



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

EUDO CITIZENSHIP OBSERVATORY

ACCESS TO ELECTORAL RIGHTS *FRANCE*

Jean-Thomas Arrighi

July 2014



US
University of Sussex



<http://eudo-citizenship.eu>

European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

***Access to Electoral Rights
France***

Jean-Thomas Arrighi

July 2014

EUDO Citizenship Observatory
Robert Schuman Centre for Advanced Studies
Access to Electoral Rights Report, RSCAS/EUDO-CIT-ER 2014/1
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

© Jean-Thomas Arrighi

This text may be downloaded only for personal research purposes.
Additional reproduction for other purposes, whether in hard copies or electronically,
requires the consent of the authors.

Requests should be addressed to eudo-citizenship@eui.eu

The views expressed in this publication cannot in any circumstances be regarded as
the official position of the European Union

Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported, at various times,
by the European Commission grant agreements JLS/2007/IP/CA/009 EUCITAC and HOME/2010/EIFX/CA/1774 ACIT,
by the European Parliament and by the British Academy Research Project CITMODES (both projects co-directed
by the EUI and the University of Edinburgh). The financial support from these projects is gratefully acknowledged.

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

Access to Electoral Rights

FRANCE

Jean-Thomas Arrighi

Introduction

The present report reviews the conditions of eligibility and rules of access to the franchise in all elections held in France, as of June 2014, for three categories of voters: citizen residents, non-resident citizens and non-citizen residents.

In the French context, the principle of universal suffrage can be traced as far back as 1793, when the Constitution of Year I, adopted by popular referendum, proclaimed that “every Frenchman who enjoys the rights of citizenship is eligible throughout the entire Republic.” However, it is not until the end of WWII, when the right to vote and to stand as candidate was extended to women, that the main revolutionary ideal became durably institutionalised in the French political system. Historical developments of the franchise in France challenge teleological accounts of citizenship, which see the extension of the suffrage to traditionally excluded groups as part of a gradual yet irresistible process of democratisation, largely completed in European countries by the end of the Long Nineteenth Century. Instead, the franchise has been marked by successive processes of expansion and retrenchment, in a country that saw numerous political upheavals and regime changes in the course of its modern history.

Over the past thirty years, public debates have revolved around two aspects of the franchise that, in spite of their common implications on the boundaries of the demos, have remained largely separated from one another: the persisting exclusion of long term residents from third countries in local elections, and the extension of the suffrage to non-residents, who can directly elect their own representatives in the National Assembly as well as in the Consular administration of the extra-territorial constituency where they reside. The report examines in great details the conditions and procedures regulating the voting and candidacy rights of both categories of voters.

1. Eligibility: Who has electoral rights in elections held in France?

The task of this section is to provide an overview of voting rights in all types of elections held in France. It is organised as follows: The first three parts successively examine the voting rights of three categories of voters, that is to say *citizen residents*, *non-resident citizens* and *third country residents*, in those elections that are regulated by national rather than EU law. The fourth and final part briefly describes the electoral rights of EU citizens, including the transposition of EU Council Directives 94/80/EC on local elections and the conditions of access to the franchise of expatriates and non-national EU citizens residing in France in European Parliament elections.

1.1. *Citizen Residents, or the limits of universal suffrage*

In its article 3, the 1958 French Constitution stipulates that “(a)ll French citizens of either sex who have reached their majority and are in possession of their civil and political rights may vote...” Based on this provision, (French) citizenship status has been interpreted by judicial courts as a necessary condition for the franchise, a point examined in greater details in section 1.3. on the electoral rights (or lack thereof) of non-citizen residents. On the other hand, it suggests that citizenship does not constitute a sufficient condition and points to a number of qualifications. The explicit reference made to citizens of “either sex” can only be understood against the background of an earlier qualification reserving the right to vote to male citizens. In spite of the fact that the ‘universal’ suffrage was formally extended to women in 1944 and that levels of political participation between men and women, as measured by turnout, have largely converged over the past fifty years, inequalities in female political representation have persisted to this date. In 2008, an amendment to the Constitution introduced the principle of “equal access to elected offices and posts for men and women”, thereby complementing the principle of formal equality with the long-term aim of achieving equal descriptive representation.¹ Besides, Art. 3 introduces restrictions on grounds of on age, mental disability and criminal offence, successively discussed in the remainder of this section.

Since 1972, the *minimum age* for voting in all types of elections held in France has been 18. In 2011, the age thresholds for candidacy rights were reduced from 23 to 18 years of age in Presidential, Legislative and European Parliament elections, and from 30 to 24 years of age for elections to the Senate.

Since 2007, adults who have been placed under *guardianship or curatorship* by a final decision of the court are no longer automatically deprived of their right to vote. When ordering or renewing a measure of guardianship or curatorship, the judge must rule on the retention or abolition of the right to vote of the protected person.² Unlike voting rights, the candidacy rights of adults who were found legally incapacitated by a final decision of the court remain automatically

¹ Révision constitutionnelle du 23 juillet 2008, Préambule et Article 1^{er}.

