



# EU-CITIZEN: ACADEMIC NETWORK ON EUROPEAN CITIZENSHIP RIGHTS

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## Annex – Member States Fiches

Accompanying the TYPE A REPORT on Political Participation on  
Disadvantaged Groups

|                       |      |
|-----------------------|------|
| Compiled by           | CEPS |
| Version               | v.2  |
| Delivery date         | 2018 |
| Total number of pages | 125  |



This publication has been produced with the financial support of the European Union. The contents of this publication are the sole responsibility of and can in no way be taken to reflect the views of the European Commission.



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## 1. Austria

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### 1.1. LEGAL FRAMEWORK

In Austria, electoral rights are enshrined in the Austrian Constitution. Art. 1 of the Austrian Constitution establishes that all power emanates from the people. With regard to municipal elections, Art. 117 provides that the municipal council is elected in equal, direct and free elections. In addition, Art. 117 entitles both Austrian and EU citizens to exercise their active and passive voting rights, subject to the conditions laid down in the laws of the *Länder*.<sup>1</sup> For a table with an overview of the relevant legislation, please see Section 1.5.

In Austria the laws on municipal elections differ between the *Länder*. With regard to the active voting rights, a high degree of uniformity in the legal frameworks of the different *Länder* can be detected. All *Länder* require that the citizen is at least 16 years old and resides in the municipality. In addition, each municipality must keep a register of all citizens that are entitled to vote ("*Wählerevidenz*"). Only those included in the register are eligible to vote on Election Days. In general, EU citizens have the right to vote in these local legislative elections. The exception is the city of Vienna, which is a province and a municipality at the same time. Here, EU citizens can only vote in the urban district elections. In those *Länder* where the mayors are directly elected, EU citizens have the same rights as their Austrian counterparts: they can vote both for the municipal council and the mayor. As regards passive voting rights, a distinction must be made between the eligibility for the municipal council and the position of a mayor. Whereas Austrians are eligible for both a position within the municipal council and for the position of mayor, other EU citizens can only be elected to the municipal council and not as a mayor. Furthermore, it should be noted that in some *Länder*, the mayor is not directly elected by the people, but indirectly through the municipal council.

Contrary to the laws on municipal elections, the elections for the European Parliament are regulated on the federal level by the *Bundesgesetz über die Wahl der Mitglieder des Europäischen Parlaments*, in short, the *Europawahlordnung* (EuWO). The right to vote in the European Parliament Elections is enshrined in Art. 23a of the Constitution. Art. 23a (2) of the Constitution provides that Austria will form one single voting constituency for the European Parliament Elections. It

equally provides that all men and women that are 16 years or older and not excluded from the elections by Austrian or European Union Law are entitled to vote. This criterion is elaborated on in §16 EuWO, which provides that all men and women that are 16 years or older and registered in the *Europa-Wählerevidenz* are entitled to vote. The specifics on the *Europa-Wählerevidenz* are laid down in the *Bundesgesetz über die Führung ständiger Evidenzen der Wahl- und Stimmberechtigten bei Wahlen zum Europäischen Parlament*, in short, the *Europa-Wählerevidenzgesetz* (EuWEG). How this registration occurs, will be elaborated on below. With regard to passive voting rights, Art. 23a (3) provides that all citizens that are 18 years old or older and that are entitled to exercise their active voting rights are eligible for a position as a Member of the European Parliament. This means that, in accordance with §29 EuWO, citizens must be included in the *Europa-Wählerevidenz*, the details of which are elaborated on below.

In terms of national elections, only Austrians are entitled to vote. Austrians living abroad are also entitled to exercise their voting rights in national elections, provided that they register to vote. The registration is valid for ten years and is renewable. Voters may cast their votes at polling stations or use absentee ballot cards for postal voting. As only Austrians possess voting rights for this election, this election will not be further elaborated on.

### 1.2. REGISTRATION AND VOTING CONDITIONS

As regards the registration and voting conditions for municipal elections, it can be held that each municipality must maintain a register which provides an overview of all citizens that are eligible to vote. Both Austrian citizens and non-Austrian EU citizens must be automatically registered in this voting register. This means that contrary to the *Europa-Wählerevidenz*, the non-Austrian-EU-citizen does not have to request registration. The only exception is the *Land Burgenland*, where non-Austrian-EU citizens have to register themselves.<sup>2</sup> The register is then published and accessible to anyone. All citizens can then appeal and request that they be withdrawn from or included in the register.

With regard to voting, a distinction is made between voting physically on the day itself in your own municipality and voting by absentee ballot cards. Voters in possession of an absentee ballot card can exercise their right to vote by voting in the municipality itself, by voting in a different municipality, by voting in front of a committee for people with physical

disabilities or per post. However, it should be noted that only those that expect to be unable to vote on Election Day before the competent authority within the municipality can obtain an absentee ballot card. This situation occurs if you are absent from the municipality in that period, if you are abroad or if your health does not permit you to go to the polls.

With regard to the registration and voting conditions in the European Parliament Elections, §16 and §29 EuWO require that citizens be registered in the *Europa-Wählerevidenz* by the key date set by the government (usually a few weeks before the elections). How the registration in the *Europa-Wählerevidenz* for Austrians takes place, depends on whether they reside in Austria or abroad and is regulated by the *Europa-wählerevidenzgesetz*. In §2 and §4 the main rules for citizens with Austrian nationality are set out: Austrians residing in Austria are automatically registered by their municipality.

Austrians residing abroad must request their registration in the *Wählerevidenz* in order to retain their rights to vote for the European Parliament Elections in their former municipality or another municipality in Austria. To successfully register, the applicant must submit the form which is available online at the Federal Ministry of the Interior's website, a valid identification document, proof of which municipality is competent and a declaration stating that he or she wishes to vote for the Austrian Members of the European Parliament and not for those in another Member State. These documents can be submitted by post, fax or e-mail. Registration can be accomplished all-year round. However, to be eligible to vote at upcoming elections, Austrians living abroad must be registered on the key date for the relevant election which is set by the federal government at least 71 days before the Election Day. Once registered, Austrians living abroad are automatically sent an absentee ballot card. The registration is valid for ten years and is renewable. In §3 the rules for the exclusion of electoral rights are laid down. It specifies that if certain criminal acts are perpetrated, the electoral rights of the citizen are withdrawn. In addition, Austrian courts have the possibility to withdraw the electoral rights for perpetrators of crimes with a prison sentence with a duration of more than five years.

§5 regulates the electoral rights of non-Austrian EU citizens residing in Austria. For those EU citizens, there is no automatic registration in the *Europa-Wählerevidenz*. EU citizens who request to be registered must provide proof of their identity, express their wish to vote in the Austrian elections for the European Parliament (in accordance with Art. 23a of the Constitution) and provide prove that they have not

lost their right to vote in the European Parliament in their home Member State. If the applicant was previously registered to vote in the European Parliament elections in his or her country of citizenship, he or she must state where (country, constituency and municipality). The application to vote has to be submitted at the municipality of the applicant's registered residence, either in person or (in some municipalities) by post, fax or e-mail. One cannot register online. The applicant must bring the completed registration form and a valid identification document. To be eligible to vote in upcoming elections, resident EU citizens must be registered to vote by the key date for the relevant election, which is set by the Federal Government at least 71 days before Election Day (§2 EuWO). The registration is automatically renewed for every election provided that the voter does not change his or her address of residence to an address outside of Austria. §25 *Europa - Wahlordnung* provides that voting is possible within the municipality itself, or elsewhere if the citizen possesses an absentee ballot card. In conformity with §26, absentee ballot cards will be given to Austrian citizens residing abroad, EU citizens absent from the municipality during the elections, or citizens that cannot come to the polling station for health reasons. Based upon §27, such an absentee ballot card can be requested either by visiting the municipality or by written communication. Citizens living abroad must be informed of this option. On the voting day itself, voting will be possible in the premises designated by the municipality (§§39-45) and by post (for those who possess an absentee ballot card) (§46).

### 1.3. MEASURES FACILITATING VOTING RIGHTS

Firstly, with regard to the municipal elections, municipalities tend to provide information on their websites. Usually, information on who is eligible to vote, how to vote, where to vote and when to vote is published online in German only. In Burgenland, where EU citizens must register separately, information on electoral rights and registration must be published in print on the municipality's official billboard at least four months before the elections. Although exceptions exist, few political parties focus on non-national EU citizens during the municipal elections. One of the rare cases where non-Austrian EU citizens were targeted was in the Vienna District Council elections. Here, the political party "WIR im Ersten" had non-Austrian EU citizens as candidates and ran a poster campaign in German, French, Italian and English.<sup>3</sup>

Secondly, as regards the exercise of electoral rights of Austrians living abroad in the European Parliament elections, there was no state-led campaign. However, there is an initiative to promote the exercise of

electoral rights of Austrians having moved abroad. Through social media campaigns, the NGO *Auslandsösterreicher-Weltbund* seeks to increase the general voter turnout of Austrians living abroad (including in EU Member States).

Thirdly, for the European Parliament elections in 2014, information on electoral rights and the need for registration was provided to non-national EU citizens online. In addition, nine weeks before the Election Day and a few days before the key date, the Federal Ministry of the Interior issued a press release regarding the European Parliament elections, which seems to have benefitted from at least some media attention. Furthermore, the Office of the Federal Chancellor, the Federal Ministry for Europe, Integration and Foreign Affairs and the Federal Ministry of the Interior launched different information campaigns to raise awareness and to provide information about the upcoming elections.

However, it should be noted that all campaigns and information on the 2014 European Parliament elections were published in German only, with the exception of a brief overview by the Federal Ministry of the Interior being available in English as well. Bearing in mind that Croatian, Romani, Czech, Slovak, Hungarian and Slovene are officially recognised minority languages in Austria, this could potentially be seen as particularly worrisome. The fact that non-national EU citizens do not seem to be particularly incentivised to exercise their electoral rights is only reinforced by the lack of campaign activity of political parties targeted at non-national EU citizens. There were equally no campaigns by non-governmental organisations that specifically targeted non-Austrian EU citizens. Nevertheless, various umbrella organisations and self-organised groups of EU citizens living in Austria as well as embassies of EU Member States in Austria provided information about the electoral rights on their websites, social media accounts and newsletters. An example of a campaign that aimed to increase voter turnout for the European Parliament Elections was a travelling exhibition organised by the Austrian Society for European Politics (*Österreichische Gesellschaft für Europapolitik*). This travelling exhibition was displayed in schools and focused on young people aged between 15 and 19 years old.<sup>4</sup>

Finally, as already noted above, Austria is quite lenient towards citizens with disabilities in allowing voting by an absentee ballot card, instead of having to visit a polling station.

#### 1.4. STATISTICS

With regard to municipal elections, an average of 70% voter turnout can be witnessed.<sup>5</sup> However, the different Länder have not published any information on the voter turnout of non-Austrian-EU citizens in these elections. There are equally no centrally collected official data about non-national EU citizens that stood as a candidate or got elected in municipal elections.

In the 2014 European Parliament Elections, there was a significantly lower voter turnout (45%). For these elections 34.773 of a total of 6.410.602 eligible voters were non-resident Austrians. There are however no statistics on their turnout. 33.184 non-Austrian EU citizens were equally eligible to vote. Again, no statistics or estimates exist as to their turnout. Finally, it must be noted that none of the 15 non-Austrian EU citizens standing as a candidate in the European Parliament Elections was elected.<sup>6</sup>

#### 1.5. LIST OF AUSTRIAN LEGISLATION CONCERNING MUNICIPAL AND EUROPEAN PARLIAMENTARY ELECTIONS

##### 1. European Parliament Elections

*Bundes-Verfassungsgesetz (B-VG)*, Federal Constitutional Law, BGBl. Nr. 1/1930 as amended by BGBl. I Nr. 138/2017, Article 23a and 26a [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138) (DE), [www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1930\\_1/ERV\\_1930\\_1.html](http://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.html) (EN).

*Bundesgesetz über die Führung ständiger Evidenzen der Wahl- und Stimmberechtigten bei Wahlen zum Europäischen Parlament (Europa-Wählerevidenzgesetz – EuWEG)*, Federal Law on the European Parliament Electoral Register, BGBl. Nr. 118/1996 as amended by BGBl. I Nr. 120/2016, [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001437](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001437) (DE).

*Bundesgesetz über die Wahl der Mitglieder des Europäischen Parlaments (Europawahlordnung – EuWO)*, European Parliament Electoral Law, BGBl. Nr. 117/1996 as amended by BGBl. I Nr. 120/2016, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001436>

##### 2. Municipal elections

###### General

*Bundes-Verfassungsgesetz (B-VG)*, Federal Constitutional Law, BGBl. Nr. 1/1930 as amended by BGBl. I Nr. 138/2017, Article 117, 108, 95 and 26 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138> (DE), [https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1930\\_1/ERV\\_1930\\_1.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.html) (EN).

### Burgenland

*Kundmachung der Burgenländischen Landesregierung vom 15. Juli 2003 über die Wieder- verlautbarung der Burgenländischen Gemeindeordnung*, Burgenland Municipal Code, LGBL. Nr. 55/2003, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=20000221>.

*Gesetz vom 9. November 1995 über die Führung der Landes-Wählerevidenz und der Gemeinde-Wählerevidenz (Burgenländisches Wählerevidenz-Gesetz)*, Law on the Provincial and Municipal Electoral Register Burgenland, LGBL. Nr. 5/1996 as amended by LGBL. Nr. 1/2014, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=10000426>.

*Gesetz vom 7. Mai 1992 über die Wahl der Gemeindeorgane (Gemeindewahlordnung 1992 – GemWO 1992)*, Burgenland Local Electoral Code LGBL. Nr. 54/1992 as amended by LGBL. Nr. 40/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=10000304>

### Carinthia

*Kärntner Allgemeine Gemeindeordnung – K-AGO*, Carinthian Municipal Code, LGBL Nr 66/1998 (WV) as amended by LGBL. Nr. 25/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=10000276>

*Kärntner Gemeinderats- und Bürgermeisterwahlordnung 2002 - K-GBWO 2002*, Carinthian Local Electoral Code LGBL. Nr. 32/2002 as amended by LGBL. Nr. 25/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=20000047>

### Lower Austria

*NÖ Gemeindeordnung 1973 (NÖ GO 1973)*, Lower Austrian Municipal Code, LGBL. 1000-0 as amended by LGBL. Nr. 12/2018, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000105>

*NÖ Landesbürgerevidenzengesetz*, Law on the Provincial and Municipal Electoral Register Lower Austria, LGBL. 0050-7 as amended by LGBL. Nr. 55/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000041>

*NÖ Gemeinderatswahlordnung 1994 (NÖ GRWO 1994)*, Lower Austrian Local Electoral Code LGBL. 0350-0 as amended by LGBL. Nr. 31/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000057>

*Verordnung über die Gestaltung der Drucksorten zur Vollziehung der NÖ Gemeinderats- wahlordnung 1994*, Ordinance on the Layout of Forms, LGBL. 0350/2-0 as amended by LGBL. 0350/2-8, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000058>

### Upper Austria

*Oö. Gemeindeordnung 1990 (Oö. GemO 1990)*, Upper Austrian Municipal Code, LGBL.Nr. 91/1990 as amended by LGBL. Nr. 25/2018, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=10000288>

*Landesgesetz vom 4. Juli 1996 über die Wahl der Mitglieder des Gemeinderates und des Bürgermeisters (Oö. Kommunalwahlordnung)*, Upper Austrian Local Electoral Code, LGBL. Nr. 81/1996 as amended by LGBL. Nr. 95/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=10000481>

### Salzburg

*Salzburger Gemeindeordnung 1994 – GdO 1994*, Salzburg Municipal Code, LGBL. Nr. 107/1994 as amended by LGBL. Nr. 96/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10000813>

*Salzburger Gemeindewahlordnung 1998*, Salzburg Local Electoral Code, LGBL. Nr. 117/1998 as amended by LGBL. Nr. 106/2013, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10001108>

*Salzburger Stadtrecht 1966*, Municipal Code of the City of Salzburg, LGBL. Nr. 47/1966 (WV), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10000140>

### Styria

*Gesetz vom 14. Juni 1967, mit dem für die Gemeinden des Landes Steiermark mit Ausnahme der Städte mit eigenem Statut eine Gemeindeordnung erlassen wird (Steiermärkische Gemeindeordnung 1967 – GemO)*, Styrian Municipal Code, LGBL. Nr. 131/2014, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000218>

*Gesetz vom 21. April 2009 über die Gemeindewahlordnung 2009 – GWO*, Styrian Local Electoral Code, LGBL. Nr. 59/2009 as amended by LGBL. Nr. 98/2014, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000769>

*Gesetz vom 4. Juli 1967, mit dem ein Statut für die Landeshauptstadt Graz erlassen wird (Statut der Landeshauptstadt Graz 1967)*, Municipal Code of Graz, LGBL. Nr. 130/1967 as amended by LGBL. Nr. 45/2016, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000217>

*Gesetz vom 19. Juni 2012, mit dem eine Gemeindewahlordnung für die Landeshauptstadt Graz (Gemeindewahlordnung Graz 2012) beschlossen wird*, Styrian Local Electoral Code, LGBL. Nr. 86/2012 as amended by LGBL. Nr. 135/2016, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000539>



### Tirol

Gesetz vom 21. März 2001 über die Regelung des Gemeindegewesens in Tirol (Tiroler Gemeindeordnung 2001 – TGO), Tyrolian Municipal Code, LGBL. Nr. 36/2001 as amended by LGBL. Nr. 77/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000101>

Gesetz vom 7. Juli 1994, mit dem die Wahl der Organe der Gemeinde geregelt wird (Tiroler Gemeindegewahlordnung 1994 – TGWO 1994), Tyrolian Local Electoral Code, LGBL. Nr. 88/1994 as amended by LGBL. Nr. 76/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000186>

Kundmachung der Landesregierung vom 17. Juni 1975 über die Wiederverlautbarung des Stadtrechtes der Landeshauptstadt Innsbruck, Municipal Code of Innsbruck, LGBL. Nr. 53/1975 as amended by LGBL. Nr. 32/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000196>

Gesetz vom 6. Oktober 2011 über die Innsbrucker Wahlordnung 2011 (IWO 2011), Local Electoral Code of Innsbruck, LGBL. Nr. 120/2011 as amended by LGBL. Nr. 75/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000498>

### Vorarlberg

Gesetz über die Organisation der Gemeindeverwaltung, Vorarlberg Municipal Code, LGBL.Nr. 40/1985 as amended by LGBL. Nr. 78/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000047>

Gesetz über das Verfahren bei Wahlen in die Gemeindevertretung und des Bürgermeisters, Vorarlberg Local Electoral Code, LGBL. Nr. 30/1999 as amended by LGBL.Nr. 7/2018, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000075>

### Vienna

Verfassung der Bundeshauptstadt Wien (Wiener Stadtverfassung – WStV), Constitution of the City of Vienna, LGBL. Nr. 28/1968 as amended by LGBL. Nr. 41/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000308>

Gesetz über die Gemeindegewahlordnung der Stadt Wien (Wiener Gemeindegewahlordnung 1996 – GWO 1996), Vienna Local Electoral Code, LGBL. Nr. 16/1996 as amended by LGBL. Nr. 20/2016, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000320>

### Notes:

<sup>1</sup> For more information on the demographic characteristics of non-Austrian-EU-citizens and Austrians living abroad, see G. Valchars (2018), “Report on political participation of mobile EU citizens: Austria”, GLOBALCIT Country Report 2018/05, Florence, European University Institute, September, pp. 2-3.

<sup>2</sup> For more information on Burgenland, see Valchars (2018), op. cit., p. 15.

<sup>3</sup> For more examples of exceptions, see Valchars (2018), op. cit., pp. 19-20.

<sup>4</sup> For more examples of campaigns for the European Parliament Elections, see Valchars (2018), op. cit., p. 17.

<sup>5</sup> <http://wahl.bgld.gv.at/wahlen/gr20171029.nsf>;  
<http://www.ktn.gv.at/wahlen/grwahl2015/>;

<http://www.noel.gv.at/wahlen/G20151/Index.html>;

[https://www.land-oberoesterreich.gv.at/Mediendateien/Formulare/Dokument\\_eAbt\\_Stat/GR15-Wahlbericht.pdf](https://www.land-oberoesterreich.gv.at/Mediendateien/Formulare/Dokument_eAbt_Stat/GR15-Wahlbericht.pdf);

<https://www.salzburg.gv.at/stat/wahlen/gvw/index2014.html#hist.5.0>; <https://gemeindegewahl.at/steirische-gemeinderatswahl-verluste-fuer-oevp-und-spoer/>;

[https://wahlen.tirol.gv.at/gemeinderats\\_und\\_buergermeisterwahlen\\_2016/index.html](https://wahlen.tirol.gv.at/gemeinderats_und_buergermeisterwahlen_2016/index.html);

<http://www.vorarlberg.at/wahlen/gv.asp>;

<https://www.wien.gv.at/presse/2015/10/13/wien-wahl-2015-vorlaeufiges-endergebnis-der-wiener-gemeinderatswahl>.

