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# REPORT ON POLITICAL PARTICIPATION OF MOBILE EU CITIZENS: SPAIN

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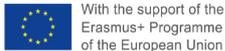
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# Report on Political Participation of Mobile EU Citizens

## Spain

Ángel Rodríguez<sup>1</sup>

### Abstract:

In Spain, EU citizens enjoy the right to vote in and stand for European Parliament and local elections. Furthermore, Spain has a number of bilateral agreements with third countries that allow nationals of those countries who are resident in Spain to vote in the Spanish local elections. Non-citizen residents have to register to be able to participate in the elections held in Spain. Spanish citizens who are permanently resident abroad may vote in all elections held in Spain, with the exception of local elections. Non-resident Spaniards are automatically registered to vote, however have to apply to receive a ballot paper; this is called the ‘begged vote’ system. The two main obstacles to the electoral participation of EU citizens in Spain are the voter registration procedure faced by non-citizen residents, and the aforementioned ‘begged vote’ system for non-resident Spanish citizens. This report suggests that an important facilitator would be to repeal these two policies.

### El extracto:

En España, los ciudadanos europeos tienen derecho al sufragio activo y pasivo tanto en las elecciones locales como en las elecciones al Parlamento Europeo. Además, España ha ratificado una decena de acuerdos bilaterales con terceros Estados que permiten a los nacionales de estos países residentes en España votar en las elecciones locales españolas. Los residentes no ciudadanos deben de inscribirse en el registro oficial para participar en las elecciones. A su vez, los ciudadanos españoles que se encuentran permanentemente residiendo en el extranjero, pueden votar en todas las elecciones que se celebran en España, exceptuando las elecciones locales. Sin embargo, aunque los españoles no residentes se hallen inscritos automáticamente en el registro, están obligados a solicitar la papeleta necesaria para efectivamente ejercitar su derecho a voto; a este método se le ha denominado sistema de “voto rogado”. Por tanto, los ciudadanos europeos en España encuentran dos obstáculos fundamentales a la hora de participar en las elecciones: el procedimiento de registro que han de cumplimentar los ciudadanos no residentes, y el ya mencionado sistema de “voto rogado” para los españoles no residentes. El presente informe sugiere que el sistema electoral se vería agilizado con la derogación de ambos.

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# 1. Introduction

Non-resident citizens have the right to vote and stand as candidates in national legislative elections and European Parliament (EP) held in Spain (see Table 1). Non-resident citizens are automatically registered to vote in national and EP elections, however have to apply to receive a ballot paper. Non-resident Spanish voters may cast the ballot through personal voting at diplomatic missions and postal voting.

Resident EU citizens have the right to vote and stand for local elections held in the municipality in which they are resident. Furthermore, citizens of Norway, Bolivia, Cape Verde, Chile, Colombia, Ecuador, Iceland, New Zealand, Paraguay and Peru also enjoy the right to vote in local elections, if they can document five years of lawful residence in Spain (three years for Norwegian citizens). Non-citizen residents have to register to be able to vote in local elections. Resident EU citizens also have the right to vote and stand for EP elections. A one-off active registration is required for EU citizens to be able to cast their vote.

Table 1. Conditions for electoral rights of non-resident citizens and non-citizen residents in Spain

Type of voter	Election type	Right Voting	Right Candidacy	Automatic registration	Remote voting
Non-resident citizens	National Legislative	YES	YES	YES <sup>1</sup>	YES <sup>2</sup>
Non-resident citizens	European Parliament	YES	YES	YES <sup>3</sup>	YES <sup>4</sup>
Non-citizen residents	Local Legislative	YES <sup>5</sup>	YES <sup>6</sup>	NO <sup>7</sup>	NA
Non-citizen residents	Local Mayoral	NA	NA	NA	NA
Non-citizen residents	European Parliament	YES <sup>8</sup>	YES <sup>9</sup>	NO <sup>10</sup>	NA

In this report,<sup>11</sup> the terms ‘mobile citizens’ will be used to refer either to people who reside in Spain but do not hold Spanish nationality, hereinafter ‘non-citizens residents’ or to Spanish citizens who reside abroad, hereinafter ‘non-residents citizens’. In addition, non-citizen residents may be nationals of another EU Member State, and therefore enjoy EU

<sup>1</sup> Non-resident citizens are automatically registered, but need to apply to receive a ballot paper.

<sup>2</sup> Personal voting at diplomatic missions and postal voting are available.

<sup>3</sup> Non-resident citizens are automatically registered, but need to apply to receive a ballot paper.

<sup>4</sup> Personal voting at diplomatic missions and postal voting are available.

<sup>5</sup> Only EU citizens residing in the municipality where the election is held; Citizens of Norway, Bolivia, Cape Verde, Chile, Colombia, Ecuador, Iceland, New Zealand, Paraguay and Peru, may also vote on the basis of reciprocity agreements, who can document five years of lawful residence in Spain (three years for Norwegian citizens).

<sup>6</sup> Only EU citizens residing in the Spanish municipality where the election is held.

<sup>7</sup> A one-off active registration is required. The registration is automatically renewed for subsequent elections as long as the voter does not change his/her address of residence.

<sup>8</sup> Only EU citizens residing in Spain.

<sup>9</sup> Only EU citizens residing in Spain.

<sup>10</sup> A one-off active registration is required. The registration is automatically renewed for subsequent elections as long as the voter does not change his/her address of residence.

<sup>11</sup> Opinions and data for this report were provided by representatives of the civil society concerned with voting rights of European Mobile Citizens, namely SOHA (*Save Our Homes Axarquía*) and *Marea Granate*; a member of the Spanish central Electoral Board and the Office of the European Parliament in Spain (Barcelona). See the attached questionnaire for details.

citizenship, or third-country nationals (TCNs). Unless otherwise stated, non-citizen residents will be used to refer to EU citizens only.

Political participation of mobile EU citizens in Spain will be analysed as far as EP elections are involved, for both non-citizen residents and non-resident citizens, and also taking into account local (only for non-citizen residents) and national (only for non-resident citizens) elections. The focus of the report will be on the administrative implementation of electoral rights, covering both voting and candidacy rights, and the practical obstacles faced by non-citizen residents and non-resident citizens who want to exercise their electoral rights in Spain. Additional emphasis will be put on young mobile citizens (non-resident first time voters) and vulnerable groups (especially, for the reasons explained below, on the non-citizen residents who are ‘gerontoinmigrants’).

## 1.1 Demographic Characteristics of Non-citizen Residents and Non-resident Citizens

### *Non-citizen residents*

According to the *Instituto Nacional de Estadística* (the official administrative body that provides statistics in Spain), almost five million foreigners (legally) reside in Spain, while the total population of the country is about 47 million. It means that around 10% of the residing population does not hold Spanish nationality. Within the EU, this figure is only surpassed in absolute numbers by Germany, while this percentage is higher only in Estonia, Cyprus, Latvia, and Luxembourg.<sup>12</sup> Nearly two million foreign residents in Spain come from another EU Member State.