² Code électoral, Art. L5.

suspended. According to estimates,³ up to 400,000 adults recovered the right to vote as a result of the 2007 legislative reform, which came into force in 2009.⁴ Furthermore, the OSCE/ODIHR Assessment Mission for the 2012 national legislative elections found that significant efforts had been undertaken to facilitate access to polling stations for disabled persons when compared with earlier elections, although no special means were provided for visually impaired voters who could thus not vote in secrecy.⁵

Unlike other EU countries that do not impose any legal constraints on prisoners' electoral rights (e.g. Ireland, Sweden and Croatia), France *disenfranchises specific categories of criminal offenders* according to the nature of the crime. Since 1995, a felony or a misdemeanour may be punished by the forfeiture of the right to vote/to be elected only where the law so provides.⁶ Moreover, disenfranchisement does not follow automatically from the conviction: instead, it is an additional penalty that depends on a judicial decision. Furthermore, forfeiture of rights may not exceed a maximum period of ten years in the case of a sentence imposed for a felony and a maximum period of five years in the case of a sentence imposed for a misdemeanour.⁷ In addition, active suffrage may be suspended for a period of three years following the date of a final decision of the Court, for those candidates who were found ineligible because their "fraudulent activities affected the integrity of the election."⁸

This fairly liberal framework notwithstanding, the electoral participation of prisoners has been marginal, partly because of an extremely cumbersome registration procedure and the lack of appropriate voting methods. According to figures of the Ministry of Interior, hardly more than 1,000 prisoners actually exercised their right to vote in the 2012 legislative elections, an insignificant figure when compared with the total number of detainees in France, which amounted to 67,000 people in 2010, only 1,643 of whom were barred from voting.⁹

1.2. The Voting rights and political representation of non-resident citizens

While the enfranchisement of non-resident citizens seems well on its way to becoming a global norm (Vathi and Collyer, 2005), France stands out for granting its expatriates not only the right to vote from abroad, but to do so for their own representation, both in the national Parliament and in the Consular administration of their constituency of residence. Through successive reforms of the Constitution and of the Electoral Code as well as a series of government decrees, the legislator sought to achieve two aims. On the one hand, the simplification of the registration procedure

³ In Le Monde, 'Les handicapés mentaux commencent à user de leur droit de vote', by Anna Benjamin, 20 April 2012.

⁴ OSCE/ODIHR Election Assessment Mission (2012) Final Report, Republic of France Parliamentary Elections (10 and 17 June 2012), p. 21.

⁵ Prisoners can either vote by proxy or ask for a one-day absence authorisation in order to exercise their right to vote in person. In the 2012 legislative elections, 751 prisoners voted by proxy and 334 obtained temporary absence authorisations (OSCE/ODIHR Election Assessment Mission (2012) Final Report, Republic of France Parliamentary Elections (10 and 17 June 2012), p. 7.).

⁶ Code Pénal, Art. 131.10 and 132.21.

⁷ Code Pénal, Art. 131.26.

⁸ Code électoral, Art. L45.1, in application of Art. L118-1 and L118-3 and LO 136 1 and LO 136-3.

⁹ OSCE/ODIHR Election Assessment Mission (2012) Final Report, Republic of France Parliamentary Elections (10 and 17 June 2012), p. 25.

together with the multiplication of voting methods contributed to facilitate the political participation of expatriates. Today, non-residents can choose between several methods for casting a ballot from their country of residence, some of which, such as electronic or postal voting, are not available to citizen residents. On the other hand, the establishment of separate constituencies in Parliament divided by geography has strengthened their political representation. Besides enjoying special representation through reserved seats in the Senate and the National Assembly, their interests are also represented in the executive branch of government, through a democratically elected consultative body, the *Assemblée des Français de l'Étranger* (AFE), and a Secretary of State, the *Secrétariat d'Etat aux Français de l'étranger*, both located within the Ministry of Foreign Affairs.

Under the Third Republic (1871-1940), residence in a French municipality was a necessary condition to the franchise in all types of elections. This requirement was weakened in 1913, when citizens abroad were granted the right to retain residence status in a French municipality, thereby no longer automatically losing their electoral rights when moving abroad. Despite the fact that the franchise remained formally dependent upon residence in France, expatriates could nonetheless exercise their right to vote by returning to the commune where they had met their military duties. This weak concession made to expatriates contrasted sharply with the comparatively generous franchise offered to French citizens living in Algeria and in the Colonies, who could vote in all elections, elect their own representatives at the Chamber of Deputies and were guaranteed reserved seats in the Senate.¹⁰

The situation evolved considerably in the aftermath of WWII, when the contribution of expatriates to the resistance and liberation struggle was rewarded in two ways. Firstly, the 1946 Constitution of the Fourth Republic guaranteed them political representation through the Senate, a provision that was reiterated in the 1958 Constitution of the Fifth Republic.¹¹ Initially they were allocated three seats based on geographic criteria: one each for Europe/Africa, Asia/Oceania and America. The access to independence of colonies and protectorates mechanically increased the population of French residing 'abroad' as well as their geographic dispersion. As a result, the number of seats and corresponding electoral districts kept evolving until 1982, when the number of Senators was increased to twelve and the principle of geographic division was abandoned. Secondly, a coalition of associations which claimed to represent the '*forces vives*' of the expatriate community obtained the creation of the High Council of French Abroad, (HCFE) a consultative body placed under the remit of the Ministry of Foreign Affairs, then directed by Robert Schumann. However, the right to vote and to stand as candidate in HFCE elections was reserved to members of one of the founding associations, while senators representing French Abroad were in turn nominated by the HFCE, thus severely curtailing the democratic legitimacy of both institutions.¹²

¹⁰ A more elaborate discussion on the highly diversified systems of administration, conditions of access to the franchise, and modes of representation in the French Empire goes far beyond the scope of the present report.

