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# EUDO CITIZENSHIP OBSERVATORY

## *ACCESS TO ELECTORAL RIGHTS*

### *MALTA*

Daniela DeBono

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EUDO Citizenship Observatory

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Malta***

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## Access to Electoral Rights

### Malta

Daniela DeBono

#### 1. Introduction: The wider picture

Since gaining independence from the British Empire in 1964, Malta has had a very restrictive voting policy. Voter enfranchisement is based on three pillars: citizenship, residence and age. The only exceptions to this rule, introduced in 2004 as a result of EU accession, are the electoral rights granted to EU citizens at local and European Parliament elections. Prior to this, British citizens resident in Malta had already been granted Local Council electoral rights in 1993, when Local Council elections started being held. This latter ‘exception’ can be attributed to the strong ties between the two countries due to the historical colonial relationship, and by the mere fact that the British expat community is the largest foreign group in Malta.

Voting is deeply entrenched in Maltese political culture. An indication of this lies in the consistently high voter turnout at national elections – 96 per cent in 2003 and 93 per cent in 2008. This is the highest for non-mandatory elections worldwide, often superseding even countries where voting is mandatory. The political scientist William Hirzy attributes this high voter turnout to the intense competition between the two main political parties, and the results are always very close; the national elections in 2008 were the closest, won by a mere 1,600 votes.<sup>1</sup> Indeed, elections are preceded by aggressive campaigns, fraught with a confrontational style of electioneering.<sup>2</sup> Loyalties to the two main political parties are ‘strong, stable and rooted in social and family backgrounds.’<sup>3</sup> This signifies, and is a result of, what the European studies scholar Michelle Cini has described as the ‘extremely high stakes at general elections.’<sup>4</sup> Interestingly, in spite of the fact that Malta uses a version of the Single Transferable Vote (STV) system which allows voters to cross party lists when selecting their candidates, in practice voters tend to vote per party. This shows the paramount importance of party allegiance for the Maltese.<sup>5</sup> With such a deeply pervasive political culture, it is

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<sup>1</sup> Hirzy, W., ‘Explaining Near-Universal Turn Out: the case of Malta’, *European Journal of Political Research*, 27/2, 1995, (pp255-271), p257.

<sup>2</sup> Idem.

<sup>3</sup> Ibid, p258.

<sup>4</sup> Ibid, p257.

<sup>5</sup> Cini, Michelle, ‘Party politics and the European question: The case of Malta’, Unpublished paper presented at ECSA-US Conference, Madison, Wisconsin, 2001, HTTP <[http://aei.pitt.edu/2066/1/001595\\_1.pdf](http://aei.pitt.edu/2066/1/001595_1.pdf)> Last accessed 24 November 2012.

unsurprising that the granting of electoral rights to foreigners is not generally regarded positively.

The electoral rights of foreigners, in general, have not been a major topic of discussion in Maltese politics and society. Indeed, the question of enfranchising foreigners is rarely critically addressed by Maltese politicians, major institutions or Maltese society. Alternatives to the present system are hardly ever mentioned, except in some cases by 'Alternattiva Demokratika', the Green Party, a very small party which has only had limited success in a few Local Council elections. Even EU citizens, who have been enfranchised in Local Council and European Parliament elections since 2004, did not managed to stir a significant debate when they encountered difficulties in accessing their electoral rights. This demonstrates the inflexibility towards new alternatives and the reluctance to consider foreign voters on an equal par with Maltese voters.

The paucity of debates in this field is interrupted, albeit on a minor scale, by two issues: the question of in-country voting together with the public expense of subsidising flights for eligible voters abroad, and the incident when around 19,000 EU resident citizens (constituting the vast majority) were struck off the Electoral Register in the 2009 EP elections. The first issue is a long-standing debate on the current and exclusive policy of in-country voting. This is a discussion which flares up around each election and is specifically prompted by the practice of the last two decades of offering subsidised flights to Maltese citizens resident in Malta but temporarily abroad. This practice is almost perceived as an entitlement or a right by many who feel that it ensures their access to the right to vote. It is, however, a costly practice when one takes into consideration the increasing number of Maltese people abroad and the newfound difficulty of proving that the minimum residence requirement has been met since Malta acceded to the EU and the Schengen area. In addition, one could also argue that the residency requirement is out-dated in the context of EU membership since it clashes with freedom of movement which is one of the fundamental pillars of the EU.

