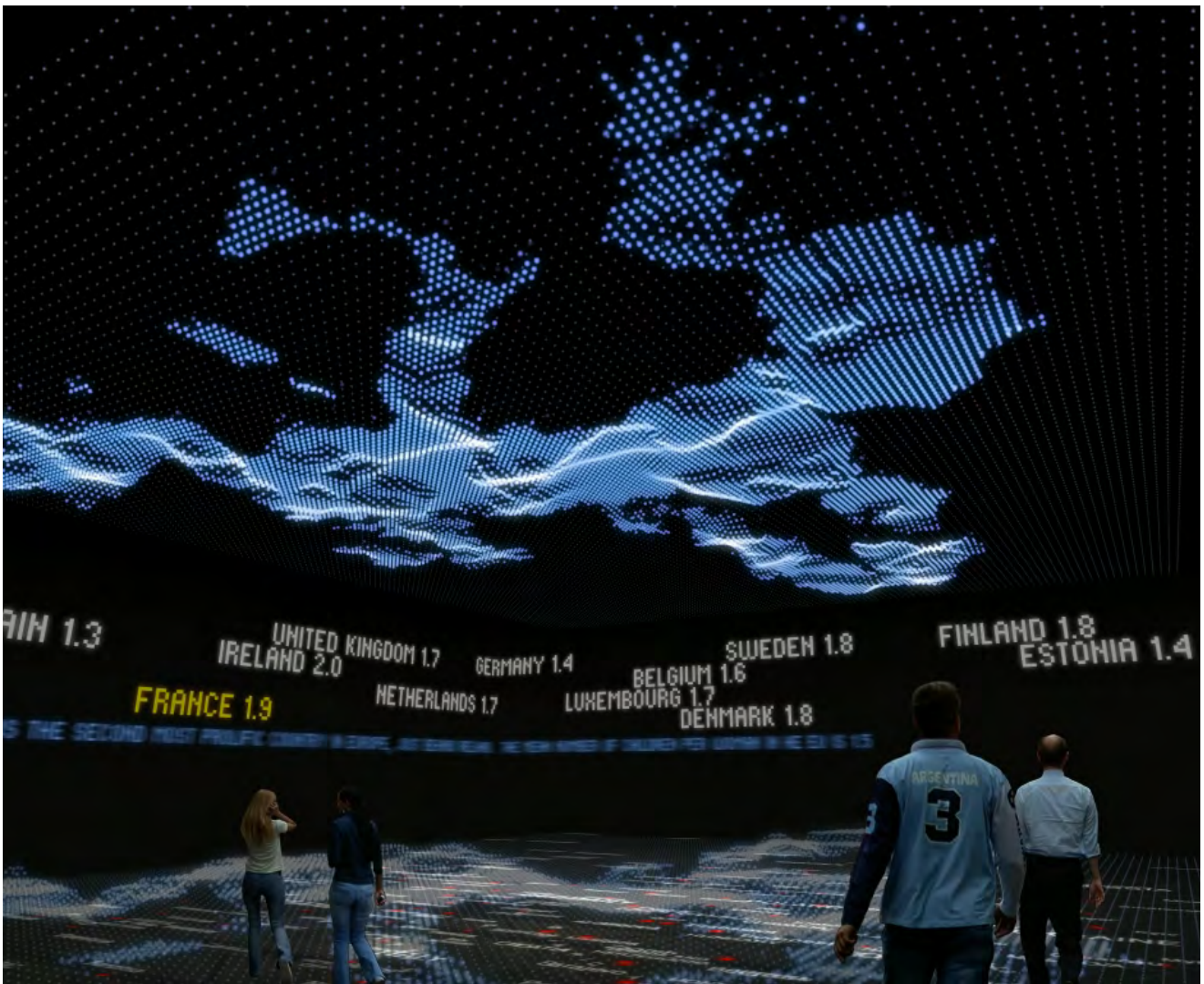
Obviously, this representation is not guaranteed in the situation mentioned by Rainer Bauböck where EU citizens lose their voting rights in national elections in their countries of origin.

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 Euro-

pean 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 that can be done for the European year of citizenship.