Both genders are almost equally represented (50.94% men, 49.05% women). Around 30% of them are under the age of 29, more than 60% are between the ages of 30 and 59, and 10% over the age of 60. Near 60% of the foreign population is concentrated in the Spanish coastal regions along the Mediterranean seaside (Balearic Islands, Murcia, Valencia and Catalonia). Only 344,806 foreign residents (only 7.2% of all foreign residents) are active workers, 39.38% of them coming from another EU Member State. The main sectors of work of non-citizen residents are tourism and commercial activities, followed by manufacturing industry, building services, and administrative services.<sup>13</sup>

The most relevant particularity of the statistics concerning foreign residents in Spain is the age of the population. In 2017, almost 450,000 non-citizen residents were above the age of 60. The number of non-citizens above the age of 60 has been increasing by 35,000 new residents per year since 1996, and surpassed half a million in 2013. Nearly 70% of this segment of the population comes from another EU Member State or an EEA country. British nationals are the most represented nationality group among sexagenarian non-citizens residents, the total number of whom is above 100,000. Non-citizens residents above the age of 60 in Spain also meet a number of characteristics that make it possible to identify them as a specific group: they are pensioners who are concentrated in a few provinces in Spain along the Mediterranean seaside, and, although formally resident in Spain, most of them systematically spend some months of the year (usually the summer) in their Member State of

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<sup>12</sup> Source: <https://ec.europa.eu/eurostat/documents/3433488/5579176/KS-SF-11-034-EN.PDF/63cebff3-f7ac-4ca6-ab33-4e8792c5f30c>

<sup>13</sup> See: [http://www.sepe.es/contenidos/que\\_es\\_el\\_sepe/publicaciones/pdf/pdf\\_mercado\\_trabajo/imt2016\\_datos2015\\_estatal\\_extranjeros.pdf](http://www.sepe.es/contenidos/que_es_el_sepe/publicaciones/pdf/pdf_mercado_trabajo/imt2016_datos2015_estatal_extranjeros.pdf)

origin. They have also been the subject of academic literature which refers to them as ‘gerontoinmigrants’.<sup>14</sup>

### *Non-resident citizens*

Around 2.5 million Spanish citizens live abroad. The numbers of men and women resident abroad are equal. Due to economic migration, the total amount of non-resident citizens has been increasing to more than one million people during the last ten years of economic recession. Almost 710,000 Spanish citizens live in another EU Member State. France is the first country of destination for Spanish citizens, with more than 250,000 Spaniards resident there, followed by Germany and the United Kingdom, with more than 150,000 resident in the former and almost 130,000 resident in the latter.

114,000 non-resident citizens resident in another EU Member State (around 16% of all non-resident Spaniards) are between 15 and 29 years of age. Those forced to migrate at a young age due to economic reasons may have started to be interested in politics only after they left the country, and will most likely vote for their first time from abroad.

## **1.2. Summary of Electoral Rights<sup>15</sup>**

Four types of elections are regularly held in Spain: elections to the European, national, and regional parliaments, and local councils. TCNs have the right to vote in Spanish local elections. Resident EU citizens enjoy passive and active electoral rights in local and EP elections. Non-resident Spanish citizens have the right to vote and stand for all elections held in Spain, except for local elections.

The *Ley Orgánica del Régimen Electoral General* (LOREG), in force since 1985 and regularly amended since then, is the general law on all electoral processes. In addition, each autonomous community (with the only exception of Catalonia) has passed its own electoral legislation, regulating the elections to their regional parliaments. The general conditions on the right to vote and stand as a candidate that are the same in all elections (regional elections included) are, however, stipulated in the LOREG, which also regulates the EP and national parliamentary elections, and the elections for the local assemblies.

In-country voters may cast their votes at a polling station situated near to their homes in the district where they are registered. If so required, citizens may also cast their ballot by postal vote which is mailed to a polling station and counted together with the votes cast at that station on the election day. Normally, schools or other facilities in public buildings are used as polling stations. Each elector must cast his or her vote in person. Handicapped people may be assisted by a person of confidence. Visually impaired people may cast their vote with Braille ballots. Proxy voting or e-voting are not permitted.

Non-resident citizens may cast their vote (except for local elections for which they are not enfranchised) by postal vote or at polling stations set up in Spanish consulates around the

<sup>14</sup> Mayte ECHEZARRETA (editor) (2005) *El Lugar Europeo de Retiro. Indicadores de Excelencia para administrar la gerontoinmigración de ciudadanos de la Unión Europea en los municipios españoles*, Granada, Comares. For further references, see the web site of the Observatory of *gerontomigrations* at Malaga University, at <http://www.gerontomigracion.uma.es>

<sup>15</sup> This section of the report is based on, and uses excerpts from, my report on *Access to Electoral Rights - Spain* to the EUDO citizenship observatory, <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=1315-Spain-FRACIT.pdf>

world. There is no separate electoral district to represent non-residents. Their votes are cast in the district to which they were previously assigned to in Spain.

Candidacy rights are, generally speaking, the same for all types of election. The rules for running as a candidate in local elections differ from those applicable to EP, national, and regional elections only in minor details (for example, those against who judicial actions have been initiated for owing a sum of money to the local government are not eligible in local elections). Resident EU citizens can stand as candidates for both EP and local elections. Non-resident citizens can also stand for all elections they are allowed to vote in (all but for the local elections). TCNs who enjoy the right to vote in local elections are, however, deprived of the right to run as a candidate.

### *Non-citizen residents*

Articles 13.2 and 23.1 of the Spanish Constitution (hereinafter referred to as CE, *Constitución Española*) establish that “only Spaniards” shall have the right to “participate in public affairs”, a broad category in which electoral rights are included. Although granted directly by the Constitution only to Spaniards, both voting rights (‘active’ and ‘passive’) can be extended to non-nationals by a law or treaty. The Constitution, however, restricts this possibility to municipal elections only.<sup>16</sup>

Since Article 13.2 CE allows that electoral rights in local elections may be granted to non-nationals “by the law”, a general provision regulating the enjoyment of such rights to non-nationals who comply with the conditions laid down by the law is constitutionally possible. However, the LOREG has not been amended to reflect this. Instead, these rights have been granted “by treaties”. The result is a number of bilateral agreements with selected countries whose nationals are entitled to vote in Spanish local elections, provided that the conditions laid down in each of these treaties are met. As a result, in addition to EU citizens, TCNs of the states with which an electoral agreement has been signed, enjoy electoral rights in local elections in Spain.

The ratification of electoral agreements with selected states started in the late 1980s, when a number of them were signed with a number of states in Europe, allowing their nationals resident in Spain to vote in local elections. The agreements became obsolete after the Treaty of the European Union (or Maastricht Treaty) entered into force in 1993 and electoral rights of EU citizens resident in another Member State became, as far as local and EP elections are concerned, a matter of EU law. The only bilateral treaty that was signed in 1980s that still in force is the one signed in 1990 with Norway.