<sup>6</sup> Valchars (2018), op. cit., pp. 25-26.



## 2. Belgium

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Belgium is a federal State, composed of three regions and three communities. The federation, the regions and the communities each have their own parliament and government (this is merged for the Flemish Community and the Flemish Region: they share one parliament and one government). The three regions are the Dutch-speaking Flemish Region, the French-speaking Walloon Region and the bilingual Brussels Capital Region. The regions are competent for territorial matters, such as housing and spatial planning. The three communities are the Flemish Community, the French Community and the German Community. The Communities are competent for personal matters, such as education and culture. The organization of the rules on elections reflect this complex constitutional framework.

### 2.1. LEGAL FRAMEWORK

#### 2.1.1. European Parliament elections

European Parliament elections are organised at federal level by the Federal Public Service Interior. The electoral participation in Belgium is **governed by two federal laws**, namely the *Electoral Code of 12 April 1894* and the *Law of 23 March 1989 concerning the election of the European Parliament*.

In Belgium, the following people **have a right to vote** for the European Parliament (in favour of candidates that are on the lists):<sup>1</sup>

- Belgians of at least 18 years old, registered in a Belgian municipality's population register (or in a population register kept at a consular post in a State that is not an EU Member State) that are not excluded or suspended from their right to vote (e.g. final exclusion exists if someone is sentenced to life imprisonment);
- Belgians of at least 18 years old, registered in a population register kept at a consular post in an EU Member State that are not excluded or suspended from their right to vote; and
- Nationals of other EU Member States that fulfil the same conditions as Belgians do, except for the nationality condition *and* that express the wish to exercise their voting right in Belgium (for further information, see sub-section 2.A.i. on registration for the European Parliament elections).

Note that for **Belgians** residing in Belgium and Belgians registered at a consular post abroad, they not only

have a right to vote, they also have an **obligation** to vote. EU citizens that have registered to vote for a candidate on a Belgian list, also have an obligation to vote.<sup>2</sup>

To be **eligible** as a Belgian candidate for the European Parliament one has to:<sup>3</sup>

- Be of Belgian nationality or of a nationality of another EU Member State;
- Reside in one of the Member States;
- Not be in any situation that would lead to exclusion or suspension;
- Not have lost the right to be eligible in one's country of origin;
- Not be a candidate for the same elections in another Member State; and
- Have reached the age of 21.

Furthermore, candidates must be a Dutch speaker ('Nederlandstalig', 'd'expression néerlandaise') in case of registration for a Dutch speaking electoral college; a French speaker ('Franstalig', 'd'expression française') in case of registration for a French speaking electoral college; or a German speaker ('Duitstalig', 'd'expression allemande') in case of registration for a German speaking electoral college. Candidates must declare to the president of the electoral college that they master the language of the electoral college they want to be a candidate for.

Belgians residing in another Member State must declare in writing that they are not a candidate for a Member State other than Belgium. Candidates that are nationals of another Member State must declare in writing their nationality, date and place of birth, last address in the Member State of origin and the address of the current place of residence in Belgium, that they are not a candidate for another Member State, and that the right to be eligible was not taken from them in the Member State of origin.

**No reform** to Belgian legislation relating to European elections are currently foreseen.

#### 2.1.2. Municipal elections

Municipal elections are governed primarily by **federal law**, namely the *Law on municipality elections of 4 August 1932*. Some provisions of the *New Municipality Law of 24 June 1988* are also relevant to the organization of municipal elections. **Each Region has adopted more specific legislation** to organise the municipal elections in its territory, i.e. the *Local and Provincial Voting Decree of 8 July 2011* (in the Flemish Region), the *Local Democracy and Decentralisation*



*Code of 22 April 2011* (in the Walloon Region), and the *Brussels Local Voting Code of 4 August 1932* (in the Brussels Capital Region).

Persons who meet the following conditions have a **right to vote** in the municipal elections:<sup>4</sup>

- Be of Belgian nationality or of a nationality of another EU Member State;
- Be registered in the municipality's population register where you want to vote;
- Not be in any situation that would lead to exclusion or suspension;
- Not have lost the right to vote in one's country of origin; and
- Have reached the age of 18.

The law on municipality elections of 4 August 1932 (Articles 1 and 1bis) therefore largely provides for the same conditions for Belgians and EU citizens to be able to vote in municipal elections.

**Nationals of another EU Member State** must however, in addition to the conditions above, have expressed the wish to exercise their voting right in Belgium (for further information, see sub-section 2.2.1 on registration for the municipal elections).

Note that, for municipal elections, **non-EU nationals** also have a right to vote under the following conditions: non-EU nationals that fulfil the same conditions as Belgians do, except for the nationality condition, who live continuously in Belgium for a period of minimum 5 years and express the wish to exercise their voting right in Belgium.<sup>5</sup>

N.B. As for European elections, Belgians residing in Belgium and Belgians registered at a consular post abroad not only have a right to vote in the municipal elections, they also have an obligation to vote. EU citizens and non-EU nationals that have registered to vote, also have an obligation to vote – *Article 62 of the Law on municipality elections of 4 August 1932*.

To be **eligible** as a candidate for municipal elections,<sup>6</sup> one must be a voter and retain the conditions to be a voter:

- Be of Belgian nationality or of the nationality of another EU Member State (*non-EU nationals can vote, but are not eligible to be a candidate for municipal elections*);
- Be registered in the municipality's population register where you want to be a candidate;
- Not be in any situation that would lead to exclusion or suspension;<sup>7</sup>
- Not have lost the right to vote in one's country of origin; and
- Have reached the age of 18.

**Nationals of another EU Member State** must, in addition to the conditions above, have expressed the wish to exercise their voting right in Belgium.<sup>8</sup>

**No reform** to Belgian legislation relating to municipal elections are currently foreseen.

## 2.2. REGISTRATION AND VOTING CONDITIONS

### 2.2.1. Registration

For **European elections**, non-mobile Belgian nationals are automatically registered to vote. If Belgians residing in another Member State wish to vote for candidates on a Belgian list,<sup>9</sup> they must have not explicitly formulated the wish to exercise their voting right in the Member State where they are residing, and they should ask the Belgian consular post to provide an application form to register and then file the completed application form with the Belgian consular post. Once registered, the registration is valid for participation to every European election taking place as from the 1<sup>st</sup> day of the 4<sup>th</sup> month following the submission of the application form, as long as long as the Belgian national remains registered on the population register of the same consular post. One can also ask for withdrawal of the registration to vote for candidates on a Belgian list.

For EU citizens in Belgium, they have to actively register to vote for European elections in Belgium.<sup>10</sup> In order to sign up for the electoral register, they have to file a written request at the municipality where they have their main residence. The request should contain the following elements:

- Nationality;
- Address of main residence;
- The municipality, electoral district or diplomatic/consular post of the Member State where they were last registered on the electoral register; and
- A declaration that the person concerned (i) will only vote for candidates on a Belgian list; and (ii) did not lose his right to vote in the country of origin.

The written request is inadmissible during the period starting from the date of the drawing up of the electoral list until the date of the elections. When the right to vote is granted, this authorisation will remain valid as long as the person concerned complies with the electoral competence requirements or as long as this person has not requested the withdrawal of this authorisation

For **municipal elections**, non-mobile Belgians are automatically registered to vote.<sup>11</sup> Mobile EU citizens in Belgium are required to actively register to vote in

municipal elections in Belgium.<sup>12</sup> In order to sign up for the electoral register, they have to file a written request at the municipality where they have their main residence. The request should contain their nationality and their address of main residence. For non-EU citizens in Belgium to register in the electoral register for municipal elections,<sup>13</sup> they have to file a written request at the municipality where they have their main residence. The request should contain the following elements:

- Nationality;
- Address of main residence; and
- A declaration in which the person concerned agrees to respect the Belgian constitution, the Belgian legislation and the ECHR.

The written request is inadmissible during the period starting from the date of the drawing up of the electoral list until the date of the elections. When the right to vote is granted, this authorisation will remain valid as long as the person concerned qualifies to be a voter or as long as this person has not requested the withdrawal of this authorisation

For mobile Belgian nationals, since they no longer have their main residence in a Belgian municipality, they are no longer entitled to vote in municipal elections, as they do not fulfil the requirement to be registered in the municipality's population register.<sup>14</sup>

Registration conditions for European Parliament elections and municipal elections are therefore very similar.

### 2.2.2. Voting conditions common to European and municipal elections

Everyone can vote by proxy if he or she cannot vote in person because of legitimate reasons.<sup>15</sup> Voting by proxy is only allowed if 'legitimate reasons' can be demonstrated. The following are accepted as 'legitimate reasons':

- Inability to go to the polling station because of illness or infirmity (a medical certificate is required in this case);
- There are vocational or operational reasons because of which the person concerned resides abroad or is unable to go to the polling station on the particular date (a certificate from the employer/military or civil authority is required);
- The voter is working as a skipper, a market vendor or at a funfair (a certificate from the mayor is required);
- Being in custody (a document from the direction of the place of custody is required);
- For religious reasons (a certificate from the religious authority is required);

- For reasons related to studies (the student needs to provide a certificate from the educational institution); or
- The voter is temporarily abroad (proof is required, which is established by the mayor or by a sworn statement).

The possibility to vote by proxy because of legitimate reasons is **open to all and for all elections**.

Furthermore, Belgians residing outside Belgium can exercise their voting rights concerning the **European Parliament elections** in person or by proxy in a *polling station in Belgium*, in person or by proxy at the *consular post* where they are registered; or via post.<sup>16</sup> These possibilities are **open for all Belgians living abroad for EP elections**,<sup>17</sup> but are not open for municipal elections since these persons do not have their main residence in a Belgian municipality and thus may not vote in this context.

Municipal elections are held on a Sunday.<sup>18</sup> European Parliament elections are held on the same day as regional elections, which are also held on a Sunday.<sup>19</sup>

## 2.3. MEASURES FACILITATING VOTING RIGHTS

Belgian nationals are generally aware that they have the right to vote, since they are familiar with the duty to vote in Belgium. The main obstacle for mobile EU citizens exercising their right to vote in the European Parliament elections and in the municipal elections is that they first have to *know that they also have the right to vote* for Belgian lists in European Parliament elections and that they have the right to vote for municipal elections, since they have to first sign up for the electoral register. In order to address this problem, the different regional governments post information on the rights of EU citizens to vote and the procedure to be followed on their websites.<sup>20</sup>

For European Parliament elections, the Minister for the Interior sends a 'circular' to the municipalities requiring them to send the form to sign up for the electoral register together with an information brochure to potential EU citizen voters in their municipality to inform them of their right to vote and be a candidate.<sup>21</sup> Municipalities are also invited in this 'circular' to hold extra information events, to post the information in the official journal and on the website of the municipality.

As for municipal elections, there does not seem to be the same type of information campaigns as just described for elections to the European Parliament (outside of posting the information on the regional websites and on the websites of different individual municipalities themselves).

If EU citizens are informed of their rights and are enrolled, then voting is facilitated by the possibility to vote by proxy. Furthermore, both European Parliament elections and municipal elections are always held on a Sunday, which makes it easier for persons to go to the polls.<sup>22</sup>

As for **linguistic minorities**, there are positive measures in place concerning the right to vote and their political representation. However, this concerns linguistic minorities in Belgium (in view of the different state reforms which were enacted throughout the last decades), and not linguistic minorities from other EU countries.

For the **European Parliament elections**, voters in one specific electoral district situated in Flanders (6 municipalities), on the border of the Brussels Capital Region, have the possibility to vote for political lists of one of 2 regions: either lists in the Flemish Region or lists in the Walloon Region (except for the German-speaking part).<sup>23</sup> These voters can exercise their choice in the voting booth itself, since they receive a voting ballot with both the political lists in the Flemish Region and in the Walloon Region. This means in practice that the French-speaking minority in these municipalities in the Flemish Region can vote for political lists in the Walloon Region (except for the German-speaking part).

Voters in two other municipalities (Voeren and Komen-Waasten) have the possibility to go and vote “on the other side of the linguistic border” for the European Parliament elections (in, respectively, Aubel and Heuvelland).<sup>24</sup> The *German-speaking* part of Belgium has a guaranteed seat in the European Parliament, because it has its own electoral district in which one seat is available.<sup>25</sup> For **municipal elections**, ‘schepenen’ (NL)/‘échevins’ (FR) are elected directly in the 6 municipalities referred to above and in Komen-Waasten and Voeren.<sup>26</sup>

For **people with disabilities**, a disabled person that cannot enter the polling station alone or fill in the voting form by him or herself can be accompanied or guided by another person. The president of the polling station needs to grant permission for this.<sup>27</sup>

In respect of measures facilitating **gender equality** in participation, the difference between the number of male and female candidates on the lists of candidates cannot be higher than one, and the *first two persons* on a list

may not have the same gender.<sup>28</sup> The same rules apply for substitute candidates. For municipal elections, the Brussels Capital Region and the Walloon Region go further and require that all persons on a political list who follow one another are required to be of a different gender.<sup>29</sup>

## 2.4. STATISTICS

In respect of the most recent **municipal elections**, which have taken place on 14 October 2018, the Federal Government note that 8 135 774 voters have registered to vote,<sup>30</sup> of which 7 975 658 are Belgians (who are automatically registered given their obligation to vote). Of the remaining registered voters, 130 559 are EU citizens (around 17% of the potential 748 267 eligible EU citizen voters), and 10 861 non-EU citizen voters.

For the most recent **European Parliament** elections in 2014, a total of 68 771 mobile EU citizens have registered to vote at the 2014 European Parliament elections in Belgium (see Figure 2.1 for breakdown of registered EU citizen voters by nationality). The total number of registered voters for the 2014 EP elections for Belgium were 7 940 275 voters (see Figure 2.2).

Figure 2.1. European Elections – 25 May 2014 – Registered EU Voters

| EUROPESE VERKIEZINGEN - 25 MEI 2014 - ingeschreven EU kiezers |                         |                       |                    |                 |
|---|-------------------------|-----------------------|--------------------|-----------------|
| ELECTIONS EUROPEENNES DU 25 MAI 2014 - électeurs EU inscrits  |                         |                       |                    |                 |
| Afkorting<br>Abréviation                                      | Landencode<br>Code pays | Land-N<br>Pays-N      | Land-F<br>Pays-F   | Aantal<br>Total |
| DE  | 103                     | Duitsland             | Allemagne          | 4.620           |
| AT  | 105                     | Oostenrijk            | Autriche           | 203             |
| BG  | 106                     | Bulgarije             | Bulgarie           | 732             |
| CY  | 107                     | Cyprus                | Chypre             | 12              |
| DK  | 108                     | Denemarken            | Danemark           | 302             |
| ES  | 109                     | Spanje                | Espagne            | 4.190           |
| FI  | 110                     | Finland               | Finlande           | 65              |
| FR  | 111                     | Frankrijk             | France             | 17.493          |
| GB  | 112                     | Verenigd Koninkrijk   | Royaume-Uni        | 2.559           |
| LU  | 113                     | Luxemburg             | Luxembourg         | 656             |
| GR  | 114                     | Griekenland           | Grèce              | 1.172           |
| HU  | 115                     | Hongarije             | Hongrie            | 173             |
| IE  | 116                     | Ierland               | Irlande            | 453             |
| MT  | 119                     | Malta                 | Malte              | 11              |
| PL  | 122                     | Polen                 | Pologne            | 1.553           |
| PT  | 123                     | Portugal              | Portugal           | 1.721           |
| RO  | 124                     | Roemenië              | Roumanie           | 1.209           |
| SE  | 126                     | Zweden                | Suède              | 213             |
| IT  | 128                     | Italië                | Italie             | 20.709          |
| NL  | 129                     | Nederland             | Pays-Bas           | 10.208          |
| LV  | 135                     | Letland               | Lettonie           | 53              |
| EE  | 136                     | Estland               | Estonie            | 18              |
| LT  | 137                     | Litouwen              | Lituanie           | 65              |
| CZ  | 140                     | Tsjechische Republiek | République Tchèque | 131             |
| SK  | 141                     | Slowakije             | Slovaquie          | 190             |
| HR  | 146                     | Kroatië               | Croatie            | 39              |
| SI  | 147                     | Slovenië              | Slovénie           | 21              |
| <b>Totaal</b>   | <b>Total</b>            |                       |                    | <b>68.771</b>   |

Source: FOD IBZ (2014).

Figure 2.2. Elections to the European Parliament 2014 – Table with registered voters

**VERKIEZING VAN HET EUROPEES PARLEMENT 2014 - TABEL MET INGESCHREVEN KIEZERS**  
**ELECTION DU PARLEMENT EUROPEEN 2014 - TABLEAU DES ELECTEURS INSCRITS**

| ibz   |  |   |                         |                           |                  |
|---|--|---|-------------------------|---------------------------|------------------|
| Date d'observation / Observatiedatum 22/03/2014   |  |   |                         |                           |                  |
| Kieskring / Circonscription   | Electeurs en Belgique<br>Kiezers in België | Electeurs de l' Union européenne<br>Kiezers - Europese Unie |                         |                           | Total<br>Totaal  |
|   |  | Inscrits<br>Ingeschreven                                    | Potentiel<br>Potentieel | Pourcentage<br>Percentage |                  |
| <b>TOTALEN VLAAMSE KIESKRING -<br/>TOTAUX CIRCONSCRIPTION ELECTORALE FLAMANDE</b>                             | 4.772.829                                  | 19.933  | 249.638                 | 7,98%                     | 4.792.762        |
| <b>TOTALEN KIESKRING BRUSSEL-HOOFDSTAD -<br/>TOTAUX CIRCONSCRIPTION ELECTORALE DE BRUXELLES-<br/>CAPITALE</b> | 583.173                                    | 15.531  | 204.122                 | 7,61%                     | 598.704          |
| <b>TOTAUX CIRCONSCRIPTION ELECTORALE WALLONNE -<br/>TOTALEN WAALSE KIESKRING</b>                              | 2.466.492                                  | 32.059  | 221.409                 | 14,48%                    | 2.498.551        |
| <b>TOTAUX CIRCONSCRIPTION ELECTORALE<br/>GERMANOPHONE -<br/>TOTALEN DUITSTALIGE KIESKRING</b>                 | 49.010                                     | 1.248   | 11.201                  | 11,14%                    | 50.258           |
| <b>TOTAAL VOOR HET RIJK<br/>TOTAL POUR LE ROYAUME</b>   | <b>7.871.504</b>                           | <b>68.771</b>   | <b>686.370</b>          | <b>10,02%</b>             | <b>7.940.275</b> |

Source: FOD IBZ (2014).

Figure 2.3. Elections to the European Parliament 2014 – Belgian voters registered abroad

| Kiezers in België<br>Electeurs en Belgique |           |                 | Belgische kiezers in buitenland<br>Electeurs belges à l'étranger |       |                 |        |       |                 |        |       |                 |        |     |                 |        |        |                 |                |        |                 |
|--|-----------|-----------------|--|-------|-----------------|--------|-------|-----------------|--------|-------|-----------------|--------|-----|-----------------|--------|--------|-----------------|----------------|--------|-----------------|
|  |           |                 | Code 1   |       |                 | Code 2 |       |                 | Code 3 |       |                 | Code 4 |     |                 | Code 5 |        |                 | Totaal / Total |        |                 |
| M/H  | V/F       | Totaal<br>Total | M/H  | V/F   | Totaal<br>Total | M/H    | V/F   | Totaal<br>Total | M/H    | V/F   | Totaal<br>Total | M/H    | V/F | Totaal<br>Total | M/H    | V/F    | Totaal<br>Total | M/H            | V/F    | Totaal<br>Total |
| 3.795.276                                  | 4.076.228 | 7.871.504       | 2.979  | 2.678 | 5.657           | 6.229  | 8.407 | 14.636          | 9.946  | 7.834 | 17.780          | 616    | 684 | 1.300           | 42.216 | 47.365 | 89.581          | 61.986         | 66.968 | 128.954         |

Code 1: vote in person in a Belgian municipality  
 Code 2: vote by proxy in a Belgian municipality  
 Code 3: vote in person in the consular post

Code 4: vote by proxy in the consular post  
 Code 5: vote via post

Source: FOD IBZ (2014).