9

EU ACCESSION TO THE ECHR REQUIRES ENSURING THE FRANCHISE FOR EU CITIZENS IN NATIONAL ELECTIONS

ANDREW DUFF



Andrew Duff is a Liberal Democrat Member of the European Parliament, representing the East of England region in the UK. He is also president of the Union of European Federalists.

As rapporteur of the European Parliament on electoral reform, I strongly support the launching of this ECI, and will sign it⁴⁴.

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 se-

44. Contribution first published on 7 March 2012.

cret 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 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 forever.

10

HOW TO ENFRANCHISE SECOND-COUNTRY NATIONALS? TEST THE OPTIONS FOR BEST FIT, EASIEST ADOPTION AND LOWEST COSTS

DAVID OWEN⁴⁵

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 residence⁴⁶. 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).

45. For David Owen’s biography see p. 28

46. Contribution published online on 15 March 2012.

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 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.



© Kommunal-og Regionaldepartementet

11

WHAT'S IN A PEOPLE? SOCIAL FACTS, INDIVIDUAL CHOICE, AND THE EUROPEAN UNION

DIMITRY KOCHENOV



Dimitry Kochenov is Chair of EU Constitutional Law at the University of Groningen in the Netherlands. He was awarded a doctorate from the same university ('EU Enlargement and the Failure of Conditionality', Kluwer Law International, 2009) and a master of laws from Central European University in Budapest. His research interests include European citizenship law; EU non-discrimination and equality Law; EU external relations and enlargement law; EU law in the overseas possessions; and rule of law, democracy and the foundations of the European legal order. Recently, Dr. Kochenov has published articles in the Fordham Journal of International Law, the Columbia Journal of European Law, the Maastricht Journal of European & Comparative Law, and in the Boston College International and Comparative Law Review. His latest book is an edited volume entitled EU Law of the Overseas: Outermost Regions, Associated Overseas Countries and Territories, Territories Sui Generis (Kluwer Law International, 2011).

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 overdue⁴⁷.

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?⁴⁸ 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 supra-

47. Contribution published online on 17 April 2012.

48. See my [EUDO CITIZENSHIP Working Paper 2011/06](#).

national institutional structure was put in place to enable the 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.⁴⁹ 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, 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 (1991: 2485). In other words, selfish-

ness 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, 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 (2005, p. 55). 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.

49. *Miscellanea W.J. Ganshof van der Meersch* (vol.2, Bruylant, Brussels, 1972) 325.

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 invis-

ibility – 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 lo-

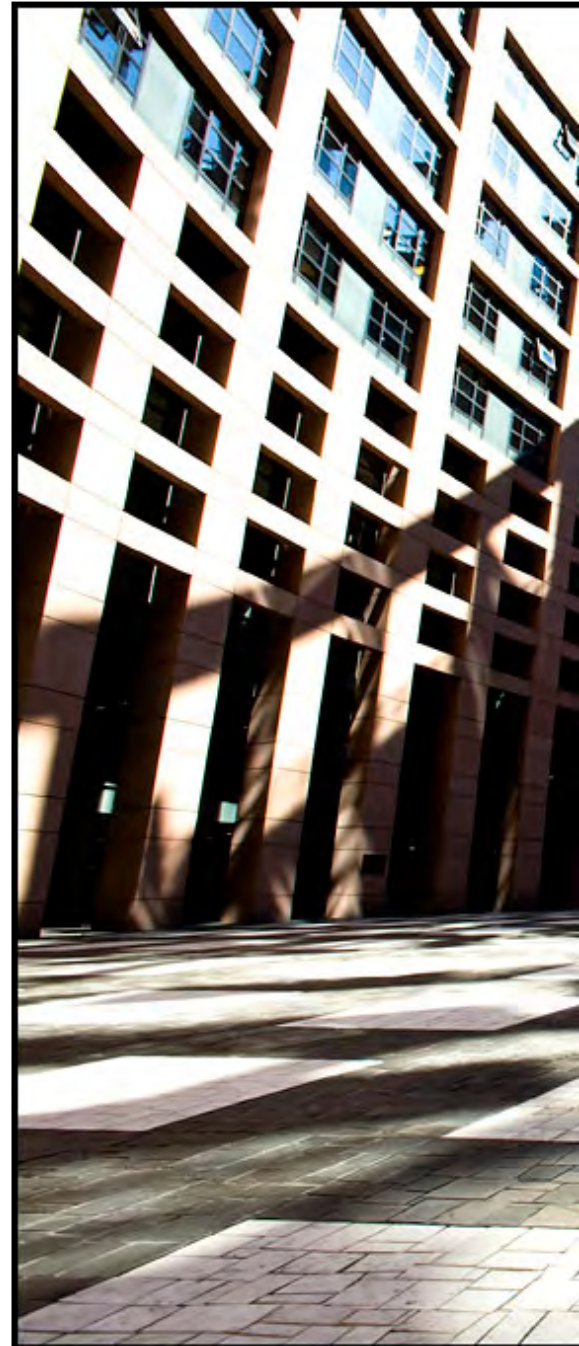
cal nationality from national elections becomes unjustifiable, as this boils down to ignoring social facts beyond the states' control. This is exactly why Bauböck's position is unfounded. It adopts a national model in ignoring social facts as a starting point. Since Member State nationalities are in 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.