After 1992, no additional agreements were signed for the next 15 years. In 2007, following a parliamentary decision on the matter, negotiations with non-EU countries were opened. Up until now, Spain has signed agreements with 11 third countries.<sup>17</sup> Nowadays,

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<sup>16</sup> The present wording of the Constitution in this respect comes from a constitutional amendment passed in 1992, prior to Spain’s ratification of the Treaty of the European Union (TEU), and following an opinion of the Constitutional Court which declared that EU citizens’ electoral rights as established by the TEU were beyond the reading of the Constitution which, at the time, authorised the Parliament to grant foreigners only with ‘active’ (and not ‘passive’) voting rights in local elections. After the amendment, passive voting rights were also included.

<sup>17</sup> Bolivia, Cape Verde, Chile, Colombia, Ecuador, Korea, Iceland, New Zealand, Paraguay, Peru and Trinidad and Tobago. These are, at present (plus Norway) the non-EU states whose nationals enjoy electoral rights in local elections. Electoral agreements allow their nationals who live in Spain regularly and on a permanent basis to vote in local elections, but not to stand as a candidate. Five years (three, in the case of Norway) of legal residence is required. Agreements have been signed on a bilateral basis, that is, they recognise the same rights as

resident TCNs who are nationals of one of these states (plus Norwegians) are entitled to vote in local elections in Spain.

### *Non-resident citizens*

The Constitution provides that “All Spaniards entitled to the full exercise of their political rights shall be electors and may be elected” to the *Congreso de los Diputados*, the lower chamber of the Spanish Parliament (Article 68.5 CE). Although it might be discussed whether living abroad could be constitutionally accepted as a cause for the deprivation of “the full exercise of political rights”, it is nowadays assumed that electoral rights in national legislative elections (at least to the Congress, since there is not a parallel constitutional provision for the Senate) are granted to all citizens by the Constitution, regardless of residence. Furthermore, the Constitution does not require residence in Spain as a condition to enjoy electoral rights for elections to the Spanish Parliament, the EP or regional parliaments.<sup>18</sup>

Spanish citizens who reside abroad on a permanent basis cannot vote or stand for municipal elections. The 2011 local elections were the first in which residents with the nationality of a number of third countries (see above) were given voting rights. They were also the first local elections in which Spanish citizens who permanently reside abroad were not allowed to vote or stand as candidates.

The reform of Article 2 LOREG, which was passed in 2011, established that residence in Spain (although not in a specific municipality) is compulsory either to vote or to run as a candidate in local elections. Unlike the vote of non-citizens (either EU citizens or TCNs), the vote of non-resident citizens had been politically relevant in previous local elections in some small towns. In some cases, non-resident citizens were key in deciding the outcome of elections due to the large proportion of emigrant voters (and of children or grandchildren of emigrants, thanks to the generous Spanish nationality laws). This was clearly a reason for the reform of the electoral law that took place in 2011.

Citizens who are resident abroad are represented in the EP and in national and regional parliaments under an assimilated representation scheme, since their votes are cast in the particular district to which they have previously been ascribed to (see below in section 3.1. for further details). Both the *Partido Socialista Obrero Español* (PSOE) and the *Partido Popular* (PP) – the two main Spanish political parties – have on occasions started negotiations with a view to reforming the law to establish a system of special representation for expatriates in national elections. That initiative has not yet been debated in the Spanish Parliament, and it does not seem like it will be implemented in the near future. Nonetheless, relevant associations of non-resident citizens, like the *marea granate* movement,<sup>19</sup> have publicly

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Spaniards living in the correspondent state, meeting in this way the constitutional exigency that electoral agreements must be “subject to the principle of reciprocity”. Although there is no constitutional or legal requirement in this direction, the fact that seven of the 11 states with electoral agreement in force are from Latin America, suggest that cultural and linguistic affinity is, together with the number of nationals living in Spain, an important reason to sign them.

<sup>18</sup> Residence in an autonomous community, however, is at present a prerequisite for all Spaniards living in Spain to vote or be voted in regional elections in that Community. That exigency comes from the Statutes of Autonomy of the Autonomous Communities, which enfranchise only nationals who reside in their territory for regional elections, unless they live abroad and had within the territory of the Community their last permanent address in Spain. Enfranchisement only of residents in the Community may be considered a general principle, since it is embodied in all Statues of Autonomy.

<sup>19</sup> Spanish for the “Maroon Wave” movement (<http://mareagranate.org/en>). The Maroon Wave is a social movement established by emigrants and supporters, aimed at fighting economic emigration and mirroring other “waves” which have appeared in recent years in Spain as protest movements against the economic crisis. The

advocated for the implementation of a special electoral district to represent them in the Spanish Parliament.

## **2. Non-national EU Citizens' Franchise in EP and Local Elections**

Directive 93/109/EC, regulating the electoral rights of EU citizens in EP elections, was transposed into Spanish law in 1994, when Article 210 and 210bis LOREG were amended. Directive 94/80/EC, regulating the voting rights of EU citizens in local elections, was not fully implemented until 1997, when Articles 176 and 177 LOREG were amended to grant EU citizens the right to vote and to stand as candidates in local elections.

In general terms (details are discussed below), the LOREG establishes that, to enjoy electoral rights, EU citizens have to satisfy the same conditions for franchise as those required of Spanish nationals, i.e. to have reached voting age and not to have been deprived of the right to suffrage by a judicial decision. No additional conditions or derogations are imposed on EU citizens to exercise their electoral rights in both EP and local elections. In the case of local elections, those who have been elected for the local council can legally accede to executive functions in local governments and may also be appointed as mayor by city councils.

Aside from fact that TCNs do not enjoy electoral rights to the EP, there are four main differences between their enfranchisement to local elections and the enfranchisement of EU citizens. These differences entail a lower level of enjoyment of the right to electoral participation of TCNs. Firstly, TCNs are not allowed to stand as candidates in local elections, since all bilateral electoral agreements signed up to today only concern active voting rights. Since the constitutional reform in 1992, passive suffrage can also be granted, but, until now, the constitutional requirement of “reciprocity” has prevented ratified treaties to contemplate it. Secondly, TCNs are required to be able to demonstrate a number of years of previous residence to be granted voting rights. No such a rule applies to EU citizens. All ratified treaties require five years of legal residence, with the exception of Norway, whose nationals only have to demonstrate three years of residence. Thirdly, and precisely because TCNs are allowed to vote only after a number of years of legal residence, they cannot apply directly to be included in the electoral roll at the municipality office (see below). Instead, they have to register at the Office of the Electoral Census, once they fulfill the legal residence requirement, and can provide a certification of inscription from the municipality. Finally, TCNs must refresh their application to be included in the electoral register for each local election, while EU citizens only have to do it for the first elections they vote in; their registration is automatically renewed for all subsequent elections.