The second issue which has arisen over the last years has to do with EU resident citizens' access to electoral rights in Malta. This had to do with the implementation of EU law and apparently procedural issues. EU resident citizens complain of discriminatory practices, that they were struck off the Electoral Register, and were therefore unable to vote in European Parliament elections. This issue has been championed by the Green Party, the smallest and 'youngest' party which has never managed to elect representatives in Parliament. The fact that this issue, and other issues regarding foreigners in Malta, are championed by the Green Party, and not generally by the main parties, is significant in itself and is to no small degree motivated by a vested interest in bringing about change to the traditional political culture.

## **2. Eligibility: Who has electoral rights under national law?**

Citizen residents are the main category of people who have voting rights in local, national and European elections, and national referenda. The general framework for electoral rights for citizen residents can be found in the Constitution of Malta and Chapter 354 of the General Elections Act. In addition, citizen residents can also vote in local and European elections, according to Chapter 363 of the Local Councils Act, and in national referenda as provided for in Chapter 237 of the Referenda Act.

The only group of foreigners granted electoral rights are EU citizens resident in Malta. Their electoral rights are limited to Local Council elections and European Parliament

elections. These rights enshrined in EU law, namely Council Directives 93/109/EC (electoral rights in national elections) and 94/80/EC (electoral rights in municipal/local elections), have been transposed into Maltese law. No other foreign residents – third country nationals – are entitled to vote, or run for elections, at any level.

Maltese citizens residing abroad are also disenfranchised in all elections by virtue of the fact that they are not resident in Malta.

## **2.1 Citizen residents**

Citizen residents are generally enfranchised in all elections. There are however a number of conditions which exclude some citizen residents from voting and for running as a candidate. These are age, mental disabilities, committing a criminal offence, and committing an offence related specifically to the body being elected.

The age threshold for all types of elections is eighteen. This is enshrined in Article 58 of the Constitution as one of the basic criteria for the qualification of voters. On and off, in line with international and European developments, there has been some minor discussion or proposals on lowering the age threshold to sixteen. The National Youth Council, the largest platform of youth organisations in Malta, has periodically put forward a proposal to lower the voting age for Local Council elections.<sup>6</sup> The Labour Party has reiterated its support for this proposal for the last few years.<sup>7</sup> The Green Party has been in favour for a long time and has recently re-asserted its proposal, this time to lower the voting age to sixteen not only at Local Council elections, but also national and European elections.<sup>8</sup> The proposal is based on the premise that young people should be entrusted with key decisions in their life just as they are entrusted to take up employment and further their education.<sup>9</sup> In spite of this there are no indications that change is likely in the near future.

Voters with mental disabilities may be disenfranchised and disqualified from voting if, according to Article 58(a) of the Constitution of Malta, they are interdicted or incapacitated for any mental infirmity by a court in Malta or are otherwise determined in Malta to be of unsound mind. This process is further elaborated in Article 27 of the General Elections Act, which entrusts a Medical Board set up by virtue of section 14 of the same Act, with processing such cases and taking a decision. The decision of the Medical Board is considered final and binding.

Persons convicted of criminal offences, according to Article 58 (b) of the Constitution of Malta, are disenfranchised and disqualified from voting for the following conditions: a) if they are under the sentence of death imposed on them by any court in Malta;<sup>10</sup> b) if they are serving a sentence of imprisonment exceeding twelve months imposed on them by any court of Malta; their sentence is substituted by a competent authority for some other sentence originally imposed on them by a court; or the execution of their prison sentence has been suspended. Former criminals are enfranchised once they have served their prison sentence.

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<sup>6</sup> *Times of Malta*, ‘Youth Council calls for serious study into effects of lower voting age’, Allied Newspapers Ltd, Valletta, 22 August 2008.

<sup>7</sup> *Times of Malta*, ‘Voting at 16 in local elections – Muscat’, Allied Newspapers Ltd, Valletta, 18 October 2012; *Times of Malta*, ‘Muscat proposes to lower voting age to 16’, Allied Newspapers Ltd, Valletta, 18 August 2008.