References

Allott, P. (1991). The European community is not the true European community. *100 Yale Law Journal*, 2485-2500.

Davies, G. (2005). Any place I hang my hat? Or: Residence in the new nationality. *European Law Journal*, 11 (1), 43-56.





© European Union 2011 Pe-Ep/Pietro Naj-Oleari

12

TESTING THE BONDS OF SOLIDARITY IN EUROPE'S COMMON CITIZENSHIP AREA

JO SHAW



Jo Shaw has held the Salvesen Chair of European Institutions at the University of Edinburgh since January of 2005. She is Dean of Research and Deputy Head of the College of Humanities and Social Science at the university. Her research focuses on citizenship and constitutionalism in a wider European perspective and –in addition to being Co-Director of the EUDO Citizenship Observatory– she is principal investigator of a major European Research Council funded project titled ‘The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia’ (CITSEE).

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 initiative⁵⁰. 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 am 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

50. Contribution published online on 17 April 2012.

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.

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, unfortunate-

ly 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.

13

AN EVER CLOSER UNION AMONG THE PEOPLES OF EUROPE: UNION CITIZENSHIP, DEMOCRACY, RIGHTS AND THE ENFRANCHISEMENT OF SECOND- COUNTRY NATIONALS

RICHARD BELLAMY



Richard Bellamy is a professor of political science and Director of the European Institute at University College London (UCL). He was educated at the University of Cambridge and the European University Institute in Florence. After three years as a post-doctoral research fellow at Nuffield College, Oxford, he went on to lectureships at Cambridge and Edinburgh and then to Chairs at the Universities of East Anglia, Reading and Essex before joining UCL in 2005. He has held visiting fellowships at Nuffield College, Oxford; the EUI in Florence; Australia National University and the Centre for Advanced Study in Oslo. He was Academic Director of the European Consortium for Political Research from 2002 to 2006 and was elected a fellow of the Royal Society of Arts in 2002 and a member of the Academy of Social Sciences in 2008. He has recently been awarded a Leverhulme Research Fellowship to complete a book entitled *A Republic of European States: Cosmopolitanism, Republicanism and the EU* for Cambridge University Press.

This Initiative is to be welcomed if only for opening up the debate and prompting the discussion here – which I have found most instructive⁵¹. 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

51. Contribution published online on 30 April 2012

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 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 poli-

cies 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.

14

FIVE PRAGMATIC REASONS FOR A DIALOGUE WITH AND BETWEEN MEMBER STATES ON FREE MOVEMENT AND VOTING RIGHTS

KEES GROENENDIJK



Kees Groenendijk is Professor Emeritus of Sociology of Law at Radboud University in Nijmegen, the Netherlands. He is founder of the Centre for Migration Law in the Law Faculty of Radboud University, which focuses on issues of migration and minority protection. He is also Chair of the Dutch Standing Committee of Experts on International Immigration, Refugee and Criminal Law.

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 Rome⁵². 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.

I.

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.

II.