A total of 128 954 Belgians registered to **vote from abroad** at the European Parliament elections in 2014 (see Figure 2.3). For the 2014 European Parliament elections for Belgium, a total of 6 690 711 valid votes were cast (out of 7 125 161 total votes cast) by 7 948 854 registered voters.<sup>31</sup>

## 2.5. LIST OF BELGIAN LEGISLATION CONCERNING LOCAL AND EUROPEAN PARLIAMENT ELECTIONS

[All links below give access to consolidated versions of these legal sources. The different linguistic versions of the texts can be found on each of these pages in the top right corner.]

Elections for the European Parliament are regulated at Federal level by the following Belgian Federal laws:

- Electoral Code of 12 April 1894 ("Kieswetboek van 12 april 1894"/"Code Electoral de 12 avril 1894"): [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1894041230&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1894041230&table_name=wet)
- Law of 23 March 1989 concerning the election of the European Parliament ("Wet van 23 maart 1989 betreffende de verkiezing van het Europese Parlement"/"Loi de 23 mars 1989 relative à l'élection du Parlement européen"): [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1989032333&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1989032333&table_name=wet)

As for municipal elections, the legal framework results from a combination of legal instruments as follows:

- Law on municipality elections of 4 August 1932 ("Gemeentekieswet van 4 augustus 1932"/"Loi électorale communale de 4 août 1932") – Federal law: [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1932080430&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1932080430&table_name=wet)

- New Municipality Law of 24 June 1988 (*“Nieuwe Gemeentewet van 24 juni 1988”/“Nouvelle Loi Communale de 24 juin 1988”*):  
[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1988062431&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1988062431&table_name=wet)
- Local and Provincial Voting Decree of 8 July 2011 (*“Lokaal en Provinciaal Kiesdecreet van 8 juli 2011”/“Décret électoral local et provincial de 8 juillet 2011”*) – Flemish Decree:  
[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2011070824&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2011070824&table_name=wet)
- Local Democracy and Decentralisation Code of 22 April 2011 (*“Wetboek van de plaatselijke democratie en decentralisatie van 22 april 2004”/“Code de la démocratie locale et de la décentralisation de 22 avril 2004”*) – Walloon Code:  
[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2004042242&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004042242&table_name=loi)
- Brussels Local Voting Code of 4 August 1932 (*“Brussels Gemeentelijk Kieswetboek van 4 augustus 1932”/“Code électoral communal bruxellois de 4 août 1932”*) – Brussels Code:  
[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1932080431&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1932080431&table_name=wet)

## Notes:

<sup>1</sup> Article 1 of the Law of 23 March 1989.

<sup>2</sup> Article 39 of the Law of 23 March 1989 *juncto* Article 180 of the Electoral Code of 12 April 1894.

<sup>3</sup> Article 41 of the Law of 23 March 1989.

<sup>4</sup> Articles 1 and 1bis of the Law of 4 August 1932.

<sup>5</sup> Article 1ter of the Law on municipality elections of 4 August 1932.

<sup>6</sup> Article 65 of the Law on municipal elections of 4 August 1932.

<sup>7</sup> See Article 1, §3 and Article 65, second paragraph, 1° to 3° of the Law on municipal elections of 4 August 1932.

<sup>8</sup> See Article 65 of the Law on municipality elections of 4 August 1932.

<sup>9</sup> Article 1 and 6 of the Law of 23 March 1989.

<sup>10</sup> Article 1 of the Law of 23 March 1989.

<sup>11</sup> Article 1ter of the Law of 4 August 1932.

<sup>12</sup> Article 1bis of the Law of 4 August 1932.

<sup>13</sup> Article 1ter of the Law of 4 August 1932.

<sup>14</sup> See Article 1, §1, 3° of the Law on municipal elections of 4 August 1932.

<sup>15</sup> For European Parliament elections, see Article 30 of the Law of 23 March 1989 *juncto* Article 147 bis of the Electoral Code. For municipal elections, see Article 56 of the Local and Provincial Elections Decree of 8 July 2011 (Flemish Decree), Article L.4132-1 of the Local Democracy and Decentralisation Code of 22 April 2011 (Walloon Code), Article 42bis of the Brussels Local Voting Code of 4 August 1932 (Brussels Code).

<sup>16</sup> Article 1 and 5 of the Law of 23 March 1989.

<sup>17</sup> Article 180 Electoral Code.

<sup>18</sup> Article 7 of the Law on municipal elections of 4 August 1932.

<sup>19</sup> Article 32 of the Law of 23 March 1989 concerning the election of the European Parliament.

<sup>20</sup> For the Flemish Region, see:  
<https://vlaanderenkiest.be/faq/mogen-niet-belgische-eu-onderdanen-stemmen-op-14-oktober-2018>;

For the Brussels Capital Region, see

<https://verkiezingen2018.brussels/electeur/de-stemming/onderdanen-van-een-lidstaat-van-de-europese-unie>;

For the Walloon Region, see

<http://electionslocales.wallonie.be/electeur/vote-des-etrangers>.

<sup>21</sup> See

[https://elections.fgov.be/sites/default/files/documents/ELECT\\_PRJ\\_2019\\_CirInscriptionUE\\_20180919\\_NF\\_NL.pdf](https://elections.fgov.be/sites/default/files/documents/ELECT_PRJ_2019_CirInscriptionUE_20180919_NF_NL.pdf).

<sup>22</sup> See Article 7 of the Law on municipal elections of 4 August 1932 for municipal elections, and Article 32 of the Law of 23 March 1989 concerning the election of the European Parliament.

<sup>23</sup> Article 10(1) of the Law of 23 March 1989.

<sup>24</sup> Article 11(1) of the Law of 23 March 1989.

<sup>25</sup> Article 10(5) of the Law of 23 March 1989.

<sup>26</sup> Article 15(2) of the New Municipality Law of 24 June 1988.

<sup>27</sup> Article 143 Electoral Code.

<sup>28</sup> Article 21bis of the Law of 23 March 1989 (for European Parliament Elections) and Article 74 of the Local and Provincial Elections Decree of 8 July 2011 (for municipal elections in Flanders).

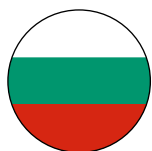
<sup>29</sup> Article 23(9) of the Brussels Local Voting Code of 4 August 1932 and Article L.4142-7 of the Local Democracy and Decentralisation Code of 22 April 2004.

<sup>30</sup> For statistics on registered voters for the 2018 Belgian municipal elections, see

[https://stat.elections.fgov.be/fr/voters/community/923/153\\_9](https://stat.elections.fgov.be/fr/voters/community/923/153_9).

<sup>31</sup> For the results for the 2014 European Parliament elections for Belgium, including detailed breakdowns, see [http://polling2014.belgium.be/en/eur/results/results\\_tab\\_EUR00000.html](http://polling2014.belgium.be/en/eur/results/results_tab_EUR00000.html).





### 3. Bulgaria

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#### 3.1. LEGAL FRAMEWORK

Electoral rights in Bulgaria are mainly governed by the 1991 Constitution of Republic of Bulgaria<sup>1</sup> and the 2014 Electoral Code.<sup>2</sup> Additional stipulations in the Civil Registration Act<sup>3</sup> are related to the residency requirements as well the population registry upon which electoral roll are collated. The Local Self-government and Local Administration Act<sup>4</sup> guides administrative structure of the local government, whereas the 2005 Act on Political Parties,<sup>5</sup> the 2010 Act on Assemblies,<sup>6</sup> the 1969 Administrative Violations and Sanctions Act,<sup>7</sup> and the 1968 Criminal Code<sup>8</sup> provide the overall framework for conducting elections.<sup>9</sup> Legislative provisions are supplemented by decisions of the Central Election Commission (CEC).

All Bulgarian and EU citizens of 18 years of age or older on polling day, who are not under judicial interdiction or serving a prison sentence have the right to vote in municipal and European Parliament elections.<sup>10</sup> EU citizens should verify that and that they are not deprived of the right to vote in the Member State of which they are nationals. There are, however, specific provisions that define these rights.

Regarding **municipal elections**, Article 396 of the Electoral Code stipulates the right to elect. There is an explicit requirement for voters in municipal elections to have resided in the respective municipality and the specific location at least for the last six months prior to elections. Regional governors and mayors conduct checks to verify this.

Regarding **European Parliament elections**, citizens need to satisfy the condition that they have resided in Bulgaria or in an EU Member state in the last three months prior to Election Day.<sup>11</sup>

This means that in practice, Bulgarian citizens with a valid ID with a permanent address in Bulgaria can exercise their right to vote regardless of where they reside. This is due to the low number of foreign address registrations at the embassies or the local authorities in Bulgaria for all citizens living abroad. Such a situation makes it difficult for state and local authorities to track citizens that have been outside of the EU for a longer period of time. A formal check is carried out by the Electoral Roll Directorate within the Ministry of Regional Development and Public Works.

Article 351 of the Electoral Code defines the scope of passive electoral rights for Members of the European Parliament. The minimum age is 21 years. In addition to the active electoral rights requirements, the candidates, both Bulgarian and EU citizens, should have resided in Bulgaria or an EU member state at least for the last six months.

Article 397 of the Electoral Code governs the right to stand in municipal elections for both Bulgarian and EU citizens as councillors and mayors. The required minimum age is having reached 18 years by polling day and satisfying the requirements of active electoral rights.

The candidates must submit a standard statement in which they declare:

- their nationality and residence address in the locality concerned;
- that they are not under legal incapacity; and
- the details of their identity card or passport and identity number.

Deputy mayors of municipalities and districts cannot be leaders of political parties or bodies thereof, exercise a commercial activity, as defined in the Bulgarian Commerce Act, be managers or members of the Supervisory, Executive or Monitoring Boards of commercial companies and cooperatives while they are in public office.<sup>12</sup>

The 2014 Electoral Code has been subject to numerous amendments. Since 2014 there have been eight amendments, some of which have been adopted without wide public consensus and/or within a very short period prior to holding elections.<sup>13</sup> The latest amendments came in force shortly before the latest early parliamentary elections in March 2017. They were related to a Bulgarian Constitutional Court decision,<sup>14</sup> as well provisions related to remote voting and electronic identification. Some of the latest amendments in the Electoral Code addressed recommendations by the Venice Commission and ODIHR.<sup>15</sup> Other amendments, e.g. related to the equal universal suffrage of Bulgarian citizens abroad, have been criticised. Further recommendations on behalf of ODIHR and the Venice Commission target the accuracy of the electoral roll, active electoral rights to Bulgarian citizens holding dual citizenship, and the use of minority languages for campaigning.

A national referendum was held in 2016, with highest turnout, aiming at changing the electoral system from proportional to majority system and introducing obligatory voting.<sup>16</sup> No reform is foreseen at present; however, often legislative changes to the Electoral

Code are sporadic without prior strategy or vision for reform, and future attempts to revise the Code are difficult to envisage. Recommendations by the CEC in their analysis suggest that further amendments are necessary in the area related to conducting European Parliament and municipal elections.<sup>17</sup>

### 3.2. REGISTRATION AND VOTING CONDITIONS

Electoral rolls are collated differently for municipal and European Parliament elections. Electoral rolls for **European Parliament elections** are compiled in two parts. Part I consists of data according to the permanent address of Bulgarian citizens in Bulgaria. If they satisfy the respective conditions, they are automatically entered (Article 357(1) and 358(1) of the Electoral Code). Part II is allocated to EU citizens residing in the country. They need to submit a declaration under Article 359 of the Electoral Code, requiring their data, citizenship, residence certificate and verification that they will exercise their electoral rights in Bulgaria and that they are not deprived of their voting rights in the country of origin. The declaration should be submitted at the latest 40 days prior to Election Day.

Electoral rolls for **municipal elections** are populated based on the preliminary checks conducted by the regional governors and mayors to establish whether the six-month residency requirement in the locality prior to the municipal elections is fulfilled.<sup>18</sup> Article 406 (1) and 407 (1) of the Electoral Code govern the electoral roll for Bulgarian citizens – this is done automatically by permanent address and by declarations for residency within the last 12 months.<sup>19</sup> Electoral rolls for EU citizens are guided by Article 406 (2) and 407 (2) of the Electoral Code. EU citizens are registered in Part II of the electoral roll compiled according to the residence address declared by them. EU nationals have to submit a declaration covered by Article 408 of the Electoral Code no later than 40 days prior to election day, declaring their nationality, address for the last six months within the territory of the municipality/locality, and identity card data.

The Electoral Code stipulates that declarations and data from the elections list (for municipal elections – Part II – in Article 408 (2) and (3)) and for European Parliament elections – Part II – Article 359 (2) and (3)) should be stored for the next elections of the same type and that, once such declarations have been submitted, EU citizens should be automatically registered in the next electoral roll. This, however, does not seem to be the case based on the analysis by the CEC.

The amendments of the Electoral Code have introduced new voting technologies, i.e. electronic machine voting and online voting. Electronic machine voting has been piloted with the 2014 European Parliament elections. The experiment has proven successful, based on the CEC's assessment. However, further issues about procurement deadlines, organisational and coordination capacity, as well as specificities for providing machines for voting abroad or in mobile polling stations have been identified.<sup>20</sup> Snap parliamentary elections have further shortened the deadlines for implementation of the electronic machine voting envisaged by the Code. Limited capacity to manage and coordinate the process was conducive to the inability to equip polling stations with machine voting. This has proven even more challenging for polling stations abroad.<sup>21</sup>

Online (electronic remote) voting has been introduced following a referendum in 2015. Amendments in 2016 have outlined a road map for its implementation, envisaging the 2019 European Parliament elections as a pilot (Transitional and Final Provisions of the Electoral Code, §143 – §145). Simulations conducted according to the Electoral Code by the CEC have raised concerns about the electronic identification in the ID cards and the capacity to implement online voting according to the stipulated deadlines.

Amendments also introduced obligatory voting in 2016 with respective consequences for not voting (Article 3 and 242a of the Electoral Code). The Bulgarian Constitutional Court, however, declared the latter provisions as unconstitutional in 2017.<sup>22</sup>

Voting abroad is conducted only in polling stations specifically set up for Election Day. Twenty-one days prior to elections, the CEC publishes the addresses of the polling stations for out-of-country voting. Prior to that, citizens living abroad have to file at least 60 requests in order to set a polling station outside the embassy or diplomatic representation no later than 25 days prior to election day (electronically or via post to the closest embassy or consulate). All citizens residing or travelling outside the country on the day of elections have the right to vote in the allocated polling stations, by signing a declaration that they have the necessary rights to vote for the European Parliament and that they have not voted for candidates in the Member State where they reside.

Polling stations outside of EU Member States are set up only within the premises of the diplomatic representation (embassy or consulate) for European Parliament elections. For other types of elections (excluding municipal where voting from abroad is not possible), there is a limit of 35 polling stations outside of the EU.



### 3.3. MEASURES FACILITATING VOTING RIGHTS

The Bulgarian Constitution does not recognise minorities in the country and proclaims Bulgarian as the only official language.<sup>23</sup> The Electoral Code provisions reflect this by stipulating the Bulgarian language as the sole language of the official documentations, ballots, complaint forms, campaigning and registration. This issue has been the subject of critiques and recommendations by the ODIHR and the Venice commission,<sup>24</sup> especially when the two main ethnic minorities in Bulgaria comprise a significant share of the population, i.e. ethnic Turks – 8.8% and Roma – 4.9% according to the latest official census.<sup>25</sup> Both minorities are assessed as most vulnerable to cases of “electoral tourism”,<sup>26</sup> vote buying and controlled voting practices.<sup>27</sup>

The Electoral Code affords some flexibility to certain groups of voters, namely the elderly, people with disabilities, persons detained in pre-trial detention (not serving a sentence), hospitals, specialised institutions and naval vessels (Article 28 and 37 of the Electoral Code). Under specific conditions and prior registration, these voters are allowed to cast their ballot in mobile ballot boxes. Citizens with disabilities that prevent them from voting in the designated polling stations should submit a declaration at the latest 14 days prior to Election Day, accompanied by a valid certificate for disability. They are allowed to submit documents even up to 5 days before Election Day if a mobile election commission has been assembled in the municipality (Article 37 of the Electoral Code). The heads of hospital and medical facilities compile a list of voters residing on the premises.

University and high school students also enjoy certain flexibility of their voting rights. If they study in a city different than their permanent address, they can vote in all elections but municipal (due to the residency rule specified) by presenting a valid student ID (Article 241 of the Electoral Code). No specific measures or provisions have been adopted for enhancing the electoral participation of women.

The main challenges that voters face in Bulgaria are the inconsistency of procedures and the frequent amendments to the legislation. Mobile citizens are at a higher risk of being disfranchised due to specific residency rules. In addition, electoral rolls are often criticised for their questionable accuracy, which undermines trust in the system. New voting technologies and other amendments are still not part of an overall electoral reform, which further exacerbates the lack of credibility. Voter education and training of election staff, delays and various

requirements to exercise the right to vote are conducive to confusion and demotivation.

### 3.4. STATISTICS

There is no centrally managed register of EU citizens that exercised their right to vote in Bulgaria.<sup>28</sup> Although the Electoral Code stipulates that municipalities should store data for the electoral roll of registered EU citizens for consecutive elections, the CEC analysis shows that this has not been done.<sup>29</sup> Moreover, municipalities’ registers of lists (Part II) are no longer publicly available in most cases. The available data online shows a limited number of the EU citizens – between 1 and 32 – registered for the European Parliament elections in 2014 and for the municipal elections in 2015, which does not include all the main cities and districts.<sup>30</sup> The estimated number of EU citizens residing in Bulgaria as of 1 January 2017 is 13.5 thousand or 0.2% of the population.<sup>31</sup>

There is no readily available data related to the number of Bulgarians registered to vote in municipal and European Parliament elections in other EU Member States. The estimate number of Bulgarians residing in the EU is between 500 000 and 600 000, and 719 000 Bulgarians residing in the EU and EEA, whereas the total number of citizens abroad is around 1.1 million.<sup>32</sup> The issue also stems from the fact that few Bulgarian citizens change their residency address with the one abroad. The CEC admits in its report that certain measures are essential to obtain data for Bulgarian citizens that have registered to vote for the European Parliament elections in another Member State to avoid the potential for duplicate voting<sup>33</sup>.

Voting abroad is allowed for European Parliament elections, but not for municipal elections.<sup>34</sup> Bulgarians abroad have to satisfy the minimum conditions for setting up polling stations in and outside the diplomatic premises. Polling stations outside the EU are set up only in the embassies. Preliminary rolls are only indicative, as Bulgarian citizens abroad can be added to voter list without prior registration. In 2009 for the European Parliament elections, 12 496 citizens exercised their right to vote in 51 polling stations in 31 countries. During the European Parliament elections in 2014, 26 060 citizens voted in 167 polling stations in 35 countries.<sup>35</sup>

Voter turnout according to the CEC in the 2014 European Parliament elections was 35.84%, compared to 53.60% in the municipal elections in 2015, 57.47% in the 2016 Presidential elections,<sup>36</sup> and 54.07% in the early parliamentary elections in 2017.<sup>37</sup> Voter turnout in European Parliament elections is comparable to turnout for the national referendum for online voting

in 2016, i.e. 39.67%.<sup>38</sup> No statistics is collated based on minority and ethnic status.

#### Notes:

<sup>1</sup> Конституция на Република България, promulgated in State Gazette (SG) No. 56/13 July 1991, in force from 13.07.1991, English version on the website of the Bulgarian Parliament ([www.parliament.bg/en/const](http://www.parliament.bg/en/const)).

<sup>2</sup> Изборен Кодекс, promulgated, SG No. 19/5.03.2014, in force from 5.03.2014, English version available on the website of the Bulgarian Central Election Commission ([www.cik.bg/en/laws](http://www.cik.bg/en/laws)).

<sup>3</sup> Закон за гражданската регистрация, promulgated, SG No. 67/27.07.1999, amended SG No 28/23.03.2001, in force from 1.07.2001.

<sup>4</sup> Закон за местното самоуправление и местната администрация, promulgated, SG No. 77/17.09.1991, in force from 17.09.1991. English version available on the website of the Bulgarian Central Election Commission ([www.cik.bg/en/laws](http://www.cik.bg/en/laws)).

<sup>5</sup> Закон за политическите партии, promulgated, SG No. 28/1.04.2005, in force from 1.04.2005. English version available on the website of the Bulgarian Central Election Commission ([www.cik.bg/en/laws](http://www.cik.bg/en/laws)).