<sup>8</sup> Briguglio, Michael, ‘Give them the vote too’, *Times of Malta*, Allied Newspapers Ltd, Valletta, 22 June 2012.

<sup>9</sup> Briguglio, Michael, ‘Give them the vote too’. *Times of Malta*, 22 June 2012.

<sup>10</sup> This is still currently included in the law even though the death penalty has been removed from Maltese legislation.

## 2.2 *Citizens abroad*

Residence in Malta is a requirement for the qualification of voters in all types of elections – local, national, European Parliament and national referenda. This includes the right to run as a candidate. The General Elections Act stipulates the minimum period of residence necessary for entitlement to electoral rights. A person must have resided in Malta for a period, or an aggregate of six months, in the eighteen months preceding the election in question. Maltese citizens temporarily, or permanently abroad, who do not meet this criterion are struck off the Electoral Register and disenfranchised. An exception to this residence requirement is made for citizens resident abroad but whose absence is due to state service out of the country, for example, military, police or diplomatic service. The law considers such persons as ‘ordinarily resident’ in Malta.

Voting is conducted exclusively in Malta. As such there is no system whereby Maltese citizens who are temporarily abroad, or ‘ordinarily resident’, can cast their votes outside of Malta. The General Elections Act stipulates the regulations concerning the voting of those Maltese citizens who are eligible to vote, but are not able to be in Malta on the day of the election. They are allowed to vote seven days before polling day, subject to taking an oath before the Electoral Commission or anyone acting on its behalf, that they will not be in Malta on the day of the election.<sup>11</sup> Maltese citizens who are abroad for state representation/work purposes are offered the possibility of flying in to vote.

In what has become common practice, the government offers a scheme by which eligible voters living abroad can purchase return Airmalta flight tickets at a heavily subsidised rate. This covers also persons married to foreigners, studying, working or undergoing medical treatment abroad and their dependants. For the 2009 national referendum on divorce, return Airmalta tickets cost €35 inclusive of taxes and other charges. This is a costly scheme for the government. Replying to a parliamentary question, the Prime Minister quoted the following figures: for the 2008 national election, 3,057 voters had benefited and it had cost the country €1,015,724 million, whereas in the 2009 European Parliament election, 1,377 voters benefited and it cost €442,000.<sup>12</sup>

Disenfranchisement for Maltese citizens who move abroad is often ‘taken care of’ by the political parties’ machinery. For a long time, the practice has been that Maltese political parties challenge in court proceedings the voter eligibility of citizens on the grounds of insufficiently long residence. The political parties focus on persons thought to be of a different political persuasion.<sup>13</sup> In the past, it was fairly easy to establish whether a person had left Malta, and for what length of time, by checking the embarkation and disembarkation cards that had to be filled out by all travellers. However, nowadays these cards no longer need to be filled out by Maltese citizens and no similarly simple administrative method is available to check on absences from Malta.

<sup>11</sup> *Laws of Malta*, Chapter 354, General Elections Act, Article 77, (3), 3A.

<sup>12</sup> *Maltese Parliamentary Question*, Kummissjoni Elettorali - votazzjoni tal-MEPs – hlas” (Electoral Commission – voting for MEPS – payment), Question no. 13091, Legislature XI, 23 November 2009, <http://www.pq.gov.mt/PQWeb.nsf/10491c99ee75af51c12568730034d5ee/c1256e7b003e1c2dc1257685004a68b4?OpenDocument>

<sup>13</sup> Lane, John C., *Elections in Malta: The Single-Transferable-Vote System in Action 1921 – 2009*, 2009. HTTP <<http://www.maltadata.com/residence.htm>> [Last accessed 21 November 2012]

### ***2.3 Foreign residents (resident third country nationals)***

Foreign residents, with the exception of EU citizens, do not enjoy any electoral rights in local or national elections. They do not fulfil the criterion of citizenship, which is the second main criterion for the entitlement of electoral rights together with residency and age.

From 1993 till 2003, British residents in Malta were the only group of foreigners allowed to vote in local elections according to the Local Councils Act. In 2003, this sub-article was removed from the Act when Malta transposed Council Directives 93/109/EC and 94/80/EC which granted the rights to all EU citizens to vote and run as candidates in local and European Parliament elections. EU citizens are therefore the only foreigners which have some electoral rights in Malta. This will be discussed in further detail in the next section.