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.

52. Contribution published online on 1 May 2012.

III.

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 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.

IV.

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.

V.

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, pos-

sibly 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



Hannes Swoboda was elected President of the S&D group in 2012. As a pro-European and dedicated member of the Social Democratic Party in Austria (SPÖ), he joined the European Parliament after Austria's accession to the EU and was the leading candidate of the SPÖ in subsequent elections (2004, 2009). He is known as an engaged parliamentarian, having served on 15 committees, 11 delegations and as the rapporteur of countless reports. Through his regional focus on southeast Europe, central Asia and Russia and steady contribution to the fight against political extremism and promoting minority rights, Swoboda is considered to be an expert of European integration. His experience as vice-president of the S&D group, his law and economics background, the 14 years representing the interest of employees in the Vienna chamber of labour as well as the nine years he served in the Vienna Assembly and Municipal Council have provided him with vast prior experience and knowledge of foreign affairs, urban development, education, health, housing and labour policies.

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 State⁵³.

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 citi-

zenship 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.

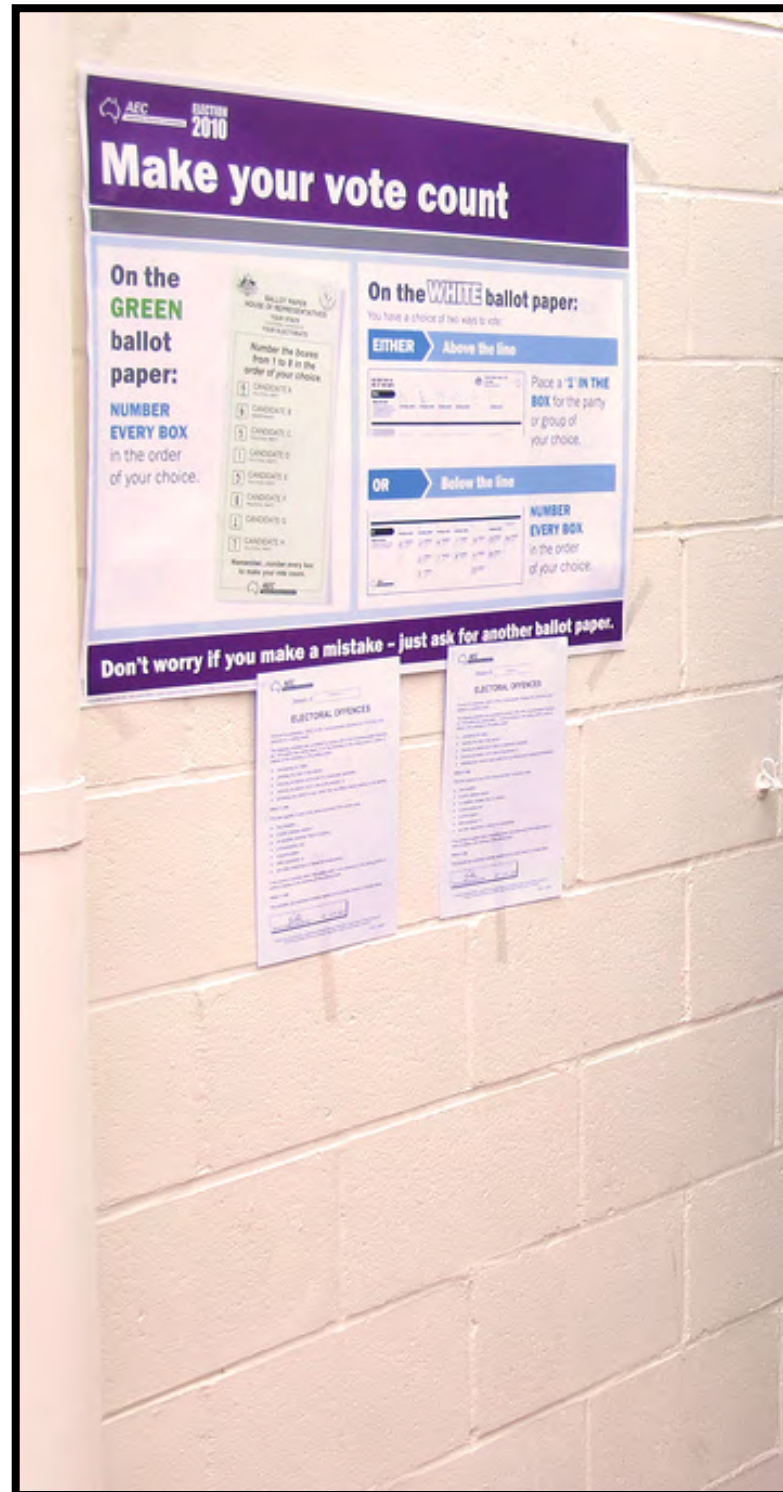
At the same time I do not share the view that we should 'start with the Europeans first'. Although I am convinced that this could have a spill-over effect on the extension of citizenship rights to third-country nationals at national level, I believe that EU policy makers should take up the political 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.