<sup>6</sup> Закон за събранията, митингите и манифестациите, Promulgated, SG No 10/2.02.1990r., amended SG. No 24/26.03.2010.

<sup>7</sup> Закон за административните нарушения и наказания, Promulgated, SG No. 92/28.11.1969, amended, SG No. 54/11.07.1978, supplemented, SG No. 28/9.04.1982, in force from 1.07.1982. English version available on the website of the Bulgarian Central Election Commission ([www.cik.bg/en/laws](http://www.cik.bg/en/laws)).

<sup>8</sup> Наказателен Кодекс, promulgated, SG No. 26/ 2.04.1968, in force from 01.05.1968.

<sup>9</sup> ODIHR (2017), “Republic of Bulgaria, Early Parliamentary Elections, 26 March 2017”, OSCE/ODIHR Limited Election Observation Mission Final Report, OSCE, Warsaw, 30 June, p. 5, available at [www.osce.org/odihr/elections/bulgaria/301191](http://www.osce.org/odihr/elections/bulgaria/301191).

<sup>10</sup> Constitution of Republic of Bulgaria, Art. 42.

<sup>11</sup> Electoral Code, Art. 350.

<sup>12</sup> Your Europe, Residence Requirements, Municipal Elections – Bulgaria, available at: [https://europa.eu/youreurope/citizens/residence/elections-abroad/municipal-elections/bulgaria/index\\_en.htm](https://europa.eu/youreurope/citizens/residence/elections-abroad/municipal-elections/bulgaria/index_en.htm).

<sup>13</sup> Against good practices and recommendations by international organisations. See for instance OSCE/Venice Commission (2017), *Joint Opinion on Amendments to the Electoral Code by the Venice Commission and the OSCE/ODIHR*, adopted by the Council of Democratic Elections at its 59<sup>th</sup> meeting (Venice, 15 June 2017) and by the Venice Commission at its 111<sup>th</sup> Plenary Session (Venice, 16-17 June 2017), Opinion No. 867/2016, ODIHR Opinion No. ELE-BGR/307/2017, Strasbourg/Warsaw, 19 June, p. 5, available at [www.osce.org/odihr/324261](http://www.osce.org/odihr/324261). According to the Joint Opinion, “the stability of the electoral law is a prerequisite for implementing the principles underlying Europe’s electoral heritage and is vital to the credibility of an electoral process”.

<sup>14</sup> Amendments introduced obligatory voting in 2016 with respective consequences for not voting (see below). They, however, have been declared unconstitutional by the Constitutional Court in 2017 (Decision of the Constitutional Court No 3 2017, SG No 20, 2017).

<sup>15</sup> See *ibid*.

<sup>16</sup> For more information on referenda turnout and results, see

<https://results.cik.bg/pvrnr2016/tur1/aktivnost/index.html> and

<https://results.cik.bg/pvrnr2016/tur1/referendum/index.html>. According to the Referenda and Direct Participation Act, a certain turnout threshold should be reached in order the results to be legally binding for the Parliament to introduce the amendments. In this case, following the referenda, certain amendment proposals were discussed, but none of them were approved.

<sup>17</sup> CEC (2015), “Report on the organization and holding of elections in 2014”, CEC, Sofia, 21 April; CEC (2018), “Report on the organization and holding of elections in 2015-2017”, Sofia, CEC, 6 February. Reports are available in Bulgarian at [www.cik.bg](http://www.cik.bg).

<sup>18</sup> According to Article 405a of the Electoral Code, the Procedure of the check is established by Article 99b of the Civil Registration Act of all address registrations effected during the last 12 months. Any such check shall be completed not later than three months in advance of the conduct of the general elections.

<sup>19</sup> Internal mobile citizens can register a current/residency address different than the permanent address to the municipality within which they reside.

<sup>20</sup> CEC (2015), “Report on the organization and holding of elections in 2014”, CEC, Sofia, 21 April; CEC (2018), “Report on the organization and holding of elections in 2015-2017”, Sofia, CEC, 6 February. Reports are available in Bulgarian at [www.cik.bg](http://www.cik.bg).

<sup>21</sup> For more details, see ODIHR (2017), “Republic of Bulgaria, Early Parliamentary Elections, 26 March 2017”, *op. cit.*, pp. 8-9.

<sup>22</sup> Decision of the Constitutional Court No 3/ 2017, SG No 20/2017.

<sup>23</sup> Constitution of Republic of Bulgaria, Art. 1-3.

<sup>24</sup> For more details, see ODIHR (2017), “Republic of Bulgaria, Early Parliamentary Elections, 26 March 2017”, *op. cit.*; and Joint Opinion on Amendments to the Electoral Code by the Venice Commission and the OSCE/ODIHR, *op. cit.*

<sup>25</sup> For more details, see the National Statistical Institute data available at: [www.nsi.bg/sites/default/files/files/pressreleases/Census2011final.pdf](http://www.nsi.bg/sites/default/files/files/pressreleases/Census2011final.pdf).

<sup>26</sup> S. Nenov (2017), “Bulgarian nationalists block Turkish border to bar ‘electoral tourism’”, *Reuters*, 24 March, [www.reuters.com/article/bulgaria-election-border/bulgarian-nationalists-block-turkish-border-to-bar-electoral-tourism-idINKBN16V1WH](http://www.reuters.com/article/bulgaria-election-border/bulgarian-nationalists-block-turkish-border-to-bar-electoral-tourism-idINKBN16V1WH).



**Notes (continued):**

<sup>27</sup> For more details, see S. Georgiev et al. (2015), “Where to Now...? Study of the events that took place in 2015 in Garmen, Orlandovtsi and Kyustendil”, Institute for Public Environment Development, Sofia,

[http://iped.bg/en/publication/3cases\\_study\\_2015](http://iped.bg/en/publication/3cases_study_2015).

<sup>28</sup> See also European Commission (2018), Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2018) 44 final, Brussels, 25.1.2018, p. 5.

<sup>29</sup> Analyses conducted by CEC for Elections in 2014 and between 2015-2017 (CEC, Report on the organization and holding of elections in 2014, 21 April 2015, Sofia; Report on the organization and holding of elections in 2015-2017, 6 February 2018, Sofia) describe storage issues of the electoral rolls, part II of European Parliament and municipal elections.

<sup>30</sup> Burgas: 11 EU nationals registered for the municipal elections in 2015;

Plovdiv: 5 EU nationals registered for the municipal elections in 2015;

Gabrovo: 1 EU national registered for the municipal elections in 2015;

Sliven: 2 EU nationals registered for the municipal elections in 2015; 1 EU national in European elections;

Dobrich: 32 EU nationals (mainly in the area of Balchik) registered for the municipal elections in 2015;

Yambol: 2 EU nationals registered for the European Parliament elections in 2014.

<sup>31</sup> Eurostat, Non-national population by group of citizenship, 1 January 2017, available at:

[http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Non-national\\_population\\_by\\_group\\_of\\_citizenship\\_1\\_January\\_2017.png](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Non-national_population_by_group_of_citizenship_1_January_2017.png)

<sup>32</sup> G. Angelov and M. Lesenski (2017), “Ten Years in the EU: Trends in Bulgarian Migration”, Sofia, Open Society Institute, October, p. 1,

[http://osi.bg/downloads/File/2017/MigratsiaEU\\_Okt2017\\_new.pdf](http://osi.bg/downloads/File/2017/MigratsiaEU_Okt2017_new.pdf).

<sup>33</sup> CEC (2015), “Report on the organization and holding of elections in 2014”, CEC, Sofia, 21 April; CEC (2018), “Report on the organization and holding of elections in 2015-2017”, Sofia, CEC, 6 February.

<sup>34</sup> Also allowed for referenda, presidential and parliamentary elections.

<sup>35</sup> In comparison, for the Early parliamentary elections in 2014, 144 208 citizens exercised their voting rights abroad.

<sup>36</sup> CEC, 2016 Voter turnout available at <https://results.cik.bg/pvrnr2016/tur1/aktivnost/index.html>.

<sup>37</sup> CEC, 2017 Voter available at <https://results.cik.bg/pi2017/aktivnost/index.html>.

<sup>38</sup> CEC, 2015 Voter available at <https://results.cik.bg/minr2015/tur1/aktivnost/index.html>.





## 4. Croatia

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### 4.1. LEGAL FRAMEWORK

Electoral participation in Croatia is governed by the Croatian Constitution<sup>1</sup> and a number of Croatian laws. Articles 15(3), 45 and 133 of the Constitution address the suffrage of Croatian nationals at local, parliamentary and presidential elections. According to Article 45 of the Croatian Constitution, “all Croatian citizens who have reached the age of eighteen (voters) are entitled to universal and equal suffrage in elections for the Croatian Parliament, the President of the Republic of Croatia and the European Parliament and in decision-making procedures by national referendum, in compliance with law”. Suffrage is exercised in direct elections by secret ballot. All Croatian voters who do not have a registered domicile in Croatia or who are outside of Croatia during elections are entitled to vote in Croatian diplomatic-consular offices in the country where they reside/are located. Voters who do not have a registered domicile in Croatia are entitled to elect three representatives for the Croatian Parliament. Based on Article 15(3) of the Croatian Constitution, apart from general suffrage, members of national minorities in Croatia may be granted by law the right to elect their representatives to the Croatian Parliament. Local elections are governed by Article 133(2) of the Croatian Constitution, which states that “the right to local and regional self-government shall be exercised through local and/or regional representative bodies, composed of members elected in free elections by secret ballot on the grounds of direct, equal and general suffrage”.

On the other hand, electoral rights of EU citizens in Croatia have been addressed by the Constitutional amendment in 2010, which introduced a new EU Chapter, containing Article 146 on the rights of EU citizens.<sup>2</sup> This provision reiterates the rights of EU citizens, as granted by the Treaties. It does so, first, by enumerating the EU citizenship rights of Croatian citizens in other EU Member States, including the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence. In its last paragraph, Article 146 provides that EU citizens in Croatia enjoy “all the rights guaranteed by EU *acquis communautaire*”, thus implying that all the previously stated EU citizenship rights apply equally to EU citizens in Croatia.

Apart by the Constitution, electoral participation in Croatia is governed by a number of laws. Elections at state level are governed by the Act on Election of Representatives to the Croatian Parliament<sup>3</sup> and the Law on the Election of the President of the Republic of Croatia.<sup>4</sup> Elections at the local level are governed by the Local Elections Act<sup>5</sup> and the Act on the Rights of Nationals of Other European Union Member States in the Election to Representative Bodies of the Local and Regional Self-Government Units.<sup>6</sup> Elections for the European Parliament are regulated by the Act on the Election of Members of the European Parliament from the Republic of Croatia.<sup>7</sup> Additionally, the Electoral Register Act stipulates the content and the manner of maintaining the electoral register and procedures for registration, issuing of documents and processing of data for election and referendum purposes.<sup>8</sup>

The right to vote and be elected at local elections is held by Croatian nationals and nationals of other EU Member States. Croatian nationals who have reached 18 years of age, have the right to vote (have legal capacity) and who are resident in the area/unit for whose representative body the elections are being held are entitled to vote at local elections.<sup>9</sup> Their right to vote includes the right to elect members of representative bodies of units of local and regional self-government, municipality heads, mayors, county prefects and other deputies.<sup>10</sup> Croatian nationals can be elected as members of a representative body of a local unit if, on the day when the decision to call the elections comes into force, they have a registered domicile on the territory of the local unit for whose representative body the elections are being held.<sup>11</sup> On the other hand, in order to be elected as a municipality head, mayor, county prefect or their deputy, a Croatian national qualifies only if, on the day when the decision to call the elections comes into force, he/she has had a registered domicile on the territory of the respective local unit for at least the past six months.<sup>12</sup> Police officers, military personnel in active military service, and civil servants and employees in the Croatian armed forces are banned from standing as candidates for members of representative bodies of local units and for municipality heads, mayors, county prefects and their deputies.<sup>13</sup> Equally, Croatian nationals who have been sentenced to jail for no less than six months, for certain criminal offences, based on a final court decision, cannot stand as candidates at local elections.<sup>14</sup>

The right of nationals of other EU Member States to vote and be elected at local elections is narrower than the right of Croatian citizens. It includes the right to vote and stand as a candidate exclusively for the

members of the representative body of the unit where the respective national of another EU Member State is permanently or temporarily residing in Croatia.<sup>15</sup> Local electoral rights of nationals of other EU Member States in Croatia do not extend to the executive functions of municipality heads, mayors, county prefects and their deputies. Croatia has, thus, decided to use the right to exclude nationals of other EU Member States from electoral rights applicable to local executive functions, as provided by Article 5(3) of Directive 94/80.<sup>16</sup> The right to vote is conditional on the submission of a request for entry in the electoral roll and a special statement, legalised by the notary public (for details, see section 4.2).

Nationals of other EU Member States may also stand as candidates and be elected as members of the local unit's representative body under the same conditions as stipulated for Croatian nationals, provided they have not been deprived of their legal capacity through a legally effective court decision in the Republic of Croatia or another EU Member State and that they have not been deprived of their right to stand as a candidate based on a decision in criminal or civil proceedings.<sup>17</sup> In case the list of candidates for the elections includes a national of another Member State, the list or the application to stand as a candidate has to be accompanied by a declaration, legalised by the notary public, stating the nationality and address of permanent or temporary residence of the respective EU citizen on the territory of the unit holding the elections, as well as the proof or a document from the competent authorities of the Member State of his/her nationality certifying that he/she has not been deprived of the right to stand as a candidate in that Member State or that they are not aware of the existence of such a disqualification.<sup>18</sup> The competent electoral commission is obliged to inform the public through the media on the manner by which nationals of other EU Member States can exercise their electoral rights.<sup>19</sup>

Electoral participation at the elections for the European Parliament is regulated by the Act on the Election of Members of the European Parliament from the Republic of Croatia. The Act proclaims the freedom of voters to choose and the secrecy of their voting, while obliging the voters to vote only once.<sup>20</sup> Voting rights are granted to all Croatian nationals having the right to vote and to nationals of all other EU Member States, subject to the same conditions which apply to Croatian nationals, provided they have permanent or temporary residence in Croatia, under the Aliens Act, and provided they have submitted a request for entry in the electoral roll and a special statement, legalised by the notary public (for details, see section 4.2).<sup>21</sup> The Act on the Election of Members of the European

Parliament from the Republic of Croatia also regulates the rights of Croatian nationals and of nationals of other EU Member States to stand as candidates at the elections for the European Parliament. According to Article 5 of the Act, any Croatian national with voting rights may be elected a member of the European Parliament. Nationals of other EU Member States may also be elected members of the European Parliament provided that they have permanent or temporary residence in Croatia under the Aliens Act, provided they are eligible to stand as candidates under the Act and provided they are not deprived of legal capacity through a legally effective court decision in the Republic of Croatia or another EU Member State, i.e. that they have not been deprived of their right to stand as candidates based on a court or administrative decision which can be appealed, and provided that they are registered in the electoral roll of the Republic of Croatia.<sup>22</sup>

Based on the available official information, no reforms related to electoral participation of nationals of other EU Member States in Croatia are foreseen in the near future.

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#### 4.2. REGISTRATION AND VOTING CONDITIONS

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Nationals of other EU Member States who want to exercise their electoral rights in Croatia have to be registered in the electoral registry according to their permanent or temporary residence in the Republic of Croatia.<sup>23</sup> The registration is done based on their request.<sup>24</sup> The registry of nationals of other EU Member States contains the following data: name, citizenship, personal ID number, gender, date of birth, address of permanent or temporary residence in the Republic of Croatia, address of previous temporary residence abroad and additional remarks.<sup>25</sup>

In order to vote at local elections, nationals of other EU Member States have to register by submitting the request for entry in the electoral roll to the Croatian authorities competent for managing the roll according to the place of permanent or temporary residence no later than 30 days before the date of the elections.<sup>26</sup> Based on the information available on the web pages of the Croatian Ministry of Public Administration, the request is made by filling in a form that is provided exclusively in the Croatian language. Along with the request for entry into the electoral roll, they have to submit a statement, legalised by the notary public, stating their citizenship, address of permanent or temporary residence in the territory of the unit holding the election and a declaration that they have not been deprived of the right to vote in the Member State of their nationality.<sup>27</sup>

Equally, nationals of other EU Member States who wish to vote at the elections for the European Parliament in Croatia have to submit a request for entry in the electoral roll to the body competent for maintaining the electoral roll no later than 30 days before the election.<sup>28</sup> Based on the information available on the web pages of the Croatian Ministry of public administration, the request is made by filling in a form that is provided exclusively in the Croatian language. Along with the request for entry in the electoral roll, they have to submit a statement, legalised by the notary public, stating their citizenship, address of their permanent residence in Croatia (where applicable) and the locality or constituency in their home Member State in whose electoral roll their name was last entered, as well as a statement that they shall exercise their right to vote only in the Republic of Croatia and a statement that they are not deprived of their right to vote in the EU Member State of their citizenship.<sup>29</sup> The competent body maintaining the electoral roll has to notify the State Electoral Commission of the Republic of Croatia of the entry in the electoral roll of nationals of other EU Member States within 8 days of such entry.<sup>30</sup>

Nationals of other EU Member States who requested registration in the electoral registry for the purpose of voting in the elections for members in the European Parliament are deleted from the electoral registry *ex officio* once the elections have been carried out.<sup>31</sup> On the other hand, nationals of EU Member States who requested registration in the electoral registry for the purpose of voting in the local elections and at local referenda are deleted from the electoral registry in case of loss of electoral rights (because of death or in case their electoral rights have been revoked based on the rules of the Member State of their nationality), in case they move out of Croatia or upon their request.<sup>32</sup>

Croatian laws generally provide that the elections have to be carried out at the polling stations in the Republic of Croatia and at Croatian diplomatic missions and consular posts.<sup>33</sup> Article 9 of the Act on the Election of Members of the European Parliament from the Republic of Croatia, Article 7 of the Act on Election of Representatives to the Croatian Parliament and Articles 5 and 34 of the Law on the Election of the President of the Republic of Croatia allow several exceptions to the general rule of voting at the polling station determined on the basis of one's permanent or temporary residence. First, voters who are serving in the Croatian armed forces, in UN peace missions, voters who are crew members on sea and river vessels carrying the Croatian flag outside the Croatian borders and voters deprived of their freedom on the date of the election, vote at specially determined locations.<sup>34</sup> Second, voters with a permanent residence in Croatia

who are outside the Croatian borders on the date of the election, vote at Croatian diplomatic missions and consular posts, subject to prior registration or certificate for the purpose of voting outside the location of their permanent residence.<sup>35</sup> Voting via post, internet or by other means is not possible.

In exceptional circumstances, it is possible to vote outside any polling station. This applies to the elections for the Croatian President, to parliamentary and local elections and to elections for the European Parliament. Based on Article 61(1) of Local Elections Act and Article 83(2) of the Act on the Election of Representatives to the Croatian Parliament, a voter who is not able to access the polling station due to serious illness, physical disability or infirmity may request to vote outside the polling station, by informing about his/her inability to access the polling station to the competent election commission, at the earliest 3 days before the day the election is held, or to the election committee on the day of the election. The competent election commission is obliged to hand in all requests to vote outside the polling station received from voters to the competent election committee.<sup>36</sup> The president of the election committee shall consequently appoint at least two members of the election committee to visit the voter where he/she is located and enable him/her to vote.<sup>37</sup> This also applies to cases where a voter comes to the polling station, but is unable to access it due to his/her disability.<sup>38</sup> Equally, at elections for the European Parliament, any voter who cannot access the polling station due to his/her disability is entitled to notify the election committee thereof. In such a case, the president of the election committee is obliged to designate at least two members of the election committee or deputies who shall visit the voter at the place where he/she is located and enable him/her to vote, while taking care of the secrecy of the vote.<sup>39</sup> Similarly, at the elections for the Croatian president, when a voter who cannot access the polling station informs the election committee thereof, the committee will enable him/her to vote.<sup>40</sup>

Finally, at all elections, a voter who cannot vote independently, due to his/her physical disability or illiteracy, may appear at the polling station with another person (who is literate) and who shall encircle the ordinal number in front of the list or in front of the name of the candidate for whom the voter wishes to vote according to his/her power and instructions.<sup>41</sup> Additionally, the Act on the Election of Members of the European Parliament from the Republic of Croatia stipulates that blind persons are entitled to vote on the ballot in Braille.<sup>42</sup>

#### 4.3. MEASURES FACILITATING VOTING RIGHTS

There are certain measures that facilitate the right to vote and stand as candidates for minorities. Citizens with disabilities are entitled to vote outside the polling station at parliamentary, presidential and local elections and the elections for members of the European Parliament. As explained under section 4.2, in such a case, at least two members of the election committee will visit the voter where he/she is located and enable him/her to vote.