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wave is labelled maroon after the colour of Spanish passports, a symbol of a forced migration. One of the key aim of the Maroon Wave is to encourage Spanish expatriates to vote.

## 2.1. Overview of Relevant Administrative Regulations

A number of resolutions passed by the Office of the Electoral Census stipulate the particularities of how EU citizens exercise their electoral rights, according to general rules established by the LOREG. The last resolutions, still in force, were published in September 2010 (concerning local elections) and May 2013 (concerning EP elections).<sup>20</sup>

## 2.2. Voter Registration

Although, as previously mentioned, the LOREG establishes that EU citizens, in general, must only meet the same conditions as nationals in order to vote, the process of registration on the electoral roll is completely different. The intricacies of registration procedure for EP or local elections, which will be jointly outlined below, are probably one of the main reasons for the low turnout of EU citizen voters, as compared to national voters.

Nationals are automatically listed on the electoral roll. Indeed, automation is one of the main principles of the system, since all nationals are included in the municipal census on the same day they get their birth certificate. Although the electoral roll is managed by another authority – the Office of the Electoral Census – the municipality sends that authority the municipal census data on a monthly basis, including in the electoral roll all new voters who have reached the age of 18 and erasing those who have deceased. If a national changes his or her residence and notifies it to the new municipality (for example, to pay local taxes or to be entitled to local social policies), the municipality will also communicate this to the Office, which will assign the national to a new polling station. If a national does not notify his or her move, he or she will continue to vote in the previous municipality. In sum, citizens only have to go to their polling station on the election day with an ID to be able to vote.

### *EP and local elections*

In contrast to national voters, EU citizens are subject to a complex procedure to register to be included in the electoral roll. The following details apply to the registration on the electoral roll for both EP and local elections.

EU citizens may apply to be listed on the electoral roll at the same time as they apply to the municipal administration to be included in the municipal census. The application to be included in the municipal census must be done in person before a civil servant in the municipal public administration. In theory, all foreign residents (EU citizens included) should register in the municipal census shortly after they move to a Spanish municipality, but often, in practice, many do not. Unregistered residents do not face many practical disadvantages. Furthermore, retired EU citizens who receive an untaxed pension from their Member State of origin (the common situation of ‘gerontoinmigrants’) are reluctant to register because they fear that the municipalities will forward their data to the Spanish Ministry of Finance (they do not; but even if they did, pensions may be exempted from taxation in Spain<sup>21</sup>).

<sup>20</sup> See *Resolución de la Oficina del Censo Electoral de 7 de septiembre de 2010* (Boletín Oficial del Estado de 13 de diciembre) and *Resolución de la Oficina del Censo Electoral de 12 de abril de 2013* (Boletín Oficial del Estado de 27 de mayo).

<sup>21</sup> Exemption is not easy to obtain, since it will actually depend of the personal situation of the taxpayer, his or her country of origin and other legal elements. See, Yolanda GARCÍA CALVENTE (2016) “Residencia y

Moreover, once an EU citizen applies to be included in the municipal census, it is must be underlined that the electoral registration procedure depends on another authority – the Office of the Electoral Census. In the best case scenario, the municipal administration will inform the EU citizen about the possibility of being included in the electoral roll and provide him or her with a form from the Office of the Electoral Census to be filled in, and, once completed, send the form on the behalf of the EU citizen to the Office.<sup>22</sup> Often, however, once the registration in the municipal census is completed, the municipal administration is not very interested in the electoral registration of the EU citizen. The main reasons for this are the following: the electoral registration, unlike the registration in the municipal census, does not entail any direct benefit for the municipal administration (e.g., it will not receive more funds for this); the municipal administration might not be sympathetic to the idea of ‘foreigners’ deciding on local matters, or it might not even want to facilitate the inclusion of new voters, whose political ideologies may be uncertain or who could potentially vote against the ruling political party in town (for instance, in case of ‘gerontoinmigrants’, who are often retired and elderly people, progressive mayors may fear potentially more conservative voters). As one interviewee put it, the whole process “depends completely on the functioning of the local administration, who is generally more interested in the registration of residents, but not voters”.<sup>23</sup>

Of course, it must be noted that there might also be a low interest in registering EU citizens as voters at the moment in which the application to the municipal census is made, because the local or EP elections may not have been called or may be scheduled to take place very far in the future. Additionally, the linguistic problems which non-Spanish-speaking EU citizens may face during the registration procedures should not be underestimated.<sup>24</sup>

However, EU citizens who are not registered on the electoral roll at the same time as they are listed in the municipal census, may do so at a later time, applying directly to the provincial branch of the Office of the Electoral Census. Registered residents are sent a multilingual communication, in Spanish and in the main European languages, from the Office of the Electoral Census, shortly after local or EP elections have been called, informing them about how to register. Interested EU citizens (but only those previously registered in the municipal census) can then proceed online or by mail to register themselves in order to be included in the electoral roll, provided that they are in possession of the foreign national identification number (*Número de Identificación de Extranjero*, or NIE).

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tributación. Especial referencia al colectivo de los gerontomigrantes” in Mayte ECHEZARRETA FERRER (coord.) *La residencia de los gerontoinmigrantes. Derechos y obligaciones de los jubilados extranjeros en los lugares europeos de retiro*, Valencia, Tirant Lo Blanch, p. 203-238.

<sup>22</sup> The form must be completed with the personal data that is already included in the municipal census (name, surname, date of birth, foreigner identity number or NIE, nationality and address in Spain) and, in addition, an official declaration of will to vote in municipal and EP elections held in Spain. The form also includes the following warning: “If you do wish to vote in Spain, you hereby accept and declare that you shall exercise your right to vote in Spain only”. It is also compulsory to inform of the constituency in the Member State of origin where the applicant was last registered as a voter. Finally the form informs the signer that “These options are permanent for as long as the European citizen resides in Spain, unless otherwise formally requested”.

<sup>23</sup> Statement by Mr. Mario Blancke, the Belgian Mayor of Alcaucín, a small village in the province of Málaga and chairman of the “Save Our Homes” association, interviewed in July 2018.

<sup>24</sup> Again, this is the common situation of ‘gerontoinmigrants’, who very often are too old to learn Spanish, a language that they do not really need (if they are fluent in English) except for their interactions with the public administration. They tend to live in English-speaking residential estates or condominiums, in which Spanish is not needed for the everyday life. A number of Spanish municipalities with a significant percentage of gerontoinmigrants have specific ‘foreigners desks’ with multilingual personnel trained to deal with non-Spanish speaking EU citizens.