¹¹ Constitution de 1958, art. 24.

¹² For a more detailed historical overview of the external franchise in France, see Collard, S. (2013), 'The expatriate vote in the French presidential and legislative elections of 2012: a case of unintended consequences', *Parliamentary Affairs*, 66 (1), pp. 213-233, and Garriaud-Maylam, J. (2010) 'Un pays pionnier. La représentation politique des expatriés en France'. In Dufoix, S., Guerassimoff, C. and De

To a considerable extent, the introduction of reserved seats in the upper house and the creation of the High Council set a path whereby expatriates would be considered as a distinct constituency, whose interests should be represented through separate institutions. But paradoxically, the latter were established prior to the extension of the suffrage to non-residents, thereby institutionalising a system of *political representation without representativeness*, some aspects of which have persisted to this date.

In 1976, under the presidency of Valérie Giscard d'Estaing, the residence requirement restricting the franchise in presidential elections and national referendums was finally waived. This provision was extended one year later to the elections of representatives to the European Parliament. Accordingly, expatriates were able to cast a ballot in person at embassies or consular posts for the first direct elections to the European Parliament, which were held in 1979, as well for the 1981 Presidential elections which saw the victory of the Socialist party's leader François Mitterrand. In this context, the voting system for the elections of HFCE Members and Senators increasingly seemed an anomaly. A series of reforms carried out between 1982 and 2013 sought to address what was widely seen as a democratic deficit, which could not be reconciled with the principle of universal suffrage. By 2014, the representation of French citizens abroad had been profoundly transformed. As figure 1 shows, non-residents are currently entitled to vote from abroad through universal suffrage in five types of elections. They may also vote in legislative elections at local and regional levels, although they must, in order to do so, be registered as a resident in a French municipality and return there to cast a ballot on the day of election or vote by proxy (Cf. Section 2.1).

Tinguy, A. (eds) *Loin des yeux, près du cœur: Les Etats et leurs expatriés*, Paris, Presses de la Fondation Nationale de Sciences Politiques, pp. 105–127.