### ***2.4 The definition of residence***

The definition of residence in Article 57 of the Constitution was questioned in a landmark case in 2003. In the months preceding the 2003 national elections, the Malta Labour Party, amongst others, challenged the eligibility of a Maltese citizen. The person in question, Professor Arnold Cassola was then Secretary General of the European Greens and had spent periods of time abroad. Cassola had been active in Maltese politics for a number of years, having been a candidate in each national election since 1992 and he remained a leading member of the Maltese Green Party. In March 2003, the Constitutional Court ruled in Cassola's favour. More significantly, the judgement gave a broad and quite flexible interpretation to the word 'residence' in the aforementioned Article 57 of the Constitution:

The word 'residence' does not mean physical presence in the country, but includes and allows periodic absence from the country. A person who is temporarily absent from Malta because of work, study, illness or mission, must not and cannot be considered as not resident in Malta. A person who goes abroad to study or for work purposes is still 'directly and continuously concerned' with the political activity of the country of residence and therefore there exists no reason for the deprivation of the right to vote for that person. ... Residence therefore does not require a continuous presence in the country, but a habitual one, according to the circumstances of the case of that person.<sup>14</sup>

As Professor John C. Lane pointed out, in one of the few research projects on Maltese elections, it remains to be seen whether this interpretation will prevail in future legal actions. If it does one would have to see how the Court's test of a person's being 'concerned' with Maltese politics will be applied to persons less politically active than Professor Cassola. The scope of the terms 'temporary absence' and 'habitual residence' also require elaboration, especially when an increasing number of Maltese citizens are taking up work opportunities in the European Union (EU). There does not seem to be a current inclination in Parliament to revisit and revise Article 57.

## **3. Electoral rights of EU citizens**

EU citizens who live in a Member State other than their own have the right to vote and stand as candidates in European Parliament elections. These rights are enshrined in Article 22(2) of the TFEU and Council Directive 93/109/EC of 1993 which lays down detailed arrangements

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<sup>14</sup> Judgement of the Civil First Hall (Constitutional Jurisdiction), Vassallo Dr. Harry Noe Vs Kummissjonarju Elettorali Principali Noe Et Noe, 21 March 2003.



for the exercise of electoral rights in the European Parliament for EU citizens residing in a Member State of which they are not nationals. In Malta, it has been transposed and is regulated by the European Parliament Elections Act. Similarly, the TFEU and Council Directive 94/80/EC entitle EU citizens to the right to vote and stand as candidates in Local Council elections. EU Council Directive 94/80/EC entered into force in Malta with accession on 1 May 2004. Amendments to the Local Councils Act have ensured the transposition of this Directive into national law.

With regards to the rights of Maltese citizens who are resident in another Member State, the same principle of residency as for other elections holds: if they do not fulfil the minimum requirements for residency in Malta – six months out of the eighteen months preceding the election – they will not be entitled to vote or run as candidates for EP elections in Malta.

### ***3.1 Local elections***

The Council Directive 94/80/EC mentioned above has been transposed into national law. The Local Councils Act states that non-national EU citizens are entitled to vote if they are registered as voters in the EU Electoral Register, which relates to the locality for which local councillors are to be elected. They also need to be in possession of an identity card issued by Maltese authorities in accordance with Chapter 258 of the Identity Card Act.<sup>15</sup>

With regards to the qualification to stand as candidates for Local Council elections, Article 11 of the same Act states that this could be any person registered as a voter in the Electoral Register or the EU Electoral Register. Article 12 enlists the limitations to this qualification for all voters, Maltese and EU resident citizens alike.

In Malta, non-national EU citizens are entered automatically in the Local Council election rolls, once they are included in the EU Electoral Register.<sup>16</sup>

### ***3.2 EP elections for EU citizens residing in the country***

Similar to Local Council elections, once EU citizens resident in Malta are added to the EU Electoral Register, they have the right to vote and run for EP elections. This is regulated by the European Parliament Elections Act of 2004. The voting system applied in European Parliament elections is the Single Transferable Vote and most of the regulations are similar to the ones used in national elections.<sup>17</sup>

The European Parliament Elections Act establishes the criteria that EU citizen residents have to fulfil in order to qualify for inclusion in the EU Electoral Register. The person has to be a national of a Member State who is not included in the (national) Electoral Register, in possession of an identity card issued by Maltese authorities, over the age of eighteen,<sup>18</sup> resident in Malta (at least for a period of six months in the eighteen months preceding his registration),<sup>19</sup> must make a declaration that he will exercise his right to vote to

<sup>15</sup> *Laws of Malta*, Chapter 363, Local Councils Act, 2003, Article 5(2) and Article 7.