Available data confirm that most EU citizens who have registered as voters did so through this later procedure and not when registering their residence at the municipality.<sup>25</sup> This tendency suggests that EU citizens are more likely to register as voters whenever an election is approaching. However, once elections have been called, interested EU citizens wanting to be registered as voters will have a relatively short period of time to do so, since the deadline for registration is no later than six months before the election day.<sup>26</sup>

The above outlined registration applies to both EP and local elections. EU citizens register to vote for both EP and local elections at the same time. Details of the single “official declaration of will” to vote in Spain are, however, slightly different and somewhat confusing in the two elections. The confusion comes from the incorrect but common belief that an EU citizen can only vote in local elections in Spain after having submitted a declaration that he or she will not to do so in his or her country of origin. That declaration is neither an exigency of Directive 94/80/EC nor of Spanish law, but nevertheless a form exists which EU citizens have to fill in to be included in the Spanish electoral census. According to Directive 93/109/EC, a declaration that the EU citizen will refrain from voting in the Member State of origin is a requirement for voting in EP elections in the state of residence. Since the Spanish registration procedure for EU citizens is the same for EP and local elections, potential EU voters – and, much worse, the Spanish electoral board as well – think that the declaration to refrain from double voting applies to both types of elections as well. Again, 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 therefore be legitimately interested in voting in the local elections of both their host and home countries.

### 2.3. Information during Election Campaigns

#### *EP and local elections*

Whenever EP or local elections are called, the Office of the Electoral Census informs potential EU citizen voters of the electoral registration procedure. The information is circulated by sending personalised letters to all EU citizens who are enrolled in the municipal census, informing them about how to proceed (see above). Letters are written in Spanish, English, and French. At the same time as these letters are sent out, all EU citizens who are already registered in the electoral roll will receive an official notification of the address of the polling station where they can cast their vote.<sup>27</sup>

<sup>25</sup> For instance, taking the case of local elections held on May 2007 in the electoral district of Málaga, and according to the INE (see [www.ine.es](http://www.ine.es)), in September 2006, before the official campaign by the Office of the Electoral Census was initiated, the figure of foreigners enrolled in the electoral census was 14,453. When that campaign came to an end, two months later, it had raised to 320,074. Although data are not updated and focused on one specific electoral district, they clearly show a tendency. See Ángel RODRÍGUEZ (2007) “Los electores comunitarios en España: dificultades de registro y propuestas de reforma en el procedimiento de inscripción en el censo electoral de los ciudadanos de la Unión Europea”, in *Revista General de Derecho Constitucional*, 4, on line at [www.iustel.com](http://www.iustel.com) (RI §400672), page 13.

<sup>26</sup> According to the information circulated by the Office of the Electoral Census concerning last local elections, the registration procedure can be initiated at any time, but it had to be completed before 30 December 2014 to be able to vote in the municipal elections held on 24 May 2015.

<sup>27</sup> This practice was praised by the European Commission, according to which Spain is the only Member State in which individual letters with information about the electoral registering process are sent to all resident EU nationals. See *Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the rights 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*, of 9.3.2012, COM(2012) 99 final, under §2.3

According to the official website of the Office of the Electoral Census,<sup>28</sup> more than 300,000 letters were sent to EU citizens and TCNs who enjoy electoral rights when last local elections (in 2015) were called. The website also provides multilingual information about the electoral rights of resident non-citizens and the registration procedure. In addition, there are a number of other websites which also provide information about electoral rights of non-citizen residents in Spain.<sup>29</sup>

Local associations of EU citizens also sponsor websites such as [www.soha.es](http://www.soha.es).<sup>30</sup> These associations are more active when local elections are called and they also hold face-to-face meetings in selected municipalities informing resident non-citizens on their electoral rights.

## 2.4. Political Parties and Candidacy Rights

EU citizens enjoy the right to passive suffrage in local and EP elections under the same conditions as Spanish citizens. That is, requirements for registering as a candidate are the same, and, in principle, the same clauses of ineligibility apply.<sup>31</sup> As a general rule, if someone is on the electoral roll and enjoys the right to vote, he or she is also entitled to stand as a candidate, regardless his or her nationality.

However, it must be emphasised that elections held in Spain are organised in multi-member electoral districts in which, with the exception of the Senate, a proportional system is applied to lists of candidates presented by political parties. Candidatures are closed, which means that voters cannot erase the names of candidates or change their position on the list. Candidates who are not sponsored by a political party, i.e. candidates on “electors’ lists”, are not allowed to enjoy the privileges that political parties lists enjoy, such as public financial aid in advance or access to the public media. In addition, electors’ lists need to be supported by a number of voters to be published. Under these circumstances, being included on a list of a political party is almost as crucial as the legal right to stand as a candidate.

Taking into account the key role played by political parties in the electoral process, it is worth mentioning that an indirect restriction to the passive suffrage rights of EU citizens in both EP and local elections was in force until 2015. The Organic Law on Political Parties (*Ley Orgánica de Partidos Políticos* 6/2002) allowed non-nationals to participate in political parties, but, until that year, only Spaniards were entitled to establish them. In 2012, the European Commission, in its report on the implementation of Directive 94/80/EC, expressed its concern about the fact that resident EU citizens could not found political parties in Spain.<sup>32</sup>

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<sup>28</sup> See: [www.ine.es](http://www.ine.es).

<sup>29</sup> This kind of information can be reached either in ‘practical life’ sections of commercial websites addressed to ‘gerontoinmigrants’, i.e. retired foreign residents, for example: <http://www.andalucia.com>; or on academic websites like <http://www.gerontomigracion.uma.es/>, or websites sponsored by consulates in Spain providing a wide range of services to the EU citizen community of a specific nationality (for British expatriates, see for example <https://www.supportinspain>).

<sup>30</sup> SOHA stands for “Save our homes Axarquía”, and is an association of non-residents facing legal problems because they decided to buy their homes in a rural district of Andalucía (Axarquía) before learning that those homes had been illegally built. They managed to raise the problem to the European Parliament and eventually negotiated an amendment to the regional land planning law with the regional government. See [www.soha.es](http://www.soha.es).

<sup>31</sup> According to the LOREG, clauses of ineligibility include members of the royal family, judges, and other high public officials.

<sup>32</sup> See the *Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the rights 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*, of 9.3.2012, COM(2012) 99 final, under §5.1.

As a result, the Organic Law on Political Parties was amended in 2015, repealing the provision which forbade non-nationals to found political parties, and replacing it with a new provision according to which EU citizens enjoy same rights as nationals.

As discussed below, the extent to which EU citizens are targeted by political parties as candidates diverges in EP and local elections.

### *EP elections*

Since Spain as a whole counts as one electoral district, the competition for being included on the ballot is nationwide. Only the top leaders of a political party, or those who have had a prominent role in the party, have a real chance. EU citizens are not usually among them. As a result, the general rule is that there are no EU citizen candidates (it must be emphasised that for the EP elections held in 2014, EU citizens were not yet allowed to found political parties, just to join existing ones). This conclusion comes from a direct analysis of candidates included in electoral lists (looking for possible non-Spanish names), since there are no official statistics on the nationality of candidates. There is, however, an exception: Mr. Florent Marcellesi, a French national, was elected as a member of the European Parliament (MEP) after being included on the electoral list of *Primavera Europea* (European Spring), a coalition of federalists, ecologists and progressive political parties, which won one seat in last EP elections. Mr Marcellesi, from EQUO, an Spanish ecologist political party, was in the second place in the electoral list and became MEP in October 2016, after the resignation of the leader of the coalition. He was the only EU citizen elected in 2015 EP elections in Spain.