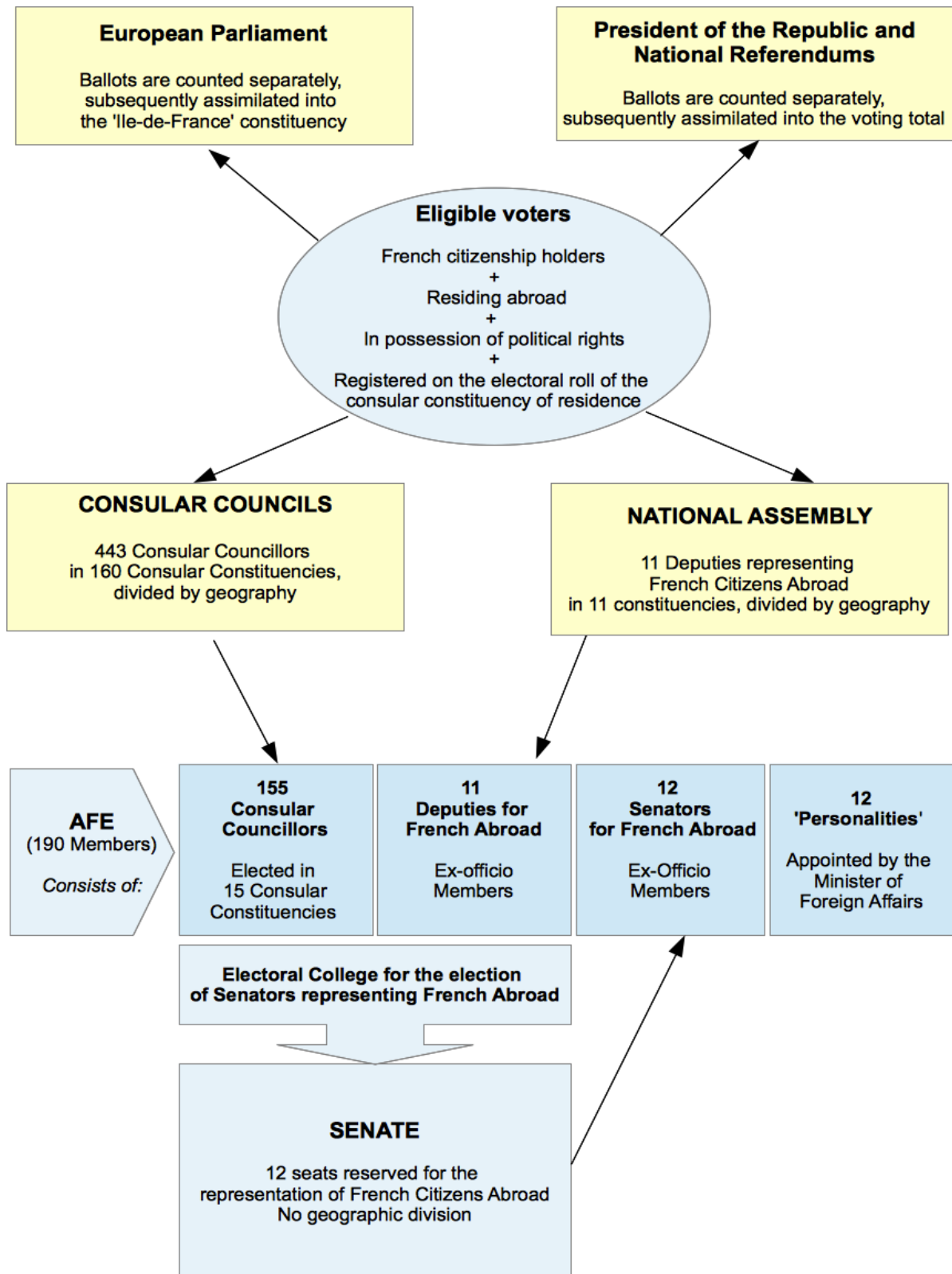


Figure 1: Voting rights and mode of representation of French expatriates (2014)

In Presidential elections and national referendums, external ballots are counted separately and subsequently added to the voting total. In European elections, they are assimilated into the results of the ‘Ile-de-France’ constituency (cf section 2.4).

In 2008, as part of a broader package of Constitutional reforms, non-residents were granted the right to directly elect their own representatives in the lower House, that is to say the National Assembly.¹³ Eleven geographically divided constituencies were created according to the demographic distribution of expatriates registered on consular electoral rolls throughout the world at the time the reform was made.¹⁴ Hence, their geographic size varies greatly, from Benelux countries alone in the 4th constituency to an eclectic grouping a 50 countries ranging from Azerbaijan to New-Guinea in the 11th constituency. Other EU Member States such as Croatia, Portugal or Italy purposively created external constituencies aggregating a far greater number of voters than domestic ones in order to limit the potential electoral impact of expatriate voting. By contrast, France stands out for having a similar number of registered voters per seat for the domestic and external electorate.¹⁵

Since 2013, expatriates are also entitled to elect the Members of Consular Councils in the Consular constituency where they reside, an institution that, in the best of my knowledge, has no equivalent in other countries. Consular Councils consist of one to six councillors who are elected in each of the 160 Consular posts or diplomatic missions with a consular constituency. Their purpose is to assist the administration by issuing an opinion on all matters of interest to French citizens residing within the constituency.¹⁶ With barely 16% of registered voters who cast a ballot, the first elections of consular councillors which took place on 25 May 2014 were marked by a remarkably low turnout, despite the broad range of voting methods available, including electronic and proxy voting.

While their actual role within consular administrations is ill-defined, councillors, who are elected through universal suffrage, also serve the purpose of boosting the democratic credentials of the two main representative institutions of expatriates: the former HCFE, which was relabelled *Assemblée des Français de l'Etranger* (AFE) in 2004, and, albeit indirectly, the Senate.

The AFE is a consultative body affiliated to the Ministry of Foreign Affairs, the official aim of which is to “represent French Citizens Established Abroad, act as their spokesperson and defend their rights and interests.”¹⁷ The Assembly is presided by the Minister of Foreign Affairs and consists of 190 Members:

¹³ Loi n° 2013-659 du 22 juillet 2013 relative à la représentation des Français établis hors de France, Art. 6 to 13.

¹⁴ The list of constituencies for the representation of French Abroad as of June 2014 can be consulted at <http://www.elections-legislatives.fr/circonscriptions/099.asp#lis> (accessed on 2 June 2014).

¹⁵ “Keeping Pandora’s box Half-Shut: A Comparative Inquiry into the Institutional Limits of External Voting in EU Member States.” (With Hutcheson, D.) in *Democratization*, special issue on Voting Rights in the Age of Globalisation, edited by Grotz, F., and Caramani, D. (under review).

¹⁶ Loi n° 2013-659 du 22 juillet 2013 relative à la représentation des Français établis hors de France, Art. 3.

¹⁷ AFE website, available at <http://www.assemblee-afe.fr/-qui-sommes-nous-.html> (accessed on 25 April 2014).

- 155 delegates directly elected by Consular Councillors in 15 constituencies, divided by geography;¹⁸
- 23 Members of Parliament (12 Senators and eleven MPs representing French citizens abroad), who are ex-officio members;
- 12 'Personalities' nominated by the Minister of Foreign Affairs on the basis of their "expertise in expatriation-related matters"¹⁹.

Since 2013, Senators are elected for a six-year term by an electoral college consisting of those representatives who are directly elected by non-residents through universal suffrage, that is to say 443 consular councillors and eleven MPs (cf. figure 1).

By way of conclusion, it is also worth mentioning that expatriates are also represented through the Secretary of State in charge of French Abroad, established in 2011 under the Presidency of Nicolas Sarkozy and located within the Ministry of Foreign Affairs.