<sup>16</sup> [http://ec.europa.eu/justice/citizen/files/com\\_2012\\_99\\_municipal\\_elections\\_en.pdf](http://ec.europa.eu/justice/citizen/files/com_2012_99_municipal_elections_en.pdf)

<sup>17</sup> *Laws of Malta*, Chapter 467, European Parliament Elections Act, 2004, Article 21.

<sup>18</sup> Constitution of Malta, 1964, Article 57 (b).

<sup>19</sup> *Ibid*, Article 57 (c).

elect of Members of the EP in Malta only and has not been deprived of the right to vote in another Member State.<sup>20</sup>

According to Article 12, EU citizen residents will be disqualified from the EU Electoral Register if they are declared to be of unsound mind, convicted of an offence with a sentence longer than twelve months, or convicted of an offence connected with the election of the House of Representatives, members of Local Councils or members of the European Parliament.<sup>21</sup>

An EU citizen who fulfils these qualifications is entered into the EU Electoral Register upon producing a valid identity card issued by Maltese authorities and submitting a declaration with the following: that he is resident in Malta, his nationality, the date on which he took up residence in Malta, his address in Malta, the locality or constituency on which he was last registered, that he will exercise his right to vote for election of members of the European Parliament in Malta only and that he has not been deprived of the right to vote in his Home Member State.<sup>22</sup> The Electoral Commission retains the right to require a person who is already enrolled in the EU Electoral Register to make the above-mentioned declaration anew.

Until October 2012 the Electoral Commission only gave the possibility to EU citizens to register for inclusion in the EU Electoral Register a few months before every election. EU citizens claimed that this had created a situation whereby the vast majority of EU citizens were effectively disenfranchised. As we shall see in the next section, this situation was resolved.

Persons qualified to stand as candidates for EP elections can be any voter registered on the Electoral Register or the EU Electoral Register, save for public officers who might be restricted by other regulations.<sup>23</sup> The European Parliament Elections Act, in Article 19, also lists those persons who would not be qualified to stand for election, or who would be removed should they have already been elected to the European Parliament. These include: a) persons who are members of any disciplined force; b) persons who hold any office the functions of which involve any responsibility for or in connection with the conduct of elections of members of the European Parliament or the compilation or revision of any Electoral Roll; c) persons who are bankrupt; d) persons who are interdicted or incapacitated for any mental infirmity or for prodigality by a court or is otherwise determined to be of unsound mind; e) persons who are serving a sentence of imprisonment exceeding twelve months imposed on him by a court in a Member State or is under such a sentence of imprisonment the execution of which has been suspended; f) members of the judiciary; g) persons who had been disqualified for standing for the election of members of the European Parliament in terms of any law in force; h) persons who are standing as a candidate for the election of members of the European Parliament in the same election in another Member State.

Furthermore, the Act bars people holding certain offices on the premise that their duties render them incompatible to fulfil their duties as Members of the European Parliament. These include: a) members of the House of Representatives or members of a Local Council under the Local Councils Act or of any other similar institution or organ in another Member State. A person elected to a second such office shall, within five working days of the publication of the results of the election to this second office, renounce one of these offices

<sup>20</sup> *Laws of Malta*, Chapter 467, European Parliament Elections Act, 2004, Article 11.

<sup>21</sup> *Ibid*, Article 12.

<sup>22</sup> *Ibid*, Article 14.

<sup>23</sup> *Laws of Malta*, Chapter 467, European Parliament Elections Act, 2004, Article 18.

Should he fail to do so he shall be deemed to have renounced the office of Member of the European Parliament.