### *Local elections*

In local elections, the situation is somewhat different. Political parties are more interested in including EU citizens in their electoral lists in municipalities where there is a significant percentage of EU citizen residents. In some small towns along the Mediterranean coast, resident ‘gerontoinmigrants’ are highly influential in deciding the outcome of the elections, provided that they take part in it. The inclusion of an EU citizen candidate in a prominent position on the electoral list may be crucial for encouraging other EU citizens to register and vote. Under these circumstances, political parties may target EU citizens as candidates as a way to gather supporters in such a municipality.

It is worth mentioning the case of the ex-Prime Minister of France, Mr. Manuel Valls, whose parents were Spaniards, and who, as has been officially announced, will run for Mayor of Barcelona in the upcoming local elections in May 2019, as a candidate of a civic platform sponsored by the political party *Ciudadanos*. *Ciudadanos* won the last regional elections in Catalonia and strongly opposes the independentist movement. The inclusion of Mr. Valls has been seen as a way to try to mobilise pro-European and anti-independence voters in support of anti-nationalistic candidates. It remains to be seen whether this kind of reaction against the independence movement in Catalonia will include more EU citizens as candidates, or whether the case of Mr. Valls will be an exception.

Again, there is a lack of official statistics providing data on the nationality of candidates, elected members of city councils and elected mayors. Available data from media reports suggest however that, in the 8,112 Spanish municipalities, around 80 members of city

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According to the Commission, eight Member States, Spain included, at the time were not complying with the Directive due to the restriction imposed on EU citizens in founding or becoming a member of a political party.

councils (out of nearly 70,000) and less than five mayors are EU citizens.<sup>33</sup> But, as Mr. Blancke, a Belgian national elected as Mayor of Alcaucín (2,500 inhabitants) in the last local elections held in 2011, points out, there is no association or link of any kind between elected EU citizens who have been elected as local representatives in Spain (the same can be said for any EU level association).<sup>34</sup> The British nationals is the most represented nationality group among local representatives who are EU citizens, followed by Germans, French, Italians and Belgians.

## 2.5. Turnout

### *EP elections*

There are no official statistics on the turnout of non-citizen resident voters in EP elections. The only available official data is on the number of EU citizens registered on the electoral roll (who may or may not go to the polls on the election day): in 2018, 324,259 EU citizens were registered to vote in EP elections held in Spain.<sup>35</sup> However, although the data on the registration cannot provide accurate figures on the electoral participation, academic literature suggests that it is possible to deduce a level of ‘electoral mobilisation’, since, as seen above, only EU citizens with an interest in politics register on the electoral roll. The data shows that only around 20% of non-national residents registered in the municipal census are also registered on the electoral roll. This percentage is almost at 50% in the case of EU ‘gerontoinmigrants’.<sup>36</sup>

### *Local elections*

There are no official statistics on the turnout of non-citizen residents in local elections. The only available official data is on the number of EU citizens registered on the electoral roll (who may or may not go to the polls on the election day): in 2018, 407,784 non-citizen residents were registered to vote in local elections held in Spain.<sup>37</sup> Since the registration procedure is the same for EP and local elections (see above), it is extremely difficult to say if the turnout is higher in one or the other election. However, for the reasons explained above it is very likely that, at least in those municipalities where EU citizens have been considered political targets by national parties, the turnout would be significantly higher in local elections.

According to academic surveys, the electoral mobilisation of EU citizens in last local elections held in 2015 was unusually high, mainly in municipalities with a significant

<sup>33</sup> See <http://www.gerontomigracion.uma.es/index.php?q=taxonomy/term/121&page=6>

<sup>34</sup> Statement by Mr. Mario Blancke, the Belgian Mayor of Alcaucín, a small village in the province of Málaga and chairman of the “Save Our Homes” association, interviewed on July 2018.

<sup>35</sup> Source:

[https://www.ine.es/ss/Satellite?c=Page&cid=1259945239891&pagename=CensoElectoral%2FINELayout&L=es\\_ES&p=1259951359499#div\\_tituloDesplegable12599513595305](https://www.ine.es/ss/Satellite?c=Page&cid=1259945239891&pagename=CensoElectoral%2FINELayout&L=es_ES&p=1259951359499#div_tituloDesplegable12599513595305). Last accessed: 20 November 2018.

<sup>36</sup> Rafael DURÁN (2016) “Movilización y representación políticas de la población inmigrante en España: Elecciones municipales 2011”, in *Revista Europea de Derechos Fundamentales* 27, p. 131-172. (<https://dialnet.uni rioja.es/descarga/articulo/5866419.pdf>)

<sup>37</sup> Source:

[https://www.ine.es/ss/Satellite?c=Page&cid=1259945239891&pagename=CensoElectoral%2FINELayout&L=es\\_ES&p=1259951359499#div\\_tituloDesplegable12599513595305](https://www.ine.es/ss/Satellite?c=Page&cid=1259945239891&pagename=CensoElectoral%2FINELayout&L=es_ES&p=1259951359499#div_tituloDesplegable12599513595305). Last accessed: 20 November 2018.

percentage of EU ‘gerontoinmigrants’, the turnout of EU citizens was very close to the average turnout at national level (64%).<sup>38</sup>

### **3. Non-resident Citizens’ Franchise in National and EP Elections when Residing in other EU Member States**

As stated above, non-resident citizens are enfranchised for national and EP elections, regardless of their country of residence or of whether they are permanently resident abroad. For local elections, however, permanent non-resident citizens are disenfranchised. Regional elections are somewhat in between: non-resident citizens are enfranchised, but only in the Autonomous Community where they last resided before moving abroad.

As for voting methods, a difference should be made between temporarily non-resident citizens and those who reside abroad on a permanent basis. It must be taken into account that resident citizens who foresee that they will not be able to go to the polling station on the election day, or who simply prefer not to do so, can vote by post. This procedure may also be used by those who are temporarily abroad. This option, however, is not available to citizens who are permanently resident abroad. Like residents, temporarily non-resident citizens will, on request, receive the ballots from the Electoral Board and send them by post to the polling station. At the end of the election day, all votes received by post will be added to the ballot box and, together with the other votes, will be counted manually.

Permanently non-resident citizens, i.e. citizens registered as such in a Spanish consulate, may choose between two voting procedures. They may either cast their ballot in person in a Spanish consulate or, on request, vote by postal voting, sending the ballots to a consulate. In both cases, their votes will not be cast in a polling station; they will rather be sent by the consulate to the Electoral Board of the electoral district where the voters are ascribed to in Spain and are counted and added to the votes cast by resident citizens.