1.3. The persisting exclusion of third country residents

France does not extend the franchise to non-citizens beyond the requirements derived from EU law.

The persisting exclusion of long-term residents may seem particularly puzzling in a country which established as a Constitutional principle already in 1793 a right to French citizenship for "every alien who has attained the age of twenty-one, has been domiciled in France for one year, and lives from his labour".²⁰ The Socialist party has officially supported the enfranchisement of long term residents in local elections since 1981, when it was included in François Mitterrand's list of '110 propositions pour la France'²¹ during the presidential campaign which saw the victory of the left for the first time since the establishment of the Fifth Republic. However, the reform was never carried out and there is little indication that François Mitterrand ever considered it a priority, either during his first term in power (1981-87), or during his second one (1988-95).

The promise of enfranchising all third country nationals who could document five years of lawful residence in France was taken up again in 2012 by the centre-left candidate François Hollande in his '60 Presidential engagements'. In spite of the Socialist leader's comfortable win over his predecessor Nicolas Sarkozy, the reform

¹⁸ The map of electoral constituencies for AFE and Consular councils elections can be consulted at http://www.diplomatie.gouv.fr/fr/IMG/pdf/Elections_2014-Decoupage_mondial_par_circonscription_AFE_cle43efb2-1.pdf, (accessed on 1 June 2014).

¹⁹ AFE website, available at <http://www.assemblee-afe.fr/-qui-sommes-nous-.html> (accessed on 25 April 2014).

²⁰ Constitution de l'An I, 24 juin 1793. The full article reads as follows : "The following are admitted to exercise the rights of French citizenship:

Every man born and domiciled in France, fully twenty-one years of age;

Every foreigner, fully twenty-one years of age, who, domiciled in France for one year: And lives there by his labor, Or acquires property, Or marries a French woman, Or adopts a child, Or supports an elderly person; Finally, every foreigner who is considered by the legislative body to be deserving of being treated humanely."

²¹ François Mitterrand's 110 propositions pour la France can be consulted at <http://www.lours.org/default.asp?pid=307>, (accessed on 1 June 2014).

seems unlikely to come about before the end of his term in 2017, for a combination of mutually reinforcing legal and political reasons. First extending the local franchise to long-term residents would require an amendment to the Constitution, which could be done in one of two ways: on the one hand, the current government could seek to change art. 3 through parliamentary means – which would require the support of at least 75% of MPs and Senators. On the other hand, the President could call for a national referendum, which he is unlikely to do in an increasingly volatile and polarised political context. The fact that the Constitution of the Fifth Republic has been modified 24 times since 1958 shows that the legal barriers are by no means insurmountable.²² But the seemingly irresistible ascent of the Front National in the 2014 municipal and European Parliament elections combined with the absence of a cross-party consensus on the issue suggest that the granting of voting rights to third country residents will remain unheeded in the foreseeable future.

1.4. The electoral rights of EU citizens

As argued in the previous section, Art. 3 of the 1958 Constitution restricts electoral rights to French citizens. Hence, the enfranchisement of non-national EU citizens required a Constitutional amendment, which was adopted three months after the Maastricht Treaty was ratified, in April 1992. Art. 88.3, which was then added to the existing Constitution, reads as follows:

“Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France. Such citizens shall neither hold the office of Mayor or Deputy Mayor nor participate in the designation of Senate electors or in the election of Senators. An Institutional Act passed in identical terms by the two Houses shall determine the manner of implementation of this article.”

However, it is not until 1998 that EU Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals was transposed into French Law. In accordance with the Constitutional Amendment mentioned above, non national EU citizens are neither allowed to run for the post of Mayor, nor to vote in the (indirect) election of Senators. In 2003, they were however granted the right to vote in local referendums.

EU directive 93/109/EC of 6 December 1993 was transposed into French law in 1994. Since then, non-national EU citizens residing in France may choose to participate in the election of the representatives of France to the European Parliament under the same conditions as French voters²³.

²² The complete list of Constitutional amendments and reforms between 1958 and 2008 can be found at <http://www.ladocumentationfrancaise.fr/dossiers/revisions-constitution-cinquieme-republique/index.shtml> (accessed on 1 May 2014).

²³ Loi n° 94-104 du 5 février 1994 relative à l'exercice par les citoyens de l'Union européenne résidant en France du droit de vote et d'éligibilité aux élections au Parlement européen.

Art. 23 of the Act No 77-729 on the election of representatives to the European Parliament granted external voting rights to expatriates under the same conditions as in Presidential elections.²⁴ This disposition, however, was abrogated in 2003, as a result of a reform of the voting system that divided the single electoral district for the whole country into eight interregional constituencies.²⁵ While French citizens established in another EU Member States retained the possibility to vote in their country of residence, those residing in third countries were left with no alternative but to vote by proxy or return to France to cast a ballot in the municipality where they are registered as voters on the day of election. In 2011, the right to vote from abroad in EP elections was reintroduced and the decision was made to assimilate the external ballots into the voting total of the Ile-de France constituency.