National minorities are entitled to representation in representative and executive bodies at the state and local level, as well as in administrative and judicial bodies. Based on Article 5 of the Constitutional Law on the Rights of National Minorities, a national minority is considered to be a group of Croatian nationals whose members have traditionally been inhabiting the territory of the Republic of Croatia and whose ethnic, linguistic, cultural and/or religious characteristics differ from the rest of the population, and who are motivated to preserve these characteristics. Consequently, the rules on electoral participation of national minorities in Croatia apply to language minorities, as they are considered national minorities under the Constitutional Law on the Rights of National Minorities. Based on the Constitutional Law on the Rights of National Minorities, members of national minorities that represent more than 1,5% of the total population of the Republic of Croatia are guaranteed at least one and at the most three representative seats of members of that national minority in the Croatian Parliament.<sup>43</sup> On the other hand, members of national minorities representing less than 1,5% of the total population of the Republic of Croatia are entitled to elect at least four representatives of these national minorities in the Croatian Parliament.<sup>44</sup> Further, members of national minorities representing more than 5% and less than 15% of the population of a municipality or a city are entitled to one minority representative in the representative body of that local unit.<sup>45</sup> In case they represent more than 15% of the population of a municipality or a city, and more than 5% of the population of a county, they are entitled to proportional representation in the representative body of that local unit.<sup>46</sup>

As regards the measures/initiatives facilitating the right to vote and political representation of women, the Croatian Gender Equality Act stipulates that, when drawing up and proposing lists of candidates for the election of representatives to the Croatian Parliament, of members of local representative bodies and of members of the European Parliament, political parties and other authorised entities submitting such lists have

to observe the principle of gender equality by observing the gender quota of 40%.<sup>47</sup> In case of non-compliance with this rule, political parties and other entities can be fined up to HRK 50 000.<sup>48</sup> At the latest local elections, held in May 2017, the share of women in the total number of candidates was 41,67%, whereas 14% of electoral lists did not comply with the gender quota.<sup>49</sup> The percentage of female candidates in 2017 was a significant improvement in comparison to the 2013 elections. However, this did not result in the actual gender-balanced representation in the local representative bodies, due to the hierarchical positioning of women on the electoral lists. The share of women in county assemblies was 26,88%, in city councils 26,80% and in municipal councils 24,59%.<sup>50</sup> The share of women in executive bodies is much lower, as only 10,24% of mayors are women and there are no women county prefects.<sup>51</sup> The National Policy for the Promotion of Gender Equality for the period from 2011 to 2015 sets, as one of its strategy goal, gender equality in political and public decision-making.<sup>52</sup>

The main challenge related to electoral participation in Croatia, applicable to both Croatian nationals and nationals of other EU Member States, is the low turnout at the elections. One of the methods this could be improved is by enabling electronic voting and other possibilities of voting outside the polling station. As a response to the request by one of the Croatian opposition parties to introduce electronic voting, the Croatian Minister of Public Administration, Mr. Lovro Kuščević, stated in July 2018 that electronic voting would not be possible in Croatia for at least two more years. On the other hand, the Croatian Regulatory Authority for Network Industries (HAKOM) stated that it would be possible to introduce electronic voting immediately, but it is questionable what the expenses would be.<sup>53</sup> As explained under sections 0 and 4.2, there are some additional obstacles to exercising the right to vote applicable exclusively to nationals of other Member States. First, in order to vote at the local elections and elections for the European Parliament, nationals of other Member States have to register by submitting the request for the entry in the electoral roll. Based on the information available on the web pages of the Croatian Ministry of Public Administration, the request is made by filling in the form which is provided exclusively in the Croatian language, which might be a challenge for those who do not speak Croatian. Second, nationals of other EU Member States who registered for the purpose of voting in the elections for the European Parliament are deleted from the electoral registry *ex officio* once the elections have been carried out, so they have to register again for the following elections.<sup>54</sup> Finally, nationals of other EU Member States are entitled to vote and stand as

candidates exclusively for the members of local representative bodies, but not for local executive functions.

#### 4.4. STATISTICS

According to the Eurostat data, on 1 January 2016 there were 12 438 mobile EU citizens of voting age in Croatia (this was 0,35% of the 3 579 197 Croatian population of voting age on that date).<sup>55</sup> The Croatian authorities did not submit data on measures taken by the Croatian authorities and other initiatives to promote political participation of mobile EU citizens and on the existence of practical difficulties in this respect in Croatia.<sup>56</sup>

The data for the latest elections for the European Parliament, held in Croatia on 25 May 2014, are based

on the electoral register, which was closed on 16 May 2014. According to the electoral register, there were 3 762 486 registered voters in Croatia. Out of that number, 3 637 voters were not resident in Croatia, whereas 3 758 849 voters had permanent residence in Croatia. Out of the latter number of permanently resident voters in Croatia, only 8 registered voters were nationals of other EU Member States.<sup>57</sup>

As regards the local elections, the data stems from 2017, when the latest elections for the local representative bodies in Croatia were held. According to the electoral register, which was closed on 12 May 2017, there were 3 719 182 voters. Out of this number, only 25 registered voters were nationals of other EU Member States.<sup>58</sup>

#### Notes:

<sup>1</sup> NN 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14. The abbreviation “NN” refers to “Narodne novine”, which is the name of the Official Journal in Croatia (further in text: NN).

<sup>2</sup> NN 76/2010

<sup>3</sup> NN 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15.

<sup>4</sup> NN 22/92, 42/92, 71/97, 69/04, 99/04, 44/06, 24/11, 128/14.

<sup>5</sup> NN 144/12, 121/16).

<sup>6</sup> NN 92/10.

<sup>7</sup> NN 92/10, 23/13, 143/13.

<sup>8</sup> NN 114/12, 105/15.

<sup>9</sup> Art. 2(1) and 2(2) of the Local Elections Act.

<sup>10</sup> Art. 2(2) of the Local Elections Act.

<sup>11</sup> Art. 3(1) of the Local Elections Act.

<sup>12</sup> Art. 3(2) of the Local Elections Act.

<sup>13</sup> Art. 13(1) of the Local Elections Act.

<sup>14</sup> Art. 13(2) of the Local Elections Act.

<sup>15</sup> Art. 2 of the Act on the Rights of Nationals of Other European Union Member States in the Election to Representative Bodies of the Local and Regional Self-Government Units.

<sup>16</sup> Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, *OJ L* 368, pp. 38–47.

<sup>17</sup> Art. 6(1) of the Act on the Rights of Nationals of Other European Union Member States in the Election to Representative Bodies of the Local and Regional Self-Government Units.

<sup>18</sup> Art. 7(1) of the Act on the Rights of Nationals of Other European Union Member States in the Election to Representative Bodies of the Local and Regional Self-Government Units.

<sup>19</sup> Art. 6(2) of the Act on the Rights of Nationals of Other European Union Member States in the Election to Representative Bodies of the Local and Regional Self-Government Units.

<sup>20</sup> Art. 3(1) and 3(2) of the Act on the Election of Members of the European Parliament from the Republic of Croatia.

<sup>21</sup> Art. 4(1) and 4(2) of the Act on the Election of Members of the European Parliament from the Republic of Croatia. For the details on the registration in the electoral roll and on the statement legalised by the notary public, see under heading 2.

<sup>22</sup> Art. 5(2) of the Act on the Election of Members of the European Parliament from the Republic of Croatia.

<sup>23</sup> Art. 19 of the Electoral Register Act.

<sup>24</sup> Art. 20 of the Electoral Register Act.

<sup>25</sup> Art. 21 of the Electoral Register Act.

<sup>26</sup> Art. 3(1) of the Act on the Rights of Nationals of Other European Union Member States in the Election to Representative Bodies of the Local and Regional Self-Government Units.

<sup>27</sup> Art. 3(2) of the Act on the Rights of Nationals of Other European Union Member States in the Election to Representative Bodies of the Local and Regional Self-Government Units.

<sup>28</sup> Art. 4(1) and 4(2) of the Act on the Election of Members of the European Parliament from the Republic of Croatia.

<sup>29</sup> Art. 4(2) of the Act on the Election of Members of the European Parliament from the Republic of Croatia.

<sup>30</sup> Art. 4(4) of the Act on the Election of Members of the European Parliament from the Republic of Croatia.

<sup>31</sup> Art. 22(1) of the Electoral Register Act.

<sup>32</sup> Art. 22(2) of the Electoral Register Act.

<sup>33</sup> See e.g. Art. 8 of the Act on the Election of Members of the European Parliament from the Republic of Croatia; Art. 58 of the Local Elections Act.

<sup>34</sup> Art. 9(3) of the Act on the Election of Members of the European Parliament from the Republic of Croatia; Art. 7(2) of the Act on Election of Representatives to the Croatian Parliament; Art. 34 of the Law on the Election of the President of the Republic of Croatia.

<sup>35</sup> Art. 9(4) of the Act on the Election of Members of the European Parliament from the Republic of Croatia; Art. 7(3) of the Act on Election of Representatives to the Croatian



### Notes (continued):

Parliament; Art. 5 of the Law on the Election of the President of the Republic of Croatia.

<sup>36</sup> Art. 61(1) of the Local Elections Act; Art. 83(3) of the Act on the Election of Representatives to the Croatian Parliament.

<sup>37</sup> Art. 61(3) of the Local Elections Act; Art. 83(4) of the Act on the Election of Representatives to the Croatian Parliament.

<sup>38</sup> Art. 61(6) of the Local Elections Act; Art. 83(6) of the Act on the Election of Representatives to the Croatian Parliament.

<sup>39</sup> Art. 49(5) of the Act on the Election of Members of the European Parliament from the Republic of Croatia.

<sup>40</sup> Art. 33(4) of the Law on the Election of the President of the Republic of Croatia.

<sup>41</sup> Art. 49(1) of the Act on the Election of Members of the European Parliament from the Republic of Croatia; Art. 60(3) of the Local Elections Act; Art. 83(1) of the Action on the Election of Representatives to the Croatian Parliament; Art. 33(2) of the Law on the Election of the President of the Republic of Croatia.

<sup>42</sup> Art. 49(2) of the Act on the Election of Members of the European Parliament from the Republic of Croatia.

<sup>43</sup> Constitutional Law on the Rights of National Minorities, NN 155/02, 47/10, 80/10, 93/11. Art. 19(3) of the Constitutional Law on the Rights of National Minorities.

<sup>44</sup> Art. 19(4) of the Constitutional Law on the Rights of National Minorities.

<sup>45</sup> Art. 20(2) of the Constitutional Law on the Rights of National Minorities.

<sup>46</sup> Art. 20(3) and 20(4) of the Constitutional Law on the Rights of National Minorities.

<sup>47</sup> Art. 15(1) and 12(3) of the Gender Equality Act. Gender Equality Act, NN 82/8 69/17.

<sup>48</sup> Art. 35 of the Gender Equality Act.

<sup>49</sup> The Communication on the results of local elections in 2017 of the Ombudsperson for Gender Equality of the Republic of Croatia. Available at: <http://www.prs.hr/index.php/priopcenja-prs/2243-priopcenje-o-rezultatima-lokalnih-izbora-2017> (last accessed on 10 October 2018).

<sup>50</sup> See the results of the State Election Committee, available at:

[http://www.prs.hr/attachments/article/2243/Rodna%20statistika%20kandidata%20i%20izabranih%20kandidata%20-%20zbirno%20\(prema%20podacima%20D~.xls](http://www.prs.hr/attachments/article/2243/Rodna%20statistika%20kandidata%20i%20izabranih%20kandidata%20-%20zbirno%20(prema%20podacima%20D~.xls) (last accessed on 10 October 2018).

<sup>51</sup> See the results of the State Election Committee, available at:

[http://www.prs.hr/attachments/article/2243/Rodna%20statistika%20kandidata%20i%20izabranih%20kandidata%20-%20zbirno%20\(prema%20podacima%20D~.xls](http://www.prs.hr/attachments/article/2243/Rodna%20statistika%20kandidata%20i%20izabranih%20kandidata%20-%20zbirno%20(prema%20podacima%20D~.xls) (last accessed on 10 October 2018).

<sup>52</sup> National Policy for the Promotion of Gender Equality for the Period 2011-2015. Available at:

<https://ravnopravnost.gov.hr/UserDocsImages/arhiva/images/pdf/National%20Policy%20for%20Gender%20Equality%202011-2015.pdf> (last accessed on 10 October 2018).

<sup>53</sup> See the news here:

<http://hr.n1info.com/a320317/Vijesti/Elektronicko-glasovanje-u-Hrvatskoj-jos-nije-moguće.html> and here: <http://www.racunalo.com/zasto-elektronicko-glasanje-nije-moguće-u-hrvatskoj/>.

<sup>54</sup> Art. 22(1) of the Electoral Register Act.

<sup>55</sup> Report from the Commission to the European Parliament, the Council, the European Economic Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and stand as a candidate in municipal elections, 25.1.2018, COM(2018) 44 final, Figure 1. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2018:0044:FIN:EN:PDF> (last accessed on 10 October 2018).

<sup>56</sup> Report from the Commission to the European Parliament, the Council, the European Economic Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and stand as a candidate in municipal elections, 25.1.2018, COM(2018) 44 final, Table 1.3. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2018:0044:FIN:EN:PDF> (last accessed on 10 October 2018).

<sup>57</sup> Available at: <https://uprava.gov.hr/vijesti/3-762-486-biraca-u-popisu-biraca-za-izbore-za-europski-parlament/454> (last accessed on 10 October 2018).

<sup>58</sup> Available at: <https://uprava.gov.hr/vijesti/zaključen-popis-biraca-za-lokalne-izbore/14627> (last accessed on 10 October 2018).



## 5. Cyprus

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ELIAMEP*

When Cyprus became independent in 1960, after a long period of British rule and subsequent decolonisation, the Constitution of the new state, the Republic of Cyprus, established a presidential system of bi-communalism on the island. In this system, there was a Greek Cypriot President and a Turkish Cypriot Vice-President, and the state institutions were based on the demographic weight of the two communities. The Constitution safeguarded electoral rights for all Cypriot citizens, Greek Cypriots and Turkish Cypriots. However, Turkish Cypriots withdrew from the state in 1964, after inter-communal tensions broke out. As a consequence, the Constitution could not be implemented in its entirety, and since then, the state institutions function only within the Greek Cypriot community. With the *de facto* division of the country in 1974, this situation became entrenched and it remains until present, even if it is considered temporary. In this situation, and in order to allow for the continued functioning of the State, the country's Supreme Court developed the doctrine of the law of necessity, according to which the Parliament has the power to amend the Constitution and the Supreme Court interprets the Constitution. It is in this context that the right to vote or stand for office was in practice linked to membership in the GC, and state institutions function only with members of the Greek Cypriot (GC) community.

### 5.1. LEGAL FRAMEWORK

Cyprus is a presidential system, with a 59-member Parliament and a directly elected President who serves as both the head of state and the head of government. The country acceded to the European Union in 2004. There are four types of elections in Cyprus for public offices that all have a five-year term: elections for President of the Republic, national elections for Members of Parliamentary (MPs), elections for mayors and members of municipal and local councils, and elections for Members of European Parliament (MEPs).

Electoral participation in Cyprus is governed by a number of legislative statutes that define electoral rights in accordance with relevant constitutional provisions (in particular, Articles 31 and 63 of the Constitution). The election of the President of the Republic is regulated by the Elections Laws of 1959 until 1998. Elections for the House of Representatives are regulated by the Constitution and the Elections of Members of the House of Representatives Law of 1979

(Law 72/1979 as amended), and the elections for MEPs are regulated by the European Parliament Law of 2004 (Law 10(1)/2004).

Electoral rights for municipal/local elections (municipalities and community councils) are defined by the Municipalities Law of 1985 (Law 111/1985) for the election of Mayors and Municipal Councils and the Communities Law of 1999 (Law 86(I)/1999) for the election of Presidents of Communities and Community Councils. The legal basis for the right of non-Cypriot EU citizens (mobile EU citizens), who live in Cyprus, to vote and to stand as candidates in municipal/local elections is the Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals. The Directive was transposed into the Cypriot legal order with the Municipalities and Community Councils (Nationals of other Member States) Law of 2004 (Law 98(I)/2004).

Regarding European Parliament (EP) elections, electoral rights are regulated by the Election of the Members of the European Parliament Law of 2004 (Law 10(I)/2004), in combination with provisions of the Election of the Members of the House of Representatives Law of 1979 (Law 72/1979), and the Act concerning the election of the Members of the European Parliament by direct universal suffrage. The legal basis for the right of non-Cypriot EU citizens living in Cyprus to vote and to stand as candidates in European Parliament (EP) elections is Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. The Directive was transposed into the Cypriot legal order with the aforementioned Law 10(I)/2004. Finally, the rules defining registration in the electoral lists and all details about their preparation and updating are regulated by a single piece of legislation for all types of elections, the Civil Registry Law of 2002, and its subsequent amendments until 2017.

The Cypriot Constitution guarantees the right to vote for all citizens in all elections that take place in the country, and in accordance with residential qualifications prescribed by law (Articles 31 and 63 of the Constitutions). While the Constitution initially determined a minimum voting age of twenty-one years old (Article 63), it was amended by a law in 1996 that reduced the voting age to eighteen. Thus, all citizens

who are at least 18 years old on the day of election and who are resident in Cyprus for a period of six months before becoming eligible to vote in all elections and have the right to be registered in the electoral lists. Exercising the right to vote in Cyprus is considered to be a civic duty. Both voting and registration as an elector are compulsory by law (Law 72/1979, Article 7, para. 2) except in elections for European Parliament (EP) representatives. While abstaining from voting may in principle result in criminal sanctions and penalties, in recent years, especially since 2004, the sanctions foreseen in law have not been imposed to those failing to exercise their right to vote.

Besides the requirement of a minimum age and residential qualifications, the law cannot otherwise abridge the right to vote except in cases of deprivation of such right by any subsequent legislation or court decision. The amended Law on the Elections of the Members of the House of Representatives of 1979, which applies *mutatis mutandis* in all other types of elections, provides that persons who have been detained, imprisoned or declared as mentally incapable in accordance with the provisions of the relevant legislation in force do not have the right to vote (Article 6). According to the Law on Elections for the House of Representatives (Article 6) and the Civil Registry Law (Law 141(I)/2002, Article 94, para. 1), anyone who is in prison on the day of election is not allowed to vote. Subsequently, however, in 2006, the Cypriot government made the decision to enfranchise inmates. It did so following the European Court of Human Rights' ruling in *Hirst v United Kingdom* that the blanket prohibition on voting by sentenced prisoners was disproportionate and incompatible with the right to participate in elections.

Eligible to vote in European Parliament elections are all Cypriot nationals and non-Cypriot nationals of an EU Member State who have completed eighteen years of age, on the condition that they have their habitual residence in Cyprus for at least six months preceding the elections. The condition of habitual residence is satisfied for EU nationals even if they have been residing in another Member State, as for municipal and community council elections (Law 10(I)/2004, Article 4). Non-Cypriot EU nationals can exercise their right to vote only once, either in Cyprus or in the Member State of origin (Law 10(I)/2004, Article 5) and on the condition that they have not been disqualified from voting in their Member State of origin (Law 2196/1994, Article 6). Non-Cypriot EU nationals can exercise their right to vote in European Parliament and municipal and community council elections, but not in national elections of any type.

Cypriot nationals living abroad were not initially allowed to vote in any electoral processes (except for members of the diplomatic staff, for whom Cyprus is considered to be their habitual residence). Following an amendment to the Election of the Members of the House of Representatives Law in 2002, which was also applied *mutatis mutandis* to the presidential and European parliament elections (but not to the municipal and community council elections), Cypriot nationals living abroad became eligible to vote. While Cypriot expatriates who were recognized as eligible voters were initially students and temporary working persons, the right to vote was subsequently extended to any person registered in the electoral list and living abroad, provided that they fulfil the legal requirements for electoral registration. However, since habitual residence of six months before acquiring electoral rights is a prerequisite for the registration in the electoral lists, Cypriot nationals living abroad permanently are not entitled neither to get registered in the electoral list nor to vote. At the same time, they can still stand as candidates in the Presidential and parliamentary elections according to the Constitution and relevant legislation, as there is no residence requirement for the right to be elected in their case. Cypriots living abroad can vote in polling stations set up in Cypriot embassies or consulates of the area where the electors reside, but such a decision is at the discretion of the Ministry of Interior and subject to certain requirements.