Non-resident citizens who enjoy the right to vote in national or EP elections also enjoy the right to stand as candidates in such elections, provided that no general cause of ineligibility (as regulated by Article 6 LOREG) is applicable.

#### **3.1. Overview of Relevant Administrative Regulations**

##### *EP elections*

The general provisions on the exercise of the right to vote when living abroad also apply to EP elections. However, since the enfranchisement of non-resident citizens for EP elections is established by law, the LOREG could in theory also be amended to disenfranchise them, as the reform of 2011 did for local elections. Admittedly, disenfranchisement is very unlikely to

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<sup>38</sup> Rafael DURAN (2018) “International retirees at the polls: Spanish local elections 2015”, in *Revista de Investigaciones Políticas y Sociológicas* 17, p. 27-54. ([https://www.researchgate.net/publication/325923694\\_International\\_retirees\\_at\\_the\\_polls\\_Spanish\\_local\\_elections\\_2015](https://www.researchgate.net/publication/325923694_International_retirees_at_the_polls_Spanish_local_elections_2015))

happen, and has not been proposed or even discussed by any relevant political party. Besides, unlike to what happens in national elections (see below), the assignment of non-resident citizens to electoral districts is not problematic in EP elections, since there is only one electoral district for the whole country. Therefore, the question of district assignment does not arise in the case of EP elections.

### *National elections*

There are two main differences between regulations concerning the right to vote of non-resident citizens in national and EP elections.

The first difference is a theoretical one: as said above, the enfranchisement of non-resident citizens for EP elections is established by law. On the contrary, the enfranchisement for national elections (at least for the lower chamber of the national parliament, see above), is granted by the Constitution and, therefore, disenfranchisement is constitutionally forbidden. In other words, the deprivation of the non-resident citizens' right to vote in these elections is possible only through intervention by the Parliament, as was the case of disenfranchisement for local elections.

The second difference concerns the districts in which the votes of non-resident citizens are counted in national elections. There are no seats in the National Parliament reserved to a separate constituency of non-resident citizens. On the contrary, they are represented under an assimilated representation scheme, i.e. each non-resident citizen is ascribed to a province in Spain<sup>39</sup> where his or her votes will be counted together with those of residents to elect the seats in Parliament. Since non-resident citizens may have been out of the country for decades (or may have never even lived in Spain), they are allowed to decide for themselves to which electoral district they want to be assigned to. Article 36 LOREG only stipulates that the assignment must be decided "with a sufficient and justified cause" (for example, asking for ascription to the district where relatives or ancestors used to live), but this is up to the discretion of consular officials. The law allows changing the ascription of the electoral district only one year before elections are called.

## **3.2. Voter Registration**

Non-resident citizens who temporarily abroad during the election period remain registered in the electoral census as described above. Citizens who are permanently resident abroad are, according to Article 36 LOREG (in force after the reform of 2011), automatically registered on the Register of Residents Abroad, a special section of the electoral register.

Therefore, since 2011, all non-resident citizens are automatically registered in the electoral census. Before the reform of the LOREG that took place that year, permanent non-resident citizens have to apply to be included in this special section. Still, to be registered in the census, a non-resident citizen must first apply to be registered at a Spanish consulate as a 'resident' in a foreign country.

Although registration in the electoral census is automatic, non-resident citizens will have to meet another condition to be able to vote in EP or national elections: they have to specifically apply to the consulate where they are registered to receive the electoral ballots

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<sup>39</sup> With a few exceptions, concerning the Canary and Balearic Islands and the autonomous cities of Ceuta y Melilla in Africa, provinces are the electoral districts in national elections.

and the documentation needed in order to cast their vote. In practice, this application operates as a renewal of the voter registration, since voters who fail to do so, will not be allowed to vote. The application must be done each time elections are called. This procedure, known as the ‘voto rogado’ (begged vote) system, was first implemented in 2011. Since then, it has been opposed by associations of non-resident citizens due to the complications introduced by this procedure.

At present, the ineffectiveness of the ‘begged vote’ system is a clear obstacle for non-resident citizens who wish to vote, as the low turnout of non-resident citizens in EP or national elections suggest (see below). According to the procedure currently in force, voters must, first, ‘beg for the vote’ by filling in an official form, which is sent to all registered voters by the Office of the Electoral Census (although it can also be downloaded online). In a second step, the Office of the Electoral Census will send voters the electoral ballots, a registration certificate, and an official electoral envelope with the postal address of the Spanish consulate where they are registered. Thirdly, voters can choose between sending back their votes by postal service to the consulate or by going there personally to cast the vote. Finally, the consulate will send all of the received postal votes to the Electoral Boards of districts to which the voters have been assigned to. All of this must be completed in a relatively short period of time, in just 25 days (between 29 and four days before the election day).

Drawbacks of the ‘begged vote’ system established in the 2011 reform are clear: there is a need to register as a local resident first; voters must ‘beg’ for the vote whenever a new election is called; the timeframe for doing this is short, and the whole procedure is not efficient (delays, deficiencies of the postal services, impossibility of online voting, etc).

After a very persistent campaign contesting the ‘begged vote’ system by associations of non-resident citizens, like the above-mentioned ‘marea granate’ movement, there is a wide consensus among the main political parties in Parliament to change it. Since no bill on the matter has entered the Parliament yet, it is extremely unlikely that the reform would come into force before the next EP or local elections that will be held in 2019.

### 3.3. Turnout

In contrast to the lack of data on non-citizen residents, the Spanish electoral statistics make it possible to know the number of non-resident citizens who vote in EP or national elections. Figures are extremely low: 34,130 electors (out of 1,692,618) went actually to the polls in last EP elections of 2014, and 121,277 (out of 1,924,021) did so in last general national elections in 2016<sup>40</sup>.

Moreover, and once again quite unlike to the situation of non-citizen residents, the exercise of the right to suffrage by non-resident citizens has gained the interest in the general public on a number of occasions. In 2011, non-resident citizens were deprived of the right to vote in local elections, due to the crucial role that they played in the local elections held in small towns. It must be borne in mind that, thanks to the generosity of Spanish nationality laws, it was possible for non-resident voters to have never lived in the municipality where they were assigned to cast their vote in (they could have never even resided in Spain). At that time, it was not rare to see political parties campaigning abroad, in countries with a significant

<sup>40</sup> See official statistics at <http://www.infoelectoral.mir.es/infoelectoral/min/>

population with Spanish ancestors, and asking for their vote after obtaining the Spanish nationality and registering on the electoral roll.

As stated before, the ‘begged vote’ system has been also subject to controversies. As a matter of fact, the statistics reflect the dramatic impact that this voting system has had on the turnout of non-resident citizens. The turnout in national elections before the ‘begged vote’ was generally around 30% (31.88% in national elections of 2008). After it came into force, the turnout decreased by about 25% (2.03% in last EP elections of 2014, 6.15% in last national elections of 2016).<sup>41</sup>

## 4. Conclusion

The two main obstacles for the electoral participation of EU mobile citizens in Spain arise from the voter registration procedure for non-citizen residents, and the ‘begged vote’ system for non-resident citizens.