The system of assimilated representation, which was applied for the first in the 2014 elections, may soon be replaced by a system of special representation along geographic lines, similar to the one that was introduced in the National Assembly in 2008. A bill, currently under discussion in the Senate, proposes to create an additional district with two seats for the representation of expatriates in the European Parliament, where one seat would be allocated to “French expatriates residing in the European Union” and another to “French expatriates residing in third countries”.²⁶

²⁴ Loi n° 77-729 du 7 juillet 1977 relative à l’élection des représentants au Parlement européen.

²⁵ loi du 11 avril 2003 relative à l’élection des conseillers régionaux et des représentants au Parlement européen.

²⁶ Proposition de loi N°330, relative à l’élection de représentants des Français de l’étranger au Parlement européen, 30 January 2014, available at <http://www.senat.fr/leg/pp113-330.pdf> (consulted on 1 May 2014).

2. Exercising Electoral Rights

This section describes the procedures of electoral registration, the range of voting methods, and the eligibility criteria delimiting the right to stand as candidate for the three category of voters who are entitled to participate in all or selected types of elections held in France: citizen residents, non-resident citizens, and EU citizens.

2.1. Electoral Registration: becoming a voter in French elections

Residence status is a necessary condition for registration on the electoral roll of a French municipality (in the cases of ‘citizen residents’ and ‘EU citizen residents’) or of a French Consulate (‘in the case of ‘French citizens abroad’). In turn, electoral registration is an essential prerequisite to the franchise in all types of elections. In this context, the administrative definition of residence has been stretched far beyond the sociological understanding of the term, partly in the name of the principle of democratic inclusion. Whilst this section focuses on the mode of electoral registration for the three aforementioned categories of voters, it is worth noting that a variety of ‘peculiar cases’, who taken together come to represent a large segment of the French electorate, do not fit easily into these ideal-types. For example, the law provides for alternative registration procedures to address the inherent difficulty of establishing the residence status of a variety of citizens ranging from, watermen, bargemen but also homeless persons.²⁷ The administrative treatment of persons officially categorised as “gens du voyage”, a population whose size and socio-demographic characteristics²⁸ are hard to evaluate in a country vehemently opposed to ethnic monitoring, is also worth mentioning. Since 1969, they may register as voters in the so-called ‘commune de rattachement’ to which they have been affiliated for a minimum period of three consecutive years.²⁹ This discriminatory treatment, however, has been widely criticised. In 2012, the three-year residence requirement was found to violate the principle of equality of all citizens and hence abrogated by the Constitutional Council.³⁰ A bill profoundly revising the administrative treatment of these populations, proposed by the Green Party (EELV), will be discussed in Parliament later this year.

The Municipal Electoral Registry of Citizen Residents

In the absence of a centralised registry at national level, electoral rolls are administered and updated every year by municipal authorities. The procedure is active

²⁷ Code électoral, Art. L15 and L30.

²⁸ According to estimates, there are around 400,000 « gens du voyage » currently residing in France. In *Le Monde*, « Petit lexique à l’égard des Tsiganes, Roms, Gens du Voyage », 17 October 2012, available at http://www.lemonde.fr/societe/article/2012/10/17/petit-lexique-des-tsiganes-roms-gens-du-voyage_1768945_3224.html (last accessed 1 June 2014).

²⁹ Loi n° 69-3 du 3 janvier 1969 relative à l’exercice des activités ambulantes et au régime applicable aux personnes circulant en France sans domicile ni résidence fixe, Art. 10.

³⁰ Commentaire du Conseil Constitutionnel, Décision n° 2012-279 QPC du 5 octobre 2012, available at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2012279QPCccc_279qpc.pdf (last access 1 June 2014).

registration, that is to say voters must take the necessary measures, as specified in the Electoral Code, to register on the electoral roll. Since 1997, however, this principle no longer applies to citizens reaching 18 years of age, who are automatically registered on the electoral roll of their municipality of residence. Besides, registration is formally mandatory, although the law does not specify any penalty in case of non-compliance.

Eligible voters may choose to be registered on the electoral roll of their municipality of official domicile, of a municipality where they have been paying local taxes for the last five consecutive years, or of their municipality of habitual and continuous residence for the last six consecutive months prior to election day.³¹ The application must be made in person or sent by mail to the relevant municipality before December 31 of the year preceding the election, except for selected categories of persons who between the official closing date and the day of election either reached 18 years of age, or acquired French citizenship through naturalisation, or recovered their voting rights which had been suspended by a final Court decision.³²

The complementary Electoral Rolls of non-national EU citizens

European citizens who intend to exercise their right to vote in France must also register at their municipality of residence, which compiles, in addition to the general registry, two complementary electoral rolls reserved to this category of voters: one for municipal elections and the other, for European Parliament elections. As for citizen residents, the application must be made in person or sent by mail to the relevant municipality before December 31 of the year preceding the election.

Since 2013, a growing number of local governments have introduced the possibility to register electronically, through the municipality website. In support of their application, EU citizens must fill in a form and provide an Identity Document (either a passport or an identity card, which must be either valid or expired for no more than one year) and a proof of residence in the municipality where they intend to vote.