Finally, there are provisions specific to candidates registered in the EU Electoral Register. These are listed in Article 20 of the EU Parliament Elections Act and differentiate this group of candidates from candidates registered in the Electoral Register. First, when filing his nomination, a candidate registered in the EU Electoral Register has to make a formal declaration in writing to the Electoral Commission stating that he is not standing as a candidate in any other Member State, and produce a valid identity document. Secondly, when the candidate is registered as a voter in the EU Electoral Register, but is not a Maltese national, he must also produce to the Electoral Commission a declaration from the competent authority of his Home Member State certifying that he has not, other than because of his having been registered in the EU Electoral Register, been deprived of the right to stand for election in that Member State or that no such disqualification is known to that authority.<sup>24</sup>

The Electoral Commission then notifies the competent authority of the Home Member State to verify the contents. If information is received from the Home Member State which shows that the contents of the declaration are not true, the Electoral Commission does not register the person as a candidate. Or, if he is already registered, his name is removed from the list of candidates. This can be done if effected before the ballot papers are printed. Furthermore, for any Maltese national falling under these considerations, 'Home Member State' refers to the last Member State in which they were resident.<sup>25</sup>

### ***3.3 Issues regarding electoral rights of non-national resident citizens***

A case, which was resolved in November 2012, but is still significant - not least, due to its magnitude, possible repercussions and the array of actors involved – concerned around 19,000 EU citizens who were struck off the electoral register in the 2003 and 2009 EP elections. This amounted to around 90 per cent of non-Maltese EU residents.

In 2011, a complaint was filed with the European Commission regarding access to electoral rights of non-national EU citizens in Malta. In the 2009 EP elections only 2,604 EU citizen residents were enrolled. This is a very small figure when compared with 21,124 EU citizen residents enrolled on the Local Council electoral registers at the same time. This meant that some 90 per cent of EU citizen residents who had been on the Electoral Register for the 2003 EP election were ineligible to vote in the 2009 European Parliament election.<sup>26</sup> The disenfranchised 18,520 constitute over five per cent of the entire European Parliament electorate in Malta.<sup>27</sup>

An EU citizen resident in Malta, Oison Jones-Dillon, wrote about this issue to the European Commission and to European members of Parliament in 2011.<sup>28</sup> He claimed that the Electoral Commission had not delivered voting documents to a number of non-national EU citizens who had been regularly entered on the electoral roll. He also decried the fact that non-Maltese EU citizens were not allowed to enrol on the (Maltese) European Parliament

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<sup>24</sup> Ibid, Article 20.

<sup>25</sup> Idem.

<sup>26</sup> Vella, Matthew, 'Brussels warns Malta over electoral rights for non-Maltese EU citizens', *Maltatoday*, Media Today Ltd, San Gwann, 11 June 2012.

<sup>27</sup> *Times of Malta*, 'European Commission investigating exclusion of non-Maltese from electoral register – AD', Allied Newspapers Ltd, Valletta, 21 May 2010.

<sup>28</sup> Briguglio, Michael, "A democracy that excludes voters", *Times of Malta*, Allied Newspapers Ltd, 28 May 2012.

electoral register until 1 October 2008, just six months before the elections. The Green Party, Alternattiva Demokratika, took an active part supporting EU citizen residents and lobbying for a solution to this injustice. ALDE MEP Robert Rochefort Deeply tabled a written question to the European Commission.<sup>29</sup>

Alternattiva Demokratika's spokesperson for international affairs, Arnold Cassola, has also previously stated that the Maltese Electoral Commission does not always respect its obligation of asking EU nationals whether they intend to vote in Malta or in their native country.<sup>30</sup>

According to the Electoral Commission, all non-national EU residents had until 31 March 2009 to apply for inclusion in the Electoral Register, and those who failed to apply were removed automatically. The situation was markedly different for Maltese citizen residents who did not have to re-register for the June elections. Despite the apparent discrimination, the Electoral Commission stressed in its defence that this practice conforms to accepted procedures in other EU countries, and is in line with the EU law on European elections approved by the Maltese Parliament.<sup>31</sup>

The European Commission's Directorate-General for Justice had contacted the Maltese authorities in June 2011 over its incorrect transposition and implementation of EU law, but the matter was still pending in March 2012.<sup>32</sup> In June 2011, Alternattiva Demokratika announced in a statement that the Electoral Commission had reformed the registration system for EU citizen residents in Malta. EU citizens resident in Malta are now not bound by a limited time period to enrol in the EU Electoral Register.<sup>33</sup>

## 4. Exercising electoral rights

### 4.1 National elections

#### 4.1.1. Voter registration

Maltese citizen residents are automatically registered in the Maltese Electoral Register upon reaching the age of eighteen and on condition that they fulfil the criteria for qualification. Once they are included in the Maltese Electoral Register they are entitled to vote in national elections. The same principles and procedures are adhered to for national referenda.