Since voting is a right in Spain and not a duty, and thus not going to the polls is not punished, the automatic registration of non-citizen residents on the electoral roll would comply with EU law and would without a doubt increase their political participation in Spain. Resident Spanish citizens are never asked whether they would like to be included in the electoral roll, they are simply added to the list upon reaching the age of 18. The same procedure could easily be applied to non-citizen residents. Of course, they would still have to apply to be included in the municipal census, whilst Spaniards are automatically included at birth. But, once they have applied for that, the registration on the electoral roll should not be a separate procedure. The local administration of the town in which a non-citizen has registered his or her residence should automatically send the personal data of all non-citizen residents over the age of 18 to the Office of the Electoral Census, as they do with resident citizens.

The implementation of an automatic procedure for electoral registration would entail a reform of the LOREG, since it establishes that non-citizen residents must issue a formal declaration of will to be included in the electoral roll. Admittedly, if automatically included on the roll, EU citizens should be aware that double voting in EP elections is forbidden. But it would be enough to advise them about this when information about their polling stations is circulated by the Office of the Electoral Census. Furthermore, double voting in local elections, for the reasons stated above, should not be discouraged, provided that the non-citizen resident has not been deprived of his or her right to vote in his or her state of origin.

As a matter of fact, non-citizen residents, mainly due to the intricacies of the electoral registration process, have been conceptualised in the academic literature as a group which faces difficulties in the exercise of their right to vote, in a similar way to impaired or aged people.<sup>42</sup> Considering that non-citizen residents are a disadvantaged group of electors, other

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<sup>41</sup> See the Report submitted to the Spanish Parliament by Marea Granate, at <https://mareagranate.org/wp-content/uploads/2017/12/TEXTO-COMISI%C3%93N-LOREG-propuestas-de-modificaci%C3%B3n-y-adici%C3%B3n-del-GT-Voto-de-MG.pdf>

<sup>42</sup> Ángel RODRÍGUEZ (2007) “Los electores comunitarios en España: dificultades de registro y propuestas de reforma en el procedimiento de inscripción en el censo electoral de los ciudadanos de la Unión Europea”, in *Revista General de Derecho Constitucional* 4 ([www.iustel.com](http://www.iustel.com) [RI \$400672])

measures could be also taken to facilitate their electoral participation, like multilingual ballots, assisted voting, or any other kind of help.

In the mid- or long-term, it would be advisable to implement a kind of European mobile residence. Surveys focused on ‘gerontoinmigrants’ show that political participation cannot be separated from other issues that are commonly relevant for non-citizen residents in Spain, like tax regulations, health care coverage, and property rights.<sup>43</sup> In fact, problems arising from these aspects of everyday life (see the explanation on the SOHA movement mentioned in the questionnaire)<sup>44</sup> have played a crucial role in the political mobilisation of non-citizen residents, which have eventually led into their increased political participation.

Regarding non-resident citizens, there is now a unanimous belief that the ‘begged vote’ system should be repealed. Statistics clearly show that this system has caused a dramatic decline in the electoral participation of non-resident citizens. In the mid-term, a special district for non-resident citizens for the national parliamentary elections could be considered. It would likely increase electoral participation of non-resident citizens. Such a reform would, nevertheless, raise a question of compatibility with the Spanish Constitution, whereby only provinces can be electoral districts.

Before finishing this report, it is worth to briefly mention two collateral questions: the prospective extension of the right to suffrage in regional elections for non-citizen residents, and the particular case of the Autonomous Cities.

As stated above, since Article 13.2 of the Constitution only permits the extension of electoral rights to non-citizen residents for municipal elections, neither EU citizens, nor any other person who does not hold the Spanish nationality are allowed to vote in regional elections. Consistent with the constitutional provision, Statutes of Autonomy entitle only those who have the ‘political status’ of a citizen in an Autonomous Community to vote in regional elections. Spanish nationality is the prerequisite to holding such a status. Some of the so-called ‘second-generation’ Statutes of Autonomy, amended between 2006 and 2009, however, include a mandate for regional public authorities to promote the full participation of EU citizens in the regional political life “within the framework of the Constitution”. It is commonly accepted that this mandate could be the basis for enfranchising EU citizens in regional elections after a constitutional reform. Nowadays, the political participation at regional level, which non-citizen residents are allowed to exercise, is restricted to soft mechanisms, like membership of civic associations, petitions, etc. However, due to the nature of the political problems non-citizen residents face in some Autonomous Communities, and their configuration as a social group in the case of ‘gerontoinmigrants’, the extension of their

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<sup>43</sup> Rafael DURÁN & Michael JANOSCHKA (2012) “Political involvement of European senior citizens living abroad. Spain as a laboratory of European citizenship practice”, paper presents at the *International Conference Comparing and Contrasting “Europeanization”: Concepts and Experiences*, The Institute of International Economic Relations (IIER/IDOS). Athens, 14-16 May 2012.

<sup>44</sup> SOHA - Save Our Homes in Axarquía (<http://soha.es>) was formed in January 2008 by a group of EU local residents, mainly *gerontoinmigrants*, with the purpose of actively campaign for the establishment of an amnesty for honest home-owners in Axarquía, a district of the province of Malaga in Andalucía. The organization was founded when the owners were notified that rural houses they have bought in Spain lacked legal permission when they were built and were now at risk to be demolished. The subsequent mobilization eventually led to changes in urbanistic regulations and opened the process of legalization of the houses in a number of cases. SOHA succeeded in taking its case to the public opinion, even to the European Parliament, and eventually focused in encouraging EU voters to register in the electoral roll and participate in local elections with the purpose of giving their claims a voice in local councils.

voting rights to the regional sphere would significantly encourage their involvement in the political life of Spain.<sup>45</sup>

Although this only applicable to residents of Ceuta and Melilla, two Spanish cities in North Africa, the particular case of these Autonomous Cities is also worth mentioning. These cities enjoy political autonomy, but do not hold the constitutional status of an Autonomous Community. Therefore, the election to their autonomous assemblies falls under the LOREG regulations of 'local' elections. As a result, non-citizen residents, including TCNs who enjoy electoral rights in Spain, and who reside in Ceuta or Melilla, enjoy electoral rights in these peculiar 'regional' elections, whereas non-resident citizens are deprived of the right to vote.

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<sup>45</sup> Ángel RODRÍGUEZ (2016) "El voto de los ciudadanos de la Unión Europea en las elecciones autonómicas españolas: estado de la cuestión y propuestas de reforma", in *Revista Europea de Derechos Fundamentales* 27, pages 203-227 <https://dialnet.unirioja.es/descarga/articulo/5866421.pdf>.

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