The Consular Electoral Registry of French citizens abroad

There is no centralised electoral registry for non-residents. Instead, voters must register on the consular electoral roll compiled and administered by the Consulate in charge of the electoral district where they reside. Since 2011, those who are already registered on the registry of 'French Citizens established out of France' are automatically added to the consular electoral registry corresponding to their district of residence. In addition, the Electoral Code provides that they may choose to be registered on the electoral roll of a French *commune*, which may be the municipality of birth, the municipality of last domicile, the municipality of last residence (for at least six months), the municipality in which their spouse is registered as voter, the municipality in which one of their ascendants was born or the municipality in which a relative up to the fourth degree of kinship is registered.³³

³¹ Code électoral, Art. L11, L11-1 and L11-2.

³² Code électoral, Art. L. 30 to L35.

³³ Code électoral, Art. L12.

Despite the fact that expatriates cannot cast a ballot in local and regional elections from abroad, they are nonetheless entitled, since 1982, to vote either by proxy or by returning to the municipality where they are registered as voters on the day of election.

2.2. Voting methods: Casting a ballot in French elections

The main method for casting a ballot in all types of elections held in France is at a specified polling station either in the municipality where the voter is registered (in the case of residents) or at the consular post of their constituency (in the case of non-residents).

The only alternative for citizens who are temporarily absent from the constituency where they are registered as voters on the day of election is to vote by proxy.

Proxy voting was introduced in 1975 to replace mail voting, which was widely seen as inconvenient and unsafe. As a result of a reform carried out in 2003 voters who intend to vote by proxy no longer have to provide a sworn statement certifying his/her temporary absence on the day of election. The current procedure is as follows: the voter designates the person who will vote on his/her behalf, who must be registered on the electoral registry of the same municipality (or consular constituency in the case of non-residents). The number of proxy votes is limited to one per proxy voter, or two if at least one of the votes is cast on behalf of a non-resident citizen.³⁴ This method of casting a ballot is available in all types of elections held in France, to both residents and non-residents.

Because of the absence of special polling stations in prisons, hospitals, or nursing homes, proxy voting is the only method available to large sections of the electorate. The inexistence of alternative voting methods for citizens who are temporarily away on the day of election together with the introduction of a simplified procedure have turned proxy-voting into an increasingly popular voting method in France. According to the Ministry of Interior, proxy ballots came to represent 4.7% of the voting in the second round of the 2007 presidential elections, compared to 3.2% in 1995.³⁵

In order to guarantee equal access to the ballot to non-residents who may have to travel long-distance in order to reach the polling station of the consular post of their constituency, the legislator introduced the possibility to vote by mail or electronically in the latest national legislative elections which were held in June 2012. Electronic voting is also available for voting in the elections of Members of consular councils, but not in presidential elections or national referendums.

2.3. The passive suffrage: standing as candidate in French elections

³⁴ Code électoral, Art. L71 to L78.

³⁵ Charpentier, A., Coulmont, B. and Gombin, J. (2014). 'Un homme, deux voix : le vote par procuration', in *La vie des Idées*, available at <http://www.laviedesidees.fr/Un-homme-deux-voix-le-vote-par.html> (accessed on 30 April 2014).

We have to distinguish between those conditions of eligibility applying to all types of elections held in France and those applying to specific types of elections only.

Minimum requirements

In order to be eligible, a prospective candidate, must:

- *Be a French citizen*, with the exception of municipal and European Parliament elections, where nationals of another Member State of the European Union may stand as candidates;³⁶
- *Be at least 18 years of age on the day of election*, except for the (indirect) elections to the Senate, where candidates must be at least 24 years of age (cf. Section 1.1. on minimum age requirements);
- *Be in full possession of their political and civil rights* (cf. Section 1.1. on disenfranchisement on grounds of criminal offence and mental disability);
- Have met his/her military duties. Since compulsory military service was abrogated in 1997 under the Presidency of Jacques Chirac, prospective candidates must have attended a one-day course, the *journée défense et citoyenneté* (JDC), formerly known as the *journée d'appel de préparation à la défense* (JAPD). Attendance is mandatory for all French citizens, including expatriates.³⁷

Residence requirements in selected types of elections

There are no restrictions based on past or present residence for running as candidate in Presidential and national legislative elections. Nor is there a residence requirement for active suffrage in the elections of eleven seats reserved to the representation of French Abroad: unlike voters, candidates are not required to reside in the constituency they intend to represent in the National Assembly.

In European elections non-national EU citizens who wish to run as candidates must be resident in France for at least six months prior to the day of election. However, they do not have to reside in the inter-regional constituency where they stand. Besides, in 2003, the registration procedure for EU candidates wishing to run in EP elections in France was simplified. Since then, a candidate is no longer required to submit an official statement delivered by relevant authorities in his/her country of origin certifying that he/she enjoys his/her political rights. Instead, they must only submit a sworn statement that they are in full possession of their political rights in their EU Member States of origin,³⁸

In regional and local elections, the right to stand as candidate is subject to a residence requirement. Candidates must either:

- (1) be registered as voter in the municipality where the election is held, or

³⁶ Code électoral, Art. L228 and LO228-1.

³⁷ Further information on military obligations in France can be found on the official website of the French Public Administration at <http://vosdroits.service-public.fr/particuliers/F871.xhtml> (accessed on 15 May 2014).