Non-resident Maltese citizens, EU citizens and third country nationals are disenfranchised in national elections since they do not meet the criteria for the qualification of individuals to the Maltese Electoral Register of citizenship, age and residency.<sup>34</sup>

#### 4.1.2. Casting the vote

<sup>29</sup> *Times of Malta*, 'European Commission investigating exclusion of non-Maltese from electoral register – AD', 21 May 2010.

<sup>30</sup> Vella, Matthew, 'Brussels warns Malta over electoral rights for non-Maltese EU citizens', *Maltatoday*, Mediatoday Ltd, 11 June 2012

<sup>31</sup> *Idem*.

<sup>32</sup> *Idem*.

<sup>33</sup> Cassola, Arnold, 'Electoral Commission reforms registration system for EU voters', *MaltaToday*, MediaToday Ltd, San Gwann, 10 June 2011.

<sup>34</sup> Constitution of Malta, 1964, Article 57.

Citizen residents cast their vote in the polling station of the electoral division in which they are registered and only for candidates standing for election in that particular electoral division.<sup>35</sup> This is clearly stated in Article 16 of the General Elections Act. No other methods of voting are accepted for citizen residents, the only group entitled to vote in national elections.

Citizens residing abroad who still fulfil the residence principle of ‘continuous or aggregate six months out of the eighteen months preceding the election’ are still enfranchised. If they are in the country in the period of time that the election documents are distributed and on the day of the election itself, they can vote.

Citizen voters abroad at the time of the election have in the past years been offered the aforementioned subsidised return flight tickets with Airmalta. This government scheme, which is not enshrined in law, has been standard practice for the last decades for national elections and national referenda. In the last referendum in 2011 the government scheme was applicable to ‘eligible voters, including those married to foreigners, studying, working or undergoing medical treatment abroad, and their dependents.’<sup>36</sup> This scheme operates from a set number of European countries where the majority of citizen voters are concentrated. It therefore excludes citizen voters in other countries and continents.

#### **4.1.3. Running as candidate in national elections**

The General Elections Act in Part IX (articles 51 to 55) regulates the procedure for running as a candidate in national elections. As mentioned before, only citizen residents are enfranchised in national elections, although provisions are made for citizens who are temporarily abroad.

Citizen residents interested in standing as candidates for the national elections have to be nominated in writing on a prescribed form. This form is set out in the Ninth Schedule to the General Elections Act and has to be signed by the candidate himself or, if he is abroad, by a duly appointed representative; and by at least four voters registered in the electoral division for which the candidate is nominated. The nomination paper has to be delivered to one of the Commissioners at the Electoral Office by the candidate himself or, if he is prevented by illness or absence from the country, by his lawful representative who must be authorised in writing within the period specified. Immediately after a nomination paper has been delivered to the Commission the name of the candidate is posted at the entrance of the Electoral Office with an indication of the division for which the candidate was nominated. Any voter has the right to ask the Commissioners to view any nomination paper. The validity of the nomination is only confirmed once the period of objections is over.

Objections may be made to a nomination within the time period specified by law on the following grounds: a) that the candidate is not registered as a voter in the last published Electoral Register; b) that the description of the candidate is insufficient to identify the candidate; c) that the nomination paper does not comply with, or was not delivered in accordance with, the provisions enshrined in law; d) that the deposit prescribed by law (€90) has not been paid or; e) that the candidate already stands nominated for another two electoral divisions (the Act stipulates that one can only be nominated for a maximum of two electoral divisions).

<sup>35</sup> The country is divided into thirteen electoral divisions. *Laws of Malta*, General Elections Act, 1991, Article 17.