I consider it particularly urgent to address the situation of second and third generations of third-country nationals, that is children and youngsters often born and/or raised in a Member State, for

53. Contribution published online on 10 May 2012.

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.





16

VOTING RIGHTS AND BEYOND...

MARTIN WILHELM



Martin Wilhelm studied political science and economy in Greifswald, Sweden and Serbia. He then became involved in a European network of student cultural festivals in Norway and Hungary. He worked for different institutions (Goethe-Institut, European Movement, Deutsche Gesellschaft für Internationale Zusammenarbeit, the German embassy) in Serbia and France and produced a documentary film on mobility in Europe for the channel ARTE. In 2009, Martin Wilhelm went to Berlin and worked for the Zukunft foundation. Since 2010, Martin Wilhelm has been the manager of the association Citizens For Europe. His work focuses on issues of European democracy and on civil society projects.

Last week, national elections in France and Greece have received unprecedented attention at the European level⁵⁴. 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 (one 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

54. Contribution published online on 10 May 2012.

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 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 per cent 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 respec-

tive 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, 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



Dora Kostakopoulou is Professor of European Union Law and European Integration at the University of Southampton, and Director of the Centre for European Law (CELS). Formerly, she was Jean Monnet Professor in European Law and European Integration and Co-director of the Institute of Law, Economy and Global Governance at the University of Manchester, the Jean Monnet Lecturer at the University of East Anglia, and deputy director of the Centre for European Law and Practice (1996-1999). Her research interests include European public law; free movement of persons; European Union citizenship; the areas of freedom security and justice; migration law and politics; citizenship, multiculturalism and integration; democracy and legitimacy in the EU; law and global governance; political theory and Constructivism; and, fairly recently, equality law.

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 thoughtful⁵⁵. 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.

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' (1964, p. 87). And this experience becomes dwarfed when national voting rights become a good reserved for co-nationals while EU citizens

55. Contribution first published on 19 May 2012.

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 noisier 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.

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 Mem-

ber 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 nation-centric 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 politi-

cal 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?

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, 1975, 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, 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 that 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.

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 dilem-

mas 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.

References

Dewey, John. (1964). *Democracy and Education*. New York: Macmillan.

The European Commission. (1975). Towards European Citizenship (COM (75) 321). Retrieved from: http://aei.pitt.edu/5572/1/002205_2.pdf.

18

SECOND COUNTRY EU CITIZENS VOTING IN NATIONAL ELECTIONS IS AN IMPORTANT STEP, BUT OTHER STEPS SHOULD BE TAKEN FIRST

ÁNGEL RODRÍGUEZ



Ángel Rodríguez holds doctorates in political science (Universidad Complutense, Madrid) and in law (European University Institute, Florence). After serving as Chair of Constitutional Law at the Universidad de Extremadura for four years (2001-2005), he rejoined the Faculty of Law of the Universidad de Málaga in 2006, where he had previously been lecturing in Constitutional Law (since 1990) and had served as Vice-Dean and Acting Dean. Since April 2007, he is Chair in Constitutional Law at the Universidad de Málaga. He is the director of the research project EURIGHTS Fundamental Rights in Europe (PAI SEJ 0171) of the Andalusian Research Plan (PAI). He is also a senior researcher with the European Observatory on [Gerontomigration](#).