³⁸ Loi du 16 décembre 2013 transposant la directive 2013/1/UE du Conseil du 20 décembre 2012 modifiant la directive 93/109/CE en ce qui concerne certaines modalités de l'exercice du droit d'éligibilité aux élections au Parlement européen pour les citoyens de l'Union résidant dans un Etat membre dont ils ne sont pas ressortissants.

- (2) if the person does not reside in the constituency where the election is held, he/she may still be entitled to stand as candidate provided that he/she is registered as a (local) tax payer, or
- (3) the person can document the fact that he/she should have been registered as a local taxpayer on the first calendar day of the year preceding the election. In municipalities with more than 500 inhabitants, the proportion of non-resident municipal councillors may not exceed one fourth of the council.

The same residence conditions apply to non-national EU citizens.

It should be noted that non-residents may also run as candidates, provided that they are registered in the electoral registry of the municipality where the election is held, which may be either the municipality of birth, the municipality of last domicile, the municipality of last residence (for at least six months); the municipality in which their spouse is registered as voter, the municipality in which one of their ascendants was born, or the municipality in which a relative up to the fourth degree of kinship is registered.³⁹

Additional requirements in specific types elections

The Electoral Code specifies an exhaustive list of professional activities that are regarded as incompatible with holding an elected office. Some professional qualifications, such as those prohibiting military personnel from holding an elective mandate, apply to all types of elections, while others concern specific types of elections only. Over the past fifteen years, the legislator has sought to restrict multiple office holding, a widespread practice in France that has been widely seen as an impediment to the renewal of political elites and to the election of persons from sections of the electorate who are underrepresented in political institutions. In January 2014 the current Socialist government passed new legislation prohibiting MEPs, Deputies and Senators from holding a regional or local executive mandate, in spite of the fierce opposition of a sizeable minority of its own party backbenchers.⁴⁰

Of particular interest for the present report is the fact that there are no further restrictions on the candidacy rights of citizens who hold multiple nationalities or who have acquired French citizenship through naturalisation. The provision of the 1889 nationality law which provided that naturalised citizens could not stand as candidates in French elections for a period of five years following the date of their naturalisation was abrogated in 1972.⁴¹ However, the electoral code stipulates that French citizens who are employed in an international organisation by a foreign state are not eligible for the posts of Deputy and Senator.⁴² Finally, elections for the President of the Republic are restricted to candidates who, in addition to fulfilling the conditions listed above, are of “good character” (*font preuve de dignité morale*), a requirement that does not apply to other types of elections.

³⁹ Code électoral, Art. L12, (Cf. Section 2.1 of the present report on ‘Electoral registration procedures’).

⁴⁰ Loi organique n° 2014-125 du 14 février 2014 interdisant le cumul de fonctions exécutives locales avec le mandat de député ou de sénateur; Loi n° 2014-126 du 14 février 2014 interdisant le cumul de fonctions exécutives locales avec le mandat de représentant au Parlement européen.

⁴¹ Loi n° 73-42 du 9 janvier 1973 complétant et modifiant le code de la nationalité française et relative à certaines dispositions concernant la nationalité française.

⁴² Code électoral, Art. LO143.

Conclusion

This report gave an overview of the conditions of eligibility and rules of access to electoral rights in France for citizen residents, non-citizen residents and non-resident citizens, as of 2014.

The first section discussed enduring qualifications to the principle of universal suffrage for the default category of citizen residents, on grounds of age, mental disability or criminal offence. Subsequently, it examined the franchise of non-resident citizens and deciphered the idiosyncratic and somewhat complex mode of representation of expatriates, who are entitled to vote for their own representatives within the National Assembly (MPs for French Abroad constituencies) as well as in the Consular administration of the extra-territorial constituency where they reside (Consular councillors). Finally, it discussed the persisting exclusion of third country residents from the local franchise and reviewed the electoral rights of EU citizens in municipal and EP elections.

The second section shifted the focus away from eligibility to the procedures regulating access to electoral rights. It examined the modes of electoral registration for each category, the voting methods available to eligible voters, and the rules of exercise of active suffrage, in all types of elections held in France.

The striking contrast between a comparatively generous external franchise and the absence of local voting rights for long-term residents may be interpreted in one of two ways. Some may understand it as a symptom of a resurgent ethnic nationalism, exemplified by the growing success of the radical right party Front National in recent electoral competitions, chiefly the 2014 municipal and European Parliament elections. However, it could also be read as a reassertion of the Republican principle of equality of all citizens, which provides them with equal access to the ballot irrespective of their place of residence and encourages resident aliens to become fully-fledged citizens through naturalisation laws that have remained relatively inclusive compared to European standards.⁴³

The purpose of this report, however, has been essentially descriptive. In order to fully understand the relationship between the two, one must carefully examine the changing motivations and behaviours of a variety of stakeholders who have been involved in the process of profoundly redrawing the boundaries of the demos in France over the past three decades.

⁴³ Cf. CITLAW indicators of the EUDO Observatory on Citizenship, available at <http://ind.eudo-citizenship.eu/acit/topic/citlaw> (accessed on 30 April 2014).