In order to stand as candidates for municipal or community council elections for the office of Mayor or Member of municipal council and President or Member of community council respectively, Cypriot nationals have to be of twenty-one years of age and over and registered on the electoral lists of a municipality or community of the Republic. They must not have been declared mentally incapable, currently bankrupt or convicted for an offence involving dishonesty or moral depravity within a five-year period (ten-year period for community council elections) prior to the elections. Non-Cypriot nationals of EU Member States also have the right to stand as candidates for members of municipal and community councils, but not for Mayors, Deputy Mayors or Presidents and Deputy Presidents of the community councils. The nomination procedures for candidates are the same as those followed for national parliamentary elections. All candidates must also submit a deposit, which varies according to the office of municipal or community council elections they run for.

Eligible to stand as candidates for European Parliament elections are Cypriot nationals and nationals of other EU Member States who have attained the age of twenty-one years old on the day of the election. They

are eligible to stand as candidates on the condition that they have not been convicted for an offense involving dishonesty or moral turpitude, that they have not been deprived of their right to stand as a candidate pursuant to a court decision because of any electoral offence and that they do not suffer from a mental disease that renders them unable to perform their duties as members of the European Parliament. In order to stand as candidates, mobile EU citizens must also submit a declaration stating their citizenship, address of their permanent residence in Cyprus, their date and place of birth, that s/he is not at the same time a candidate in another Member State and that s/he has not been deprived of the right to stand as a candidate in the Member State of origin, as well as a number of other details. Standing as candidate for Member of the European Parliament is incompatible with holding public office as provided in the Act for the Elections of the Members of the European Parliament and in the Constitution of Cyprus, both for mobile EU citizens and for Cypriot nationals.

In Cyprus, third country nationals (TCNs) do not have access to electoral rights in any type of election, despite the fact that their number has been increasing. Their enfranchisement is only possible through naturalisation, a highly discretionary and restrictive procedure. Cyprus has signed, but has not ratified, the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level. In 2011, the House of Representatives rejected proposals by the government to introduce legislation that would extend the right to vote to long-term legal residents and those with permanent immigration permits in local elections. The bill was rejected, despite the fact that it applied to a very limited number of persons. Concerns were voiced about the purported danger of increasing migration flows. All political parties apart from governing party of AKEL (left wing) opposed the bill and claimed that more information was needed before deciding on the matter. Despite lengthy discussions in the House of Representatives, the bill was finally rejected.

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## 5.2. REGISTRATION AND VOTING CONDITIONS

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In order to exercise their right to vote, Cypriot nationals and mobile EU citizens must be registered in the electoral lists. Cypriot nationals are not registered in the electoral lists automatically. They have the obligation to register when they turn eighteen years of age and within thirty days from their acquiring electoral qualifications (Law 141(I)/2002, Article 97, para. 1 and 3). As the same electoral list is used for all types of elections at the national level, they only have to register once after having received their electoral

qualifications. The procedure is done locally at the Citizens' Service Centres. The data is collected by the District Offices, which are responsible for compiling and updating the lists and the citizens are provided with an electoral booklet.

Special electoral lists are established for particular groups, as explicitly provided for by law. Such groups include displaced persons after 1974 for whom a separate list exists in every constituency based on their habitual residence in the occupied territories of the Republic (141(I)/2002, Article 107), religious groups, enclave voters, imprisoned persons, as well as non-Cypriot EU nationals. In the case of the European Parliament elections, special registers are created for both Cypriot and non-Cypriots EU nationals. For participating in EU elections, Cypriots are registered automatically based on the general electoral list while mobile EU citizens have to apply for getting registered. The electoral list is being updated, depending on the case, on 1<sup>st</sup> of January, 1<sup>st</sup> of April, 1<sup>st</sup> of July or 1<sup>st</sup> of October of the same year (in four trimesters) immediately preceding the preparation of the electoral register.

In order to register in the electoral lists, mobile EU citizens have to submit similar supporting documents as those required from Cypriots. These include their identity card and a solemn declaration stating their nationality, place of residence in Cyprus, the date upon which they have taken residence in the Republic (for municipal and community council elections) and that they have not been disqualified from the right to vote in the country of origin, and that they will exercise their right to vote in EP elections in Cyprus only. All other requirements for the acquisition and exercise of electoral rights are the same for Cypriot nationals and for mobile EU citizens.

The registration conditions for municipal and community council elections and for European Parliament elections do not differ. Cypriot nationals register once for all type of elections. Non-Cypriot EU nationals have to register by submitting relevant documentation for both electoral processes, but, once they have submitted their application, they do not have to apply again. Only for European Parliament elections two special registries exist, one for Cypriot nationals and another for non-Cypriot EU nationals. There are no other means of voting (via post, internet or other means) apart from physical presence of all voters in the polling stations (nationals living abroad, mobile EU citizens, people with disabilities and others) and for all elections (national: Presidential, Members of the House of Representatives, EP, municipal and community council elections).



### 5.3. MEASURES FACILITATING VOTING RIGHTS

Few general measures have been put in place to facilitate access to the polls or to promote mobile EU citizens' right to vote in municipal elections. For instance, policemen or polling station officers on duty relevant to the elections in a polling station are allowed to exercise their right to vote in that specific polling station, instead of the polling station corresponding to their place of residence, provided that a special authorisation will be signed by the Chief Returning Officer (Genikos Ephoros Eklogon), which s/he will submit to the chief polling station officer of the voting centre where s/he will vote.

As a measure to facilitate participation in elections included in the state's e-governance programme, Cypriot nationals living abroad can electronically submit a declaration for exercising their right to vote. This service becomes available online only for a few months prior to an election (no dedicated website address exists; relevant links are created and displayed on the official government websites of the Ministry of Interior and Press and Information Office). Citizens may also send an SMS to find the polling station where they are eligible to exercise their right to vote or find it online, through links created for this specific purpose by the Ministry of Interior.

As for citizens with disabilities, according to the Central Election Service announcement for the last election which took place in the Republic (presidential elections of 2018), special polling booths would be established for persons with mobility problems ("persons in wheelchairs"), while those registered in the Cyprus Paraplegic Organisation's registry would be provided with facilitations at the polling stations where they were eligible to vote; those not registered could contact the Central Election Service which could facilitate their voting. Persons with such disabilities can be escorted to the polling station, but they have to proceed to the polling booth in person. Prior to an election, the Chief Returning Officer publishes announcements indicating what kind of assistance will be given to persons with disabilities, including practical measures which enable a person with disabilities to physically enter the polling station and to access the voting booth. As for blind citizens or citizens with another physical disability, as provided by law, they have to come to the voting station in person, and, if unable to vote on their own, they can turn to the chief polling station officer who will assist them to vote in the presence of another polling station officer or they can vote in the presence of a person who they fully trust without presence of any of the polling station's staff. The chief polling station officer is allowed to give to any

handicapped, disabled or illiterate elector further explanations on how to vote, provided that s/he will avoid any action which could be taken as a way to advise or influence the elector on his/her final vote.

In the context of the law of necessity, as briefly explicated in the beginning of this section, electoral rights in the context of the island's *de facto* division were exclusively maintained for Greek Cypriots. In 2004, the European Court of Human Rights found Cyprus in violation of the right to free elections (Article 3 of Protocol 1 to the ECHR) and for discriminatory treatment on the basis of national origin (Article 14 ECHR) on account of the exclusion of Turkish Cypriots living in the government-controlled area from the right to vote. Following this judgment, the Cypriot government passed a law that allows TC to vote in all types of elections in the government-controlled areas of Cyprus, but it still does not allow them to stand for office.

The 1960 Constitution of Cyprus does not recognise any linguistic minorities. It only recognises two separate (ethnic) communities, the Greek Cypriot and the Turkish Cypriot community (Article 2) and three religious groups, the Maronites, Latins and Armenians. These groups have the right to vote for three religious representatives in the House of Representatives. They do not have the right to vote, but only to express their opinion on educational and cultural issues – in addition to their right to participate in all other elections as members of the Greek Cypriot community. In order for the electoral process to be facilitated for these groups, they vote for representatives to the House of Representatives at the same polling stations where they are eligible to vote for their religious representatives, being registered for this reason on a special list. Voters belonging to religious groups can vote twice: for general elections and for the religious group representatives' elections. In all other elections, members of the religious minorities participate as members of the GC community. There are no other measures or initiatives aiming at facilitating the right to vote and political representation for ethnic minorities, since they are considered to be equal members of the Greek Cypriot community.

The Constitution of Cyprus establishes that every person shall enjoy all the rights and liberties provided for in the Constitution without any direct or indirect discrimination on the ground of his/her sex (Article 28). Nevertheless, women's political representation is weak, and women are severely underrepresented in all state institutions. There are currently no specific measures or initiatives aiming at facilitating their right to vote or to be elected, apart from some political parties' gender quotas in their decision-making bodies



#### 5.4. STATISTICS

and some of them in their candidate lists, which is, however, a voluntary measure. Gender quotas have not been legislated in the electoral process, as a temporary measure to correct imbalances between the two sexes, despite long-term discussions on the subject. The National Machinery for Women's Right (NMWR) under the Gender Equality Unit of the Ministry of Justice and Public Order of the Republic, which is the official institution charged with issues of gender equality and women's rights, has undertaken several actions, such as contacting party leaders, informing the public, distributing material, contacting the media and organising informative seminars on gender equality issues since its foundation in 2004.

The National Action Plan on Gender Equality for the period 2014-2017 of the NMWR, and in particular under its chapter on the "Balanced Participation of Women and Men in Political/Social and Economic life" refers to the need for quotas to be introduced. It specifically mentions a target of 40% for the participation of women in political life, the introduction of a quota of 30% for women in ballots in municipal, parliamentary and European Parliament elections and a quota of 30% for women in all public committees and boards. However, no such measure has been implemented yet. It is worth mentioning that in July 2017, the Supreme Court declared an Amending Law voted by the House of Representatives unconstitutional. That law had introduced a quota of two-fifths of the total appointments in the administrative councils of some public law entities to be filled by women (Amendment to Law 149/1988). The establishment of gender equality institutions, such as the Equality Body under the Commissioner for Administration and Human Rights (Ombudsman), the Parliamentary Committee on Human Rights and Equal Opportunities for Men and Women, as well as the appointment of women in high-ranking positions such as that of Commissioners (Law Commissioner, for the Children's Rights, for Administration and Human Rights), the Auditor-General and others over the last years, must be considered as an important step towards gender equality.

As for municipal/local (municipal and community council) elections, the Union of Municipalities, which represents all municipalities and local communities of the Republic, has established in February 2005 the Committee of Elected Women of the Union of Municipalities, with the objective of promoting the equal representation of women and men in local (municipal and community) councils. Nevertheless, there are no legally binding measures to promote women's right to vote and to be elected.



## 6. Czech Republic

*Reporting by Petr Kaniok, Masaryk University*

### 6.1. LEGAL FRAMEWORK

When it comes to the European Parliament elections, all conditions are laid down by Act No. 62/2003 Coll., on Elections to the European Parliament, as amended. Municipal elections are specified by Act No. 491/2001 Coll., on Elections to Representative Bodies of Municipalities and on Amendments to Certain Other Laws as amended.

Any Czech citizen who is – at least on the second day of voting – 18 years old is entitled to vote. In case of municipal elections, eligibility to vote is based upon a voter's residency – each voter can only vote in the place where she/he has right to reside (i.e. has her/his permanent residence registered). The right to vote municipal elections is further granted, aside from Czech nationals, also to nationals of other States to whom such rights have been granted through an international convention binding on the Czech Republic and promulgated in the Collection of International Treaties, provided they have attained the age of 18 on the second polling day at the latest and, as at the polling day, are registered as permanent residents in the municipality. Currently, this only relates to nationals of the EU Member States, because the Treaty of the Czech Republic's Accession to the European Union (Communication No. 44/2004 Coll. of Int. Treaties) is the only international treaty meeting the prerequisites laid down by the Municipal Councils Elections Act.

A citizen of another EU Member State can cast their EP ballot on the territory of the Czech Republic provided that she/he meets four conditions. First, she/he is at least 18 years old as of the second polling day. Second, she/he is registered in the register of citizens at least 45 days prior to the elections. A citizen of another EU Member State holding a temporary residence permit or a permanent residence ID to reside in the territory of the Czech Republic is registered in the register of citizens. Applications for a temporary residence permit should be submitted to the relevant Alien Police Inspectorate and applications for a permanent residence ID shall be sent to the Department of Asylum and Migration of the Czech Ministry of Interior. A citizen of another EU Member State will be registered in the register of citizens after having received a temporary residence permit or a permanent residence ID. Third, she/he has the right to exercise her/his voting

rights. A citizen will not be allowed to vote should there be a statutory limitation imposed on her/his voting rights for reasons of protection of health or withdrawal or her/his legal capacity. Fourth, she/he is entered on the EP elections electoral list.

In the case of municipal elections, any person who is eligible to vote, can run in the elections and can be elected. There are 4 limitations in this sense – serving a criminal sentence, protection of health, withdrawal of legal capacity, and ongoing military service abroad. Regarding the European Parliament elections, any citizen of the Czech Republic who is at least older than 21 years on the second day of the voting can be elected. At the same time, her/his right to be elected cannot be restricted by law. EU Member States' citizens have to meet the same age limit and they have to reside – either in form of permanent or temporary status – in the Czech Republic at least 45 days prior to the elections. At the same time, the conditions for their right to be elected as defined by their "home" country (their country of citizenship) have to be met. If a citizen possesses dual/multiple citizenships, she/he must comply with the requirements – for the right to be elected – specified by each Member State.

Currently, several political parties (ANO, SPD, Piráti) are pushing for reform concerning municipal and regional elections. The flagship of this reform is to enable direct voting of mayors (municipal elections) and regional governors (regional elections). In January 2017, the Chamber of Deputies did not support amendments on Act No. 491/2001 Coll., on Elections to Representative Bodies of Municipalities and on Amendments to Certain Other Laws as amended, which would grant the right to vote in municipal elections also to mobile EU citizens having temporary stay in the Czech Republic. When it comes to other types of elections, one political party (TOP 09) is currently trying to include the possibility of correspondence voting into the Czech legislation.

### 6.2. REGISTRATION AND VOTING CONDITIONS

Czech citizens are registered automatically on the basis of their residency status. In case of mobile EU citizens, pursuant to section 28(1) of the Municipal Councils Elections Act, the appendix to the permanent electoral list is kept by the municipal offices (city offices, town halls, etc.) in respect of voters – nationals of other States – who have permanent residence within their territory. Voters – nationals of other States – may lodge their applications for their inclusion on the Addendum to the Municipal Offices at any time until the Appendix's closing day, which is two days in advance of

the polling day. Such applications can be made in writing or in person. It shall be apparent from the application that the applicant is seeking to be included on the Appendix and the applicant shall indicate as a minimum her/his first name, surname, date of birth as well as their place of permanent stay (address) in order to facilitate identification. If an application is made in person, the written form shall not be required, as the competent official of the Municipal Office executing an official record will include the required data into the Appendix based on documents presented to her/him by the applicant and comprising such required data.

The procedures for voter registration for municipal and EP elections are pretty similar. Electoral lists for EP elections are administered by the local authorities. The local authority prepares the electoral list for each EP elections as required by the Act. There are several ways by which a citizen of another EU Member State can be placed on the electoral list. First, she/he applies to be registered on the EP elections' electoral list in the territory of the Czech Republic. Such an application is similar to the abovementioned application for inclusion on the Appendix to the permanent electoral list and can be made no later than 40 days before the date of the elections. Second, she/he had applied to be registered on the EP elections' electoral roll in the territory of the Czech Republic for past EP elections (2014), has not since applied to be deleted from the list and meets the conditions necessary for a mobile EU citizen to exercise her/his right to vote. Third, she/he is registered in the Appendix to the permanent list of voters for the purpose of municipal elections and applies at the local authority where she/he is registered for transfer of her/his data from the Appendix to the permanent list of voters into the EP elections' electoral list. Such applications shall be made no later than 40 days before the Election Day.

So far, there has not been any regulation adopted allowing citizens to vote via alternative means, such as postal voting, e-voting or any similar means. Czech citizens cannot vote at the European Parliament elections from abroad – if they want to vote for parties running in the Czech Republic, nor can they use postal voting or any other distance voting mechanisms. In the case of municipal elections, voting abroad is not available either.

### 6.3. MEASURES FACILITATING VOTING RIGHTS

No general measures or initiatives have been put in place to facilitate the access to the polls, apart from providing basic information on the website of the Czech Ministry of the Interior and other relevant authorities (such as the Chamber of Deputies, the lower house of the Czech parliament). There was no

such campaign held so far that concerns voters in the broadest term (general public), nor concerning minorities or, for example, women in particular. There were efforts to increase voters' interest in polls through proposals to change the electoral systems – most recently to the Senate, the upper house of the Czech parliament (from a two-round system to a one-round majority system), but the Chamber of Deputies rejected the proposal in April 2018 in the first phase of the proposal's deliberation.

When it comes to female representation in politics, in 2001, the Governmental Council for Equal Opportunities was established. In 2016, it prepared the "Action Plan for Equal Representation in Top Positions 2016-2018", also containing section on politics. However, as the composition of electoral lists falls within the competence of political parties – and state authorities have no right to impose quotas, for example – it only offers set of recommendations which should increase the amount of female candidates running in elections. The government considered the adoption of a law promoting better representation of women in 2015 (requiring at least 40% representation of a particular gender in electoral lists for national and regional elections), but this proposal was not approved. Currently, any proposal containing the same or similar measures is not considered. Instead, the abovementioned "Action Plan" was approved by the government as an alternative solution. However, the government has been repeatedly criticised by, for example, the OSCE/ODIHR or the UN in recent months. For example, the OSCE/ODIHR 2017 Parliamentary Elections Report noted that "greater efforts should be made to include women on candidate lists, especially in winnable positions. Temporary special measures, including state subsidy premiums for political parties and other mechanisms, should be developed to promote women participation in elections". However, any substantial changes in this regard is unlikely to take place in the near future. The current government (approved by the Chamber of Deputies in early July 2018), led by the centre-populist ANO movement, is substantially less in favour of gender/minorities agenda than the previous cabinet led by the Social Democratic Prime Minister Bohuslav Sobotka. For example, Mr. Sobotka himself supported activities of the non-profit organisation Forum 50%, aimed at increasing the number of women in politics.

The non-governmental sector is currently more active in this regard than state authorities. For example, as already mentioned, the organisation Forum 50% is currently preparing an analysis of women's representation in electoral lists for the 2018 municipal elections.

There are no measures or initiatives aiming at promoting mobile EU citizens' right to vote in municipal elections. Mobile EU citizens are kept informed, but no special campaign or initiative targeting them has taken place. Similarly, there are no measures or initiatives specifically targeting the political participation of linguistic or ethnic minorities or people with disabilities.

When it comes to mobile EU citizens, the main obstacle to their political participation in municipal elections definitely seems to be the lack of information and a very difficult and complex process of registration in the electoral list.

#### 6.4. STATISTICS

By the end of 2016, there were 2 772 mobile EU citizens registered in the electoral lists. In the same year, there were 70 177 mobile EU citizens having permanent residence in the Czech Republic.

In the case of municipal elections, in 2014, the turnout rate was 44.68% (8 406 047 registered voters, with 3 737 564 voters having cast their vote). As for the European Parliament elections in 2014, the turnout rate was 18.20% (1 528 250 votes cast out of 8 395 132 registered voters).