History demonstrates that the extension of participation rights is a process⁵⁶. 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.

56. Contribution published online on 21 May 2012.

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 is 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 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.

19

A MORE COMPREHENSIVE REFORM IS NEEDED TO ENSURE THAT MOBILE CITIZENS CAN VOTE

SUE COLLARD



Sue Collard has been at the University of Sussex since 1986, initially in Modern Languages (French) in the School of European Studies, then in the department of Politics and Contemporary European Studies in the School of Law, Politics and Sociology. Her research interests have mainly revolved around various aspects of politics in contemporary France, but more recently she has initiated a project to assess participation by non-national EU citizens in local elections as an empirical measure of the development of European citizenship, starting with France and the UK but with the long-term aim of a full EU wide survey.

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 proposal⁵⁷. 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',

57. Contribution published online on 1 June 2012

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 xeno-

phobic 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 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 per cent. 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.

20

INCREMENTAL CHANGES ARE NOT ENOUGH -VOTING RIGHTS ARE A MATTER OF DEMOCRATIC PRINCIPLE

TONY VENABLES



Tony Venables is Director and founder of the European Citizen Action Service ([ECAS](#)). He has much experience working with European issues, in particular in the areas of the EU's relationship with NGOs, free movement of people, citizenship rights, and the protection of consumers in Europe. His work also relates to transparency, governance and institutional reform of the European Union. After graduating from University of Cambridge, he started work as an administrator with the Council of Europe as secretary of different parliamentary committees, including the Political Affairs Committee. From 1973 to 1978, he was an administrator in the Council of Ministers' Secretariat in the department dealing with institutional affairs and relations with the European Parliament. In 1978, he became Director of BEUC (European Bureau of Consumer Unions) and successfully built up the organisation before leaving in April 1990 to set up ECAS. He was also a member of the Commission's high-level panel on free movement of people chaired by Simone Veil.

It is encouraging to note that the Let me vote European Citizens Initiative is attracting much support⁵⁸. As much has already been said and commented upon, I will limit my contribution to just a few additional points.

I.

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.

II.

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 situ-

58. Contribution published online on 6 June 2012.

ation). 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.

III.

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 side-lined. 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 per cent 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.

IV.

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 of-

fer 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.





© European Union 2011 PE-EP/Pietro Naj-Oleari

21

MOBILE UNION CITIZENS SHOULD HAVE PORTABLE VOTING RIGHTS WITHIN THE EU

ROXANA BARBULESCU



Roxana Barbulescu is a PhD candidate at the European University Institute in Florence and is a Country Expert for EUDO CITIZENSHIP. She received a master of research degree from European University Institute in 2009 and a master of arts degree in intercultural humanities in 2008 from Jacobs University Bremen, in Germany. She completed her undergraduate studies in 2006 at University of Craiova, Romania. Roxana's research interests are the politics of integration, immigrants' rights and European Union citizenship.

The contributions to this forum have mixed two arguments that share some common concerns but do not fully overlap⁵⁹. 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 'Let me vote' 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 hand 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

59. Contribution published online on 13 June 2012.

from their country of origin and continue to enjoy political 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 be-

cause 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.

22

CONCLUDING REMARKS: RIGHTING DEMOCRATIC WRONGS

PHILIPPE CAYLA AND CATRIONA SETH⁶⁰

60. For their biographies see p. 66
Contribution published online on 14 June 2012.

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 tour-

ists. 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.

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 mean-

ing. 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.

Objections and Answers to the ECI

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 national-

ity, 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 sig-

natures. 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.

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- Via EU Bookshop (<http://bookshop.europa.eu>);
- At the EU's representations or delegations.