<sup>36</sup> Grech, Scott, ‘Air Malta Return Flights at €35 for those wanting to vote’, *The Malta Independent*, 12 May 2011

Objections have to be in writing, signed by the objector and shall specify the grounds of the objection. The Electoral Commission may itself raise an objection if it believes that any of these grounds are valid. Upon receipt of an objection, the Commission shall fix a date for hearing the objection, shall immediately inform in writing the candidate and give him a copy of the objection filed against him, and shall inform both the objector as well as the candidate of the day appointed for the hearing of the objection. The Act stipulates the procedure and time lines for the processing of objections by the Electoral Commission.

#### **4.1.4. Assimilated or special representation of citizens residing abroad**

Since residency is a criteria for qualification as a voter, citizens residing abroad are not qualified to vote. The only exception made, if it may indeed be considered an exception since they are not considered ‘non-residents’, is for citizens who are ‘ordinarily resident’ and those temporarily abroad. This includes citizens who are either on government service, as stipulated by the General Elections Act, or abroad for other reasons like studying or undergoing medical treatment. These voters are flown into Malta to vote and are linked to the district in which they are registered as habitually resident.

## **4.2 Local elections**

### **4.2.1. Voter registration**

Citizen residents do not need to register to be able to vote in Local Council elections. All citizen residents are automatically included in the Electoral Register, and are thus entitled to vote in Local Council elections. Citizen voters are not entitled to vote in Local Council elections if they are struck off the Electoral Register, or if they have committed an offence connected with the election of members of Local Councils.<sup>37</sup>

EU resident citizens on the other hand have to go through a registration process for their name to appear on the EU Electoral Register. They are then entitled to vote in Local Council elections (as well as EU Parliament elections), provided they have not been convicted of any offence connected with the elections of members of Local Councils.<sup>38</sup>

### **4.2.2. Casting the vote**

Votes are cast in the locality in which the voter is registered, whether they are registered in the Electoral Register or the EU Electoral Register. The procedure is the same for citizen residents, citizens temporarily abroad and EU citizen residents in Malta.

### **4.2.3. Running as candidate**

All citizen residents registered as voters in the Electoral Register or the EU Electoral Register may stand for election to the Local Council.<sup>39</sup> The Act makes no distinction between citizen residents and EU citizen residents.

<sup>37</sup> *Laws of Malta*, Chapter 363, Local Councils Act, 1993, Article 5.

<sup>38</sup> *Idem*.

<sup>39</sup> *Ibid*, Article 11.

The Act lists a number of exceptions which disqualify a person from running as a candidate. This applies to both citizen residents and EU citizen residents. The first group of limitations are that no person may contest the election of more than one locality in any local election and that public officers may be restricted by other regulations.<sup>40</sup>

The second group of limitations to the universal qualification of citizen residents and EU citizen residents are listed in article 12 of the same Act. This stipulates that no person shall be qualified to stand for election as a member of a Local Council, or to remain a member thereof if: a) he is a member of the House of Representatives or of any similar institution in another Member State of the EU, or of the European Parliament; b) he is a member of any disciplined force; c) he is a person in the employment of the Council, for which elections are held, or fills the role of Executive Secretary in any one of the Local Councils; d) he is a person who holds any office which involves any responsibility concerning, or is connected with the conduct of, any election of members of the Council or the compilation of or revision of any electoral register; e) he is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in Malta; f) he is interdicted or incapacitated for any mental infirmity or for prodigality by a court in Malta, or is otherwise determined to be of unsound mind; g) he is serving a sentence of imprisonment exceeding twelve months imposed on him by any court in Malta or is under such a sentence of imprisonment the execution of which has been suspended; h) he is a member of the judiciary; i) he is disqualified from membership of the Council by or under this Act or any other law for the time being in force in Malta.

## 5. Conclusion

This report shows how the Maltese system is unwaveringly consistent on the three pillars of citizenship, residency and age upon which electoral rights are granted. This hinders any political participation of third country nationals living in the country, as well as Maltese citizens resident abroad.

EU citizens have, however, been enfranchised as an outcome of the adoption of the EU *acquis* in 2004. Although their participation in local and EP elections was interrupted for some time, their participation could bring about changes to the Maltese system. These changes would, however, be of a limited nature since they are not enfranchised in national elections.

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<sup>40</sup> Idem.