**Table 6.1. Candidates for EP elections in the Czech Republic by nationality**

|                       | 2004           | 2009           | 2014           |
|-----------------------|----------------|----------------|----------------|
| <i>Czech Republic</i> | 801<br>(99.5%) | 704<br>(99.5%) | 843<br>(99.4%) |
| <i>Germany</i>        | 1 (0.1%)       | –              | –              |
| <i>France</i>         | 1 (0.1%)       | 1 (0.1%)       | –              |
| <i>United Kingdom</i> | 1 (0.1%)       | –              | –              |
| <i>Ireland</i>        | 1 (0.1%)       | –              | –              |
| <i>Italy</i>          | 1 (0.1%)       | 1 (0.1%)       | 1 (0.1%)       |
| <i>Slovakia</i>       | –              | 2 (0.3%)       | 5 (0.6%)       |



## 7. Denmark

*Reporting by Kasper M. Hansen,  
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### 7.1. LEGAL FRAMEWORK

The provisions of electoral rights are included in the Danish Constitution's paragraph 29 and 30,<sup>1</sup> and described further in the electoral laws, which are updated often with minor changes. Overall, the right to vote in Danish elections depends on permanent residence (domicile) in Denmark, and for national elections the Danish citizenship is further required to be eligible. The electoral age threshold in Denmark is 18 years old, and this requirement applies to all groups of citizens and residents.<sup>2</sup>

#### *EP elections*

Danish citizens and non-citizen residents from EU countries are automatically registered as voters and are able to vote in the EP elections. Non-citizen residents from EU countries are able to vote either in their home country or in the Danish election for the EP. As the electoral law of Denmark states, EU citizens over the age of 18, who have registered as residents through the Danish national registration office are able to vote for the EP elections in Denmark or their home country.<sup>3</sup> Mobile EU citizens residing in Denmark and who are registered as residents will automatically receive a polling card by mail. They need to show this card at the polling station to receive the ballot paper and exercise their voting right.<sup>4</sup>

#### *Local and regional elections*

Mobile EU citizens and citizens from Greenland, the Faroe Islands, Iceland or Norway have the same electoral rights as Danish citizens for local and regional elections. However, they have to be permanent residents, which means that the individual must have been in Denmark for at least three weeks before the election takes place. For third-country nationals (i.e. nationals of countries outside the EU and Nordic countries), electoral rights at local and regional elections are obtained after three years of permanent residence.<sup>5</sup>

#### *Miscellaneous*

In all elections, voters are able to run for office if they are an eligible voter. There are no forthcoming electoral reforms that will change the above conditions.

### 7.2. REGISTRATION AND VOTING CONDITIONS

All voters are automatically registered in the electoral register if they have a Danish CPR-number<sup>6</sup> and are registered as residents with an address in Denmark. Mobile EU citizens have to register as residents. They have to do so within three months of arrival to Denmark.<sup>7</sup> Their voter registration for elections is subsequently automatically effectuated, including if the mobile EU citizen moves his/her address in Denmark.<sup>8</sup> Residents have to register their address and get a CPR-number at least three weeks prior to the elections, as the electoral lists are closed three weeks before the particular election. This time limit also applies to Danish citizens moving address in Denmark or move from another country to Denmark. If residents do not re-register, they may be obliged to vote in their former region or municipality, but they do *not* lose their electoral rights for the particular election.<sup>9</sup> Furthermore, if a person is registered in the Danish CPR-register as an EU citizen, he/she can show up at the polling station and vote.

As an eligible voter, one can cast one's vote for the European Parliament elections before polling day in any municipality. Absentee voting (usually at the city hall) starts six weeks before the elections and closes three days before the elections (i.e., for the 2019 EP elections, from 26 April to 23 May 2019). An absentee voter will need to show his/her passport or/and the yellow Danish health insurance card as ID (this card is received when a person is given the CPR-number). Eligible voters temporary staying outside Denmark can vote at Danish consulates and embassies. Absentee voting outside of Denmark starts three months before the elections.

The same rules apply to the local and regional election. The last day for absentee voting for the local election is the Friday before the elections.

### 7.3. MEASURES FACILITATING VOTING RIGHTS

Participation at elections in Denmark is generally facilitative, as voter registration is automatic, and all voters automatically receive a voting card. In previous elections, there has been some information on the election in English and in other languages.<sup>10</sup> In addition, text messages on mobile phones have been sent to first and second-generation immigrants to encourage them to vote along with many other target groups (e.g. young voters).

E-voting is not an option, but eligible voters are able to vote absentee and e.g. across the country at the city



halls. Furthermore, for instance in old peoples' homes, hospitals and prisons, government officials will facilitate absentee voting. In addition, people with disabilities are able to vote in their own home. It is also possible to receive help with the transport to the polling stations. People who wish to use this option must contact the local municipality.

#### 7.4. STATISTICS

The Copenhagen based think-tank *Tænketanken Europa* has calculated that 179 989 mobile EU citizens were able to vote in the last local and regional elections on 21 November 2017.<sup>11</sup> Another estimate of mobile EU citizen voters were made by the Danish organisation of local governments in Denmark, *Local Government Denmark* (KL). This organisation has published a report describing the characteristics of mobile EU citizens who were able to vote in Denmark for the local and regional elections in November 2017.<sup>12</sup> According to their data, there were 199 221 mobile EU citizens entitled to vote at local and regional elections right before the election in 2017. Compared to the previous local elections in 2013, this number has risen by approximately 32.2%.

had a 60.1% turnout and the non-citizens had a turnout of 67.3%, which is quite higher than the Danes' turnout. Residents from the "new" EU countries have a lower turnout of 44.4% for the residents with Danish citizenship and 48.1% for the residents without Danish citizenship.<sup>13</sup>

For comparison, residents from non-western third-countries have a much lower turnout of 22.8% for residents with Danish citizenship and 33.5% for the residents without Danish citizenship. In that light, EU citizens' turnout are very good, even though the turnout of around 60% is much lower than for national, local or regional elections, but this is a general pattern.

#### Local elections

The most recent election in Denmark was the local and regional election in November 2017. This election's turnout has been subject to research for 91 of the 98 municipalities in Denmark, for different socio-demographic groups, including the turnout for mobile EU citizens residing in Denmark.<sup>14</sup> The report showed that the turnout rates are very different internally in the group of mobile EU citizens residing in Denmark. The residents from the "old" EU countries with Danish

Table 7.1. Turnout at the EP election in May 2014 by countries of origin

|                         | Danish citizenship |                  | Other citizenship |               | Total        |
|-------------------------|--------------------|------------------|-------------------|---------------|--------------|
| Denmark                 | 57.8%              | 2 209 292        | 65.2%             | 446           | 57.8%        |
| "Old" EU countries      | 60.1%              | 13 421           | 67.3%             | 8 032         | 62.8%        |
| "New" EU countries      | 44.4%              | 6 788            | 48.1%             | 1 153         | 45.0%        |
| Nordic countries        | 56.3%              | 2 272            | 74.3%             | 35            | 56.6%        |
| Other Western countries | 57.4%              | 1 294            | 63.6%             | 77            | 57.8%        |
| Non-Western countries   | 22.8%              | 89 467           | 33.5%             | 1 075         | 23.0%        |
| <b>Total</b>            | <b>56.5%</b>       | <b>2 322 534</b> | <b>61.8%</b>      | <b>10 818</b> | <b>56.5%</b> |

Source: [https://cvap.polsci.ku.dk/forskning/valgdeltagelse/papers\\_og\\_rapporter/EP\\_rapport\\_24112014\\_final.pdf](https://cvap.polsci.ku.dk/forskning/valgdeltagelse/papers_og_rapporter/EP_rapport_24112014_final.pdf)

#### EP elections

At the EP elections in 2014, the turnout for different socio-demographic groups was described in a report where the register data and turnout for the residents of 61 out of Denmark's 98 municipalities are discovered (see Table 7.1). Its results showed that the turnout for the group of residents from the "old" EU countries were higher than for Danish citizens, regardless of their citizenship status. The "old" EU countries are the EU15, and the "new" EU countries are then the countries that entered the EU after the EU15. Ethnic Danish citizens had a turnout of 57.8%; meanwhile, Danish citizens from the "old" EU countries

citizenship have a high turnout of 72.1%, which is very close to the ethnic Danish citizens' turnout of 75.2%. The turnout for the residents from the "old" EU countries without Danish citizenship is only 39.7% (see Table 7.2).<sup>15</sup>

It looks even worse for the residents from the "new" EU-countries of which the group with Danish citizenship has a turnout of 57.5% and the ones without citizenship only have a turnout of 13.5%. These percentages for the turnout of the residents from the "new" EU-countries are very low compared with all the other identified groups, and it is problematic that the group of residents from the "new" EU-countries without citizenship is not participating in the local and

Table 7.2. Turnout at the local election November 2017 by countries of origin

|                         | Danish citizenship |                  | Other citizenship |                | Total        |
|-------------------------|--------------------|------------------|-------------------|----------------|--------------|
| Denmark                 | 75.2%              | 3 622 509        | 55.4%             | 4 686          | 75.2%        |
| “Old” EU countries      | 72.1%              | 19 838           | 39.7%             | 76 264         | 46.4%        |
| “New” EU countries      | 57.5%              | 10 525           | 13.5%             | 81 615         | 18.5%        |
| Nordic countries        | 70.8%              | 3 531            | 43.4%             | 18 910         | 47.7%        |
| Other Western countries | 67.2%              | 2 205            | 40.9%             | 8 661          | 46.2%        |
| Non-Western countries   | 47.7%              | 162 473          | 35.9%             | 147 272        | 42.0%        |
| <b>Total</b>            | <b>74.0%</b>       | <b>3 821 081</b> | <b>32.1%</b>      | <b>337 408</b> | <b>70.6%</b> |

Source: [https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV\\_RV17\\_valgdeltagelse.pdf](https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV_RV17_valgdeltagelse.pdf)

regional democracy. The turnouts are especially low for the residents from Rumania, Lithuania, Poland and Bulgaria without Danish citizenship.<sup>16</sup> These residents often works in the construction sector for shorter periods of time, which might be one of the reasons why this group are not showing up for the local and regional elections.

The turnout of the residents from the “new” EU-countries has fallen with 1.5% meanwhile the group has grown with approximately 25.000 people. Therefore there is a large potential in mobilizing this

group, as it otherwise will pull the overall turnout down.<sup>17</sup> There has been some media attention on this issue, as it is a democratic problem that the EU citizens participate less in the local and regional elections even though they possess electoral rights and are comprised by the local and regional councils’ priorities as residents.<sup>18</sup> People and local authorities are aware of the gap in the turnout, and the groups of EU-citizens living in Denmark might be subject to mobilization initiatives in the future.

#### Notes:

<sup>1</sup> [http://www.stm.dk/\\_p\\_10992.html](http://www.stm.dk/_p_10992.html)

<sup>2</sup> [www.retsinformation.dk/Forms/R0710.aspx?id=194769](http://www.retsinformation.dk/Forms/R0710.aspx?id=194769)

<sup>3</sup> [www.retsinformation.dk/Forms/R0710.aspx?id=9044](http://www.retsinformation.dk/Forms/R0710.aspx?id=9044)

<sup>4</sup> [www.retsinformation.dk/Forms/R0710.aspx?id=162705](http://www.retsinformation.dk/Forms/R0710.aspx?id=162705)

<sup>5</sup> [www.retsinformation.dk/Forms/R0710.aspx?id=200286](http://www.retsinformation.dk/Forms/R0710.aspx?id=200286)

<sup>6</sup> An ID number for residents. Given upon registration as a permanent resident.

<sup>7</sup> <https://www.workindenmark.dk/Moving-to-DK/Important-registrations/Citizens-from-EU-EEA-or-Switzerland>

<sup>8</sup> <https://www.borger.dk/udlaendinge-i-danmark/Nyttig-information-til-udlaendinge/Valgret-og-valgbarhed-for-udlaendinge>

<sup>9</sup> <https://www.workindenmark.dk/Moving-to-DK/Important-registrations/Citizens-from-EU-EEA-or-Switzerland>

<sup>10</sup> See e.g. <http://rem.dk/radet/publikationer/det-er-dit-valg-2017-1>). There is also information on the elections in English here: <https://lifeindenmark.borger.dk/Coming-to-Denmark/Facts-about-Denmark>.

<sup>11</sup> [http://thinkeuropa.dk/sites/default/files/notat\\_eu-borgere\\_kan\\_stemme\\_ved\\_kommunalvalget.pdf](http://thinkeuropa.dk/sites/default/files/notat_eu-borgere_kan_stemme_ved_kommunalvalget.pdf)

<sup>12</sup>

[https://www.kl.dk/ImageVaultFiles/id\\_84512/cf\\_202/Karakteristik\\_af\\_stemmeberettigede\\_EU-borgere.PDF](https://www.kl.dk/ImageVaultFiles/id_84512/cf_202/Karakteristik_af_stemmeberettigede_EU-borgere.PDF)

<sup>13</sup> [https://cvap.polsci.ku.dk/forskning/valgdeltagelse/papers\\_og\\_rapporter/EP\\_rapport\\_24112014\\_final.pdf](https://cvap.polsci.ku.dk/forskning/valgdeltagelse/papers_og_rapporter/EP_rapport_24112014_final.pdf), p. 21

<sup>14</sup>

[https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV\\_RV17\\_valgdeltagelse.pdf](https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV_RV17_valgdeltagelse.pdf)

<sup>15</sup>

[https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV\\_RV17\\_valgdeltagelse.pdf](https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV_RV17_valgdeltagelse.pdf), p. 18

<sup>16</sup>

[https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV\\_RV17\\_valgdeltagelse.pdf](https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV_RV17_valgdeltagelse.pdf)

<sup>17</sup>

[https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV\\_RV17\\_valgdeltagelse.pdf](https://cvap.polsci.ku.dk/publikationer/arbejdspapirer/2017/KV_RV17_valgdeltagelse.pdf), p. 38

<sup>18</sup> <https://www.tveast.dk/artikel/udlaendinge-kan-traekke-valgdeltagelsen-ned>



## 8. Estonia

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### 8.1. LEGAL

#### FRAMEWORK

Today Estonian electoral process is set by the Constitution and detailed in Riigikogu Election Act (passed 12.06.2002), Municipal Council Election Act (passed 27.03.2002), and European Parliament Election Act (passed 18.12.2002).

Municipal elections are the most inclusive and the list of voters includes all Estonian citizens and citizens of other EU Member States, along with citizens of a non-EU Member State or stateless persons residing in Estonia on the basis of a long-term residence permit or the right of permanent residence, aged 16 and over (except for those convicted of a criminal offence and imprisoned until Election Day). The European Parliament electoral roll includes Estonian and other EU Member States' citizens, at least 18 years old (with an identical clause on serving a sentence in a custodial institution on a criminal conviction).

The right to stand as a candidate for European Parliament elections is given to: 1) a citizen of the European Union who has attained the age of at least 21 years by Election Day, whose 2) permanent residence is in Estonia, i.e. the address details of his/her residence have been entered in the population register, 3) he or she has not been deprived of the right to stand as a candidate in his or her home Member State, and 4) he or she is not serving sentence in a penal institution or in active service in the Defence Forces. The right to stand as a candidate for municipal elections is given to every Estonian citizen and citizen of the European Union who has the right to vote, who has attained 18 years of age by the last day of the registration of candidates and whose permanent residence is located in the corresponding rural municipality or city not later than on 1 August of an election year (except for those enrolled in the Defence Forces or serving a prison sentence).

### 8.2. REGISTRATION AND VOTING CONDITIONS

Having gained world recognition in the scope of e-governance, registration for elections in Estonia requires little to no effort. In order to be entered in the list of voters, the address details of the residence of a person must have been entered in the population register. The voters' registration deadlines for both municipal and European Parliament elections are 30

days before Election Day. However, only the European elections leave an option for the mobile EU citizens to apply to be removed from the list.

The most significant step towards voting accessibility from the Estonian government was the introduction of advance and internet voting. Launched as a pilot project in 2005, today e-voting is a powerful tool, representing 31.7% of the votes cast at the recent local government elections in 2017. As a cornerstone of Estonian digital democracy, e-voting first faced some heavy criticisms abroad (mainly based on security and double-voting prevention issues), but quickly gained recognition as a safe and convenient tool. The system of e-voting is governed by the State Electoral Office, under supervision of the National Electoral Committee. The procedure for e-voting is implemented via national ID cards or Mobile-ID that enable secure remote authentication and legally binding digital signatures. The e-votes may be cast from the 10<sup>th</sup> day until the 4<sup>th</sup> day before Election Day, and may also be withdrawn by the voter. After the critical remarks of the OSCE observatory mission on the possibility to further strengthen the verifiability of e-votes, the respective authorities have introduced new end-to-end cryptographic tools.

From the 10<sup>th</sup> to the 7<sup>th</sup> day before Election Day, at least one polling place is open in every county centre where all voters can vote in advance, regardless of their voting district of residence. It is also possible to fill in the paper ballot at home (due to health issues or other legitimate reasons).<sup>1</sup> Moreover, on the application of the captain of a ship, voting at the Riigikogu or the European Parliament elections can be organised on a ship flying the Estonian national flag, if the ship is located in international waters or waters of a foreign state during the advance polling days and the Election Day.

According to the legislation in force, the option of voting by post has been reserved for national parliamentary elections and European Parliament elections, while municipal elections do not require the authorities to include any postal voting information on the voter's card. This adjustment seems to be reasonable, based on the different scale of these ballots (the local government voter could be an alien or a mobile EU citizen, still has to be not too far away to be directly interested in a particular community life, with a possibility to vote at home under necessity).

### 8.3. MEASURES FACILITATING VOTING RIGHTS

Since the restoration of its independence in 1991, Estonia's main political issue has been the policy towards the Russian-speaking minority, roughly representing a quarter of the total population. In order to start a brand-new phase of political life, the new legislation granted citizenship rights only to residents who lived in the country before 16 June 1940 (the starting date of Soviet occupation) or who have passed the naturalisation exams. Unsurprisingly, this obstacle to vote and to be elected has often been criticized by ethnic Russians, who are reluctant to certify compliance with the citizenship criteria. Following a range of recommendations from the Council of Europe and OSCE, some steps have been taken to facilitate access to national elections for ethnic minorities. First, as of 1 January 2016, children born in Estonia to parents of undetermined citizenship, and children who are under 15 years of age, will receive Estonian citizenship through naturalisation without an application by the parents. Second, persons over 65 years of age are exempted from the written language examination. Previously, this applied only to persons born before 1 January 1930.

Participation in municipal elections in Estonia have largely been facilitated. Mobile EU citizens do not need to apply separately, but are automatically included in the registry for municipal elections at the time of registration of their residence in Estonia. Last year, the minimum age for voting in municipal elections has been decreased to 16 years, which demonstrates the importance of considering the youth's opinion.

The accessibility of information on voting procedures for Russian speakers in Estonia has been in focus for a long time. As of today, the National Electoral Committee's website is available in Estonian, English, and Russian, and some general information about internet voting is available there (as well as on the national e-governance portal). However, according to the OSCE/ODIHR, during the national parliamentary elections of 2015, voting instructions sent to voters, as well as information in polling stations and on ballots, were only in Estonian, which certainly remains an issue of great concern. At the same time, Internet voting in Estonia is based on WAI principles (Web Accessibility Initiative), which develops strategies, guidelines, and resources to help make the Web accessible to people with disabilities, and JAWS (Job Access With Speech). The latter converts text and components of the Windows operating system into synthesised speech, thereby allowing people with visual impairments to

access written information in audio form. Currently, there are no special legal provisions aiming to promote women's political participation.

As stated above, the main obstacle to freely exercising the right to vote in Estonia according to international bodies is the still-low level of naturalisation of ethnic minorities. Regulations such as limiting the e-voting interface to the Estonian language or banning persons of undetermined citizenship from joining political parties have often been named as bottlenecks for further democratic electoral development.

### 8.4. STATISTICS

According to the CSES report on electoral conduct, the percentage of mobile EU citizens registered for European Parliament elections in Estonia has significantly declined, with voters composing 11.0% of non-nationals in 2009 and only 5.9% five years later.<sup>2</sup> It has to be noted that these figures do not represent the actual voter turnout, but only their inclusion in the electoral registration database. As of 1 November 2014, balloting lists for national Riigikogu elections included Estonian 61 694 voters abroad (with a significant number residing in Finland).<sup>3</sup>

Over the recent decades, election turnout has maintained the trend of slow but steady increase. From 2007 to 2015, the total turnout (compared to the number of registered voters) at Riigikogu elections has grown from 61.9% to 64.2%. Nonetheless, this trend seems to not be relevant to Estonians living abroad. Based on the latest national elections, less than one percent of foreign residents (0.0648%) have expressed their desire to participate in the Estonian political life. Not surprisingly, the local governmental and European Parliament elections (the latest rounds took place in 2017 and 2014 respectively) attracted less attention than the national parliament elections. Official data shows that the total turnout for municipal council elections in October 2017 comprised 53.3%,<sup>4</sup> while European Parliament elections have only raised voices of 36.5% of registered voters.<sup>5</sup> As the National Electoral Committee only provides breakdown by gender for exercising the right to be elected and among e-voters, it's hard to define the rate of linguistic and ethnic minority representation (i.e. the most sensitive issue of the Russian diaspora) at any of the recent elections. Finally, the newest wrinkle in Estonian elections is the rapid boost of popularity of e-voting – last year, over 16% of votes for municipal elections were collected online.



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**Notes:**

<sup>1</sup> <https://www.valimised.ee/en/estonian-elections-nutshell/voting-home>.