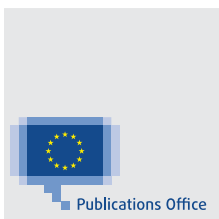
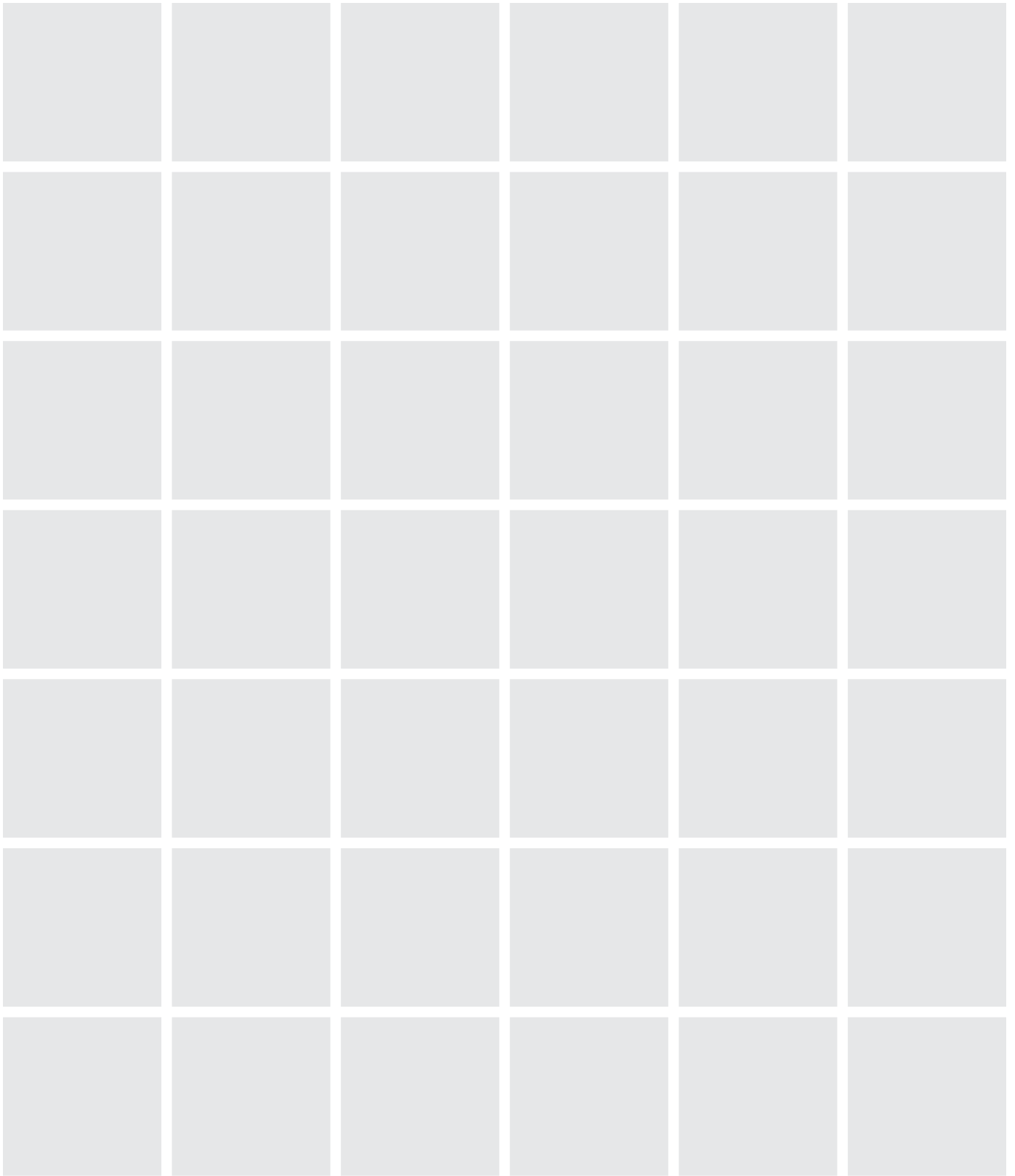
You can obtain their contact details on the Internet (<http://ec.europa.eu>) or by sending a fax to +352 2929 42758

Priced publications:

- Via EU Bookshop (<http://bookshop.europa.eu>).

Priced subscriptions:

- Via sales agents of the Publications Office of the EU (http://publications.europa.eu/others/agents/index_en.htm)



DOI 10.2870/50245
QM-30-12-823-EN-E

ISBN 978 92 9084 093 0 9 789290 840930

ISBN 978-92-9084-093-0