<sup>2</sup> [http://edz.bib.uni-mannheim.de/daten/edz-k/gdj/15/final\\_report\\_2014\\_ep\\_elections\\_study\\_cses\\_10\\_march\\_2015.pdf](http://edz.bib.uni-mannheim.de/daten/edz-k/gdj/15/final_report_2014_ep_elections_study_cses_10_march_2015.pdf).

<sup>3</sup> <https://news.err.ee/115276/estonians-abroad-losing-interest-in-elections>.

<sup>4</sup> <https://kov2017.valimised.ee/osavotu-statistika.html>.

<sup>5</sup> <https://www.valimised.ee/en/archive/statistics>.





## 9. Finland

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### 9.1. LEGAL

#### FRAMEWORK

In Finland, electoral and participatory rights are guaranteed in the Constitution (731/1999). According to Article 14(1), every Finnish citizen who has reached the age of eighteen years has the right to vote in national elections and referendums. Article 14(2) grants the right to vote in European Parliamentary (EP) elections to every Finnish citizen and to every citizen of the European Union resident in Finland, provided that the voter has attained the age of eighteen years. The right to vote in municipal elections and referendums, on the other hand, is conferred to every Finnish citizen and foreigner permanently residing in Finland, as stipulated in Article 14(3) of the Constitution. Age-wise, the voter must be at least eighteen years old to cast a vote in municipal elections.

More detailed provisions concerning the elections and voting are laid down in the Election Act (*Vaalilaki*, 714/1998), which contains provisions for the election of the members of the parliament (parliamentary election), the election of the President of the Republic (Presidential election), municipal elections, and elections for the members to the European Parliament from Finland (EP elections). Provisions on municipal elections in the Province of Åland are, however, laid down in the separate Provincial legislation of the Åland Islands. In addition to aforementioned Election Act, further provisions concerning municipal elections have been codified in the Local Government Act (*Kuntalaki*, 410/2015).

In addition to the general electoral and participatory right stipulated in the Constitution, Article 2(2) of the Election Act establishes more detailed conditions for mobile EU citizens' right to vote in EP elections. In order to vote in Finland, mobile EU citizen must 1) have a municipality residence in Finland, or 2) work for the EU or other international organisation in Finland, or 3) is a family member of such person, and whose personal information has been entered in the Population Information System in the manner referred to in the Act on the Population Information System and the Certificate Services of the Population Register Centre (661/2009).

According to Article 164(1) of Election Act, Finnish citizens and mobile EU citizens who are entitled to vote in Finland are also eligible to stand as candidates in the

EP elections in Finland, provided that a mobile EU citizen candidate has not lost his or her candidate eligibility in his or her Home State. Article 164(2), however, lays down grounds for ineligibility, stating that a member of the European Parliament cannot be a member of government in Finland, a member or a public official of other EU institutions, or a person who is in such a position that he or she cannot, under the Constitution, be a Member of Parliament in Finland. Therefore, military officials, the Chancellor of Justice, the Parliamentary Ombudsman, the Prosecutor-General as well as the judges from the Supreme Court and the Supreme Administrative Court are also excluded from the candidacy to the European Parliament (Article 27 of the Constitution).

As a basic rule regarding municipal elections, eligibility to vote requires a voter to have their municipality of residence in the municipality in which the voter wishes to cast a vote (Article 20(1) of Local Government Act). The residence information must have been entered in the Population Information System (*väestötietojärjestelmä*) at least 51 days prior to Election Day. The aforementioned rule applies to Finnish citizens, mobile EU citizens and citizens of Norway and Iceland. Residential requirement for non-EU citizens prior to obtaining voting right in municipal elections is two years.

In order to stand as a candidate in municipal elections, a person must 1) have a municipality residence in the municipality in question, 2) have a right to vote in the municipal elections, and 3) not have been declared legally incompetent (Article 71 of Local Government Act). Persons who may have a conflict of interest, for example due to their employment as a public servant in the Central Government or in municipally-owned corporate entities, as laid down in Article 72, are generally ineligible to run in municipal elections.

There are no foreseeable reforms that would affect municipal or EP elections *per se*. Finland has been attempting to reform its regional government, as well as health and social services, for years. The reform seeks to shift certain responsibilities from local municipalities to regional governments (which are to be established). If the reform passes, the regional governments are to be formed through elections in which the electoral and participatory rights would correspond to the voting rights for municipal elections. However, the reform is not designed to abolish municipal elections, but to add a new governmental level with new elections.

## 9.2. REGISTRATION AND VOTING CONDITIONS

According to Article 18 of the Election Act, the Population Register Centre establishes a register on the eligible voters based on the information from the Population Information System. The voting register is established no later than 46 days before Election Day. As a general rule, the registration in the voting register is automatic for persons whose data has been entered into the Population Information System at the latest 51 days before the elections. However, in order to be entered in the voting register, a mobile EU citizen who is eligible to vote in the EP elections in Finland must file a written notification stating that he or she wishes to exercise the right to vote in Finland. The notification shall be made to the local registration office at least 80 days prior to Election Day (Article 18(4) of Election Act).

After establishing a voting register, the Population Register Centre compiles a polling card concerning each person entered in the voting register. The polling cards are sent at the latest on the 24<sup>th</sup> day before Election Day to the eligible voters with a known address. Article 22 of the Election Act also states that the Population Register Centre should inform citizens of other EU Member States, who fulfil the conditions laid down for eligible voters, that these persons have a right to vote in municipal and EP elections, and that they are eligible to stand as candidates. These persons also need to be informed of the procedure necessary in order for them to exercise their right to vote and to meet the eligibility criteria for candidacy.

Elections are conducted by organising advance voting and voting on Election Day. Every eligible voter may vote in advance at the general advance polling stations in Finland and in the Finnish diplomatic missions abroad. An eligible voter who is in the hospital, in a facility with round-the-clock treatment, in other operational units of social service or in a penal institution may vote in advance in the said institution. Eligible voters whose ability to move or function is limited to the degree that they are unable to come to the polling or advance polling station without undue difficulty, can be allowed to vote in advance at their home. In such cases, the persons entitled to vote at home must notify the central municipal election board of their municipality of residence of their willingness to vote at home no later than 12 days before Election Day.

Voting via post was introduced in the Election Act in 2017 (939/2017) and is available for eligible voters who do not have municipality residence in Finland or who are unable to vote in the polling stations in advance or on Election Day due to their residency or staying abroad. The responsibility for voting arrangements, including the ordering of the election documents from

the Ministry of Justice, is on the voter. Additionally, two persons not related to the voter must bear witness to the vote.

The aforementioned provisions, as stated in sections 5 and 5a of the Election Act, are available for all elections and apply equivalently to all eligible voters, irrespectively of their citizenship. According to Article 2 of the Election Act, voting by proxy is not allowed.

## 9.3. MEASURES FACILITATING VOTING RIGHTS

There are no specific legislative measures or other initiatives to facilitate the political representation or voting of women. In general, electoral and participatory rights are relatively advanced in Finland. For instance, women have been eligible to vote and to stand as candidates in parliamentary elections since 1906. Already in the 1907 parliamentary elections, nineteen women were elected as Members of Parliament (MPs), resulting in a female representation of 9.5% in Parliament. Currently, 41.5% of MPs in the Finnish Parliament are women. The first female President, Tarja Halonen, was elected in 2000 and she has held office for twelve years, which is the maximum period stipulated by the Constitution.

Regarding linguistic minorities, the Swedish language has a constitutional status as an official language together with Finnish. Swedish is spoken by less than 6% of the population, but the Constitution enshrines that public authorities are obliged to provide cultural and societal needs for Finnish-speaking and Swedish-speaking populations on an equal basis. Further provisions have been codified in the Linguistic Act (*Kielilaki*, 423/2003). The Sami language is also recognised by the Constitution, and the Sami Linguistic Act (*Saamen kielilaki*, 186/2003) guarantees the right for the Sami-speaking population to use their language in their communication with public authorities, but the right is generally limited geographically to the areas in which the language is spoken by the general population (i.e. in Northern Finland). Regarding Roma and other groups, there are no specific linguistic provisions other than the constitutional protection for these groups to maintain and develop their language and culture.

The Ministry of Justice maintains the election website, which contains the most important information on *inter alia* elections, voting and political parties.<sup>1</sup> The website is available in Finnish, Swedish and English. Besides these three languages and Sami, specific information sheets about EP elections are also available in Estonian, Russian, and Somali.<sup>2</sup> There is also a specific brochure on the EP elections available in plain Finnish, taking into account persons with difficulties understanding technical, legal and political

language. However, the information sheets currently available on the website have been designed for the 2014 EP elections. No information concerning their update for the upcoming 2019 elections has yet been established. Regarding the municipal elections, the general information on the website corresponds relatively well to the information on EP elections. However, the information sheets on municipal elections are available altogether in 23 different languages.<sup>3</sup>

There are no specific legal provisions or initiatives stipulating the political participation of ethnic minorities, but the general rules on voting and candidacy are applicable. In fact, two immigrants (from Turkey and Afghanistan) were elected to the Finnish Parliament in the last Parliamentary elections in 2015. Immigrants have stood as candidates and been successfully elected in municipal elections as well, especially in the largest municipalities such as Helsinki and Turku. However, no specific, nationwide data is available to illustrate the exact numbers of immigrant participation in the elections. Currently, the main challenge in relation to ethnic minorities' and immigrants' participatory rights in elections revolves around the recent escalation of racism and hatred in general. For instance, both immigrant MPs as well as municipal representatives with immigrant backgrounds have reportedly received hate mail and even death threats. At the root level, there are several organisations, including the Finnish Red Cross and the Finnish League for Human Rights, which are combating against racism. At the state administrative level, the Ministry of Justice coordinates a couple of development projects which aims to reduce *inter alia* hate speech and racisms (project numbers OM005:00/2018 and OM075:00/2017). In the wider context, the State's general plan concerning the integration of immigrants can also be regarded as promoting electoral participation through integration in general, even though the plan itself does not expressly mention participatory rights and voting.

In order to facilitate the right to vote and participation of citizens with disabilities, the Parliamentary Ombudsman conducts unannounced inspections at randomly selected polling stations in each election to ensure their accessibility. The Finnish Association for People with Physical Disabilities has also published a check-list to promote accessibility to polling places. Furthermore, specific ballots have been designed for persons with visual impairments. However, no nationwide measures to promote the participation of citizens with disabilities have been initiated.

The main obstacle regarding voting seems to be the lack of interest, especially towards the EP elections, in

which the turnout rate seem to be stabilised at 40%. Regarding municipal elections, the facilitation of younger voters (below the age of 25) seems to fail, as in the 2017 elections, two thirds of said age group did not exercise their right to vote. There have been some discussions on lowering the voting age limit from 18 years to 16 years in municipal elections, but so far, no consensus has been reached or any formal measures taken in that regard. However, the Ministry of Justice is running a development project which aims to enhance young people's participation in societal questions in general, but also including democracy and elections (project number OM010:00/2018).

#### 9.4. STATISTICS

There is data on election results available *inter alia* at the Ministry of Justice's result service site<sup>4</sup> and at Statistics Finland's (*Tilastokeskus*) website.<sup>5</sup> General information on registered voters and election turnout rates is available regarding every election. However, the availability of additional data, such as on the participation of linguistic or ethnic minorities, is not systematically collected.

In the 2014 EP elections, there were 4 440 297 registered voters in Finland. Out of these, 94.8% (i.e. 4 210 748 voters) were Finnish citizens living in Finland, and 5% (i.e. 222 216 voters) were Finnish citizens living abroad. The percentage of mobile EU citizens was 0.2% (i.e. 7 333 voters). There are no specific data available on how these groups casted their votes, but the general turnout was 41%, which corresponds to turnout rates of the previous EP elections (the turnout for the 2009 EP elections was 40.1%, and 41% in the 2004 elections).

Regarding the 2017 municipal elections, the total number of registered voters was 4 391 558, out of which 95.9% (i.e. 4 214 897 voters) were Finnish citizens. In addition, there were 81 051 mobile EU citizens and 95 610 non-Finnish or non-EU citizens. Advanced voting attracted 26.6% of voters, and on Election Day, 32.3% of voters casted their votes, amounting to a total turnout of 58.9%. In the 2012 municipal elections, the turnout rate was 58.3%, and 61.3% in the 2008 elections.

According to the statistics, in the 2017 municipal elections, 17.6% of mobile EU citizens exercised their right to vote. Linguistically, 5.8% of the voters spoke a language other than Finnish or Swedish as their native language. Similarly, 5.8% of voters were non-Finnish, but no advanced statistic on their country of origin or ethnic background is available.

In comparison, the 2018 Presidential elections reached a 69.9% turnout rate, and in the 2015 parliament



elections, 70.1% of voters casted their votes. Turnout for Finnish living abroad in the 2018 Presidential election was 13.3%. Equivalent statistics available for the 2015 parliament election is not available. While

only Finnish citizens are eligible to vote in these elections, the data nevertheless illustrates that, for some reasons, the EP elections are the least appealing elections to the voters in Finland.

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**Notes:**

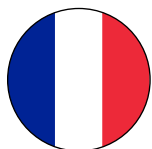
<sup>1</sup> <https://vaalit.fi/en>.

<sup>2</sup> <https://vaalit.fi/en/information-about-european-elections-in-different-languages>.

<sup>3</sup> <https://vaalit.fi/en/information-about-the-municipal-elections-in-different-languages>.

<sup>4</sup> <https://tulospalvelu.vaalit.fi/indexe.html>.

<sup>5</sup> See [www.stat.fi/til/vaa\\_en.html](http://www.stat.fi/til/vaa_en.html).



## 10. France

*Reporting by Caterina Molinari and  
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### 10.1. LEGAL FRAMEWORK

*Law 77-729 of 7 July 1977* governs the election of representatives of France to the European Parliament ('EP'). It was last modified by *Law 2018-51 of 31 January 2018* on the procedures for filing nominations for the elections.<sup>1</sup> The Electoral Code is the general law governing elections in France. It applies to municipal elections. Articles L1 to L6 deal with the right to vote of French citizens, while Articles LO227-1 to LO-227-5 deal specifically with the right to vote of mobile EU citizens residing on French territory. Sections of the Electoral Code are also applicable to the elections of representatives of France to the European Parliament ('MEPs for France'), by virtue of references contained in *Law 77-729 of 7 July 1977*.<sup>2</sup>

French citizens can vote for both French MEPs and municipal councillors if they are at least 18 years old, enjoy their civil and political rights and are not in a situation of incapacity provided for by the law. French citizens residing abroad can vote for the European Parliament elections (1) in the country where they are resident, if they are registered in the relevant consular list, or (2) in France, if they are registered in the electoral list of a municipality (see section 10.2). However, French citizens that reside in another EU Member State and have been admitted to exercise their right to vote for the European Parliament in their country of residence cannot vote in the EP elections organised in France. French citizens residing abroad can vote for local elections only if they are registered in the electoral list of a municipality (see section 10.2). Mobile EU citizens residing on French territory can vote for both French MEPs and municipal councillors under the same conditions as French nationals. Mobile EU citizens are considered resident in France when they have their actual place of residence in France or when their residence in France has a continuous character. Non-EU citizens residing in France cannot vote, although the possibility has formed the object of political debate for several years.<sup>3</sup>

According to Article L5 of the Electoral Code, when instituting or renewing a tutorship, the judge decides whether the right to vote of the person placed under tutorship should be maintained or suppressed. On 26 January 2017, the National Consultative Commission has stated in an opinion that this provision is incompatible with the right to human dignity.<sup>4</sup> Two of the main reasons given to support this conclusion are

(1) the arbitrary and subjective nature of the appreciation of each judge on the voting capacity of the individual concerned, in the absence of clear and pre-defined parameters established by the law, and (2) the importance of the right to vote for the purpose of including disabled people in public life. A Statement of the Secretary of State in charge for disabled persons seems to go in the same direction, favouring the abolition or modification of this provision.<sup>5</sup>

Any person who (1) fulfils the conditions to be a voter and (2) is not in a situation of ineligibility provided for by the law can be elected as an MEP for France. According to Article L228 of the Electoral Code, all voters of the municipality (i.e. persons who have their domicile in the municipality)<sup>6</sup> as well as citizens registered in the tax roll of direct contributions of that municipality (or who prove that they should have been registered on such tax roll on 1 January of the year of the election) can be elected as municipal councillors. Note that people who do not have their domicile in the municipality can register in the tax roll (for example, if they own property there). Mobile EU citizens residing in France can be elected to the EP if (1) they are at least 18 years old and (2) enjoy their right to be elected in their Member State of origin. Mobile EU citizens residing in France can be elected as municipal councillors if they (1) are registered on the complementary electoral list (*listes électorales complémentaires*), (2) fulfil all the conditions to be a voter and are registered in an electoral list, and (3) are registered in a tax roll of direct contribution of the municipality (or prove that they should have been registered in such roll on 1 January of the year of the election). Complementary electoral lists are lists of mobile EU citizens who registered to vote. There are different complementary electoral lists for, respectively, EP and municipal elections, so that mobile EU citizens can decide to register on one, both, or none of them. Complementary electoral lists are compiled for each electoral office by the authorities competent to compile electoral lists of French citizens. They are governed by Articles 2-2 to 4 of *Law 77-729* for EP elections, and LO227-2 to LO227-5 of the Electoral Code for municipal elections.

Whatever their nationality, persons declared ineligible by an administrative judge or by the Constitutional Council cannot be nominated for the EP or municipal elections for a maximum period of 3 years. Persons or age who are under tutorship or guardianship cannot be elected (Article L-230 Electoral Code for municipal elections and Article LO-129 Electoral Code, in conjunction with Article 5 of *Law 77-729* for EP



elections). Articles 5-1 to 6-6 of *Law 77-729* provide for a series of cases of incompatibility between the office of MEP for France and other offices/functions. Articles L46 to L-46-2 and L-237 to L-239 of the Electoral Code provide for a series of cases of incompatibility between the office of municipal councillor and other offices/functions. According to Article 5-1 of *Law 77-729*, no one can be nominated for the same European Parliament elections both in France and in another EU Member State.

An amendment to *Law 77-729 of 7 July 1977* in view of the 2019 EP elections was approved in June 2018 with *Law 2018-509 of 25 June 2018*.<sup>7</sup> The reform relates to the time allocated to candidates by audio-visual media and modifies the constituencies for the election of French MEPs. The single constituency provided for in the original version of *Law 77-729* was substituted by eight constituencies in 2003. The reform has re-introduced one single constituency for the whole French territory. This amendment does not affect the right to vote and to stand for the European Parliament elections.

*Law 2016-1048 of 1 August 2016* modifies the formalities for registration on electoral lists.<sup>8</sup> It has already been adopted and has entered into force on 1 January 2019.<sup>9</sup> The main changes it introduced are examined in the next section.

## 10.2. REGISTRATION AND VOTING CONDITIONS

Title 1 of the French Electoral Code is applicable to the registration on the electoral lists for French citizens for municipal elections, as well as for EP elections by virtue of the reference contained in Article 2 of *Law 77-729 of 7 July 1977*. According to Article L-11-1 of the Electoral Code, French citizens who turn 18 are automatically registered in the electoral lists of their place of actual domicile (i.e. their principal place of establishment according to Article 102(1) of the French Civil Code). In all other cases, as established by Article L-11 of the Electoral Code, voters are registered upon their request: (1) on the electoral lists of the municipality where they have their actual domicile or they have lived for the last 6 months; (2) on the electoral list of a municipality, provided that they are registered in the tax roll of direct municipal contribution of that municipality for the fifth time in a row and, if they are not resident in that municipality, they have expressed their intention to vote there; or (3) on the electoral list of a municipality, if they are public servants with an obligation to reside in that municipality.

According to Article L-12 of the Electoral Code, upon their request, French citizens registered in the roll of

French citizens established abroad (kept by the consular authorities of the host country) can be registered on the electoral list of one of the following municipalities: (1) the municipality of birth, (2) the municipality of their last domicile, (3) the municipality of their last residence, if the duration of such residence was at least 6 months, (4) the municipality where one of their ascendants was born, or where one of their ascendants is or was registered in an electoral list, or (5) the municipality where one of their relatives up to the fourth degree is registered or was registered in an electoral list. According to Article L-14 of the Electoral Code, upon their request, French citizens registered in the roll of French citizens established abroad can be registered on the electoral list where their spouse is registered.

Starting from 1 January 2019, by virtue of the entry into force of *Law 2016-1048 of 1 August 2016*, persons that have just acquired French citizenship will be automatically registered in their place of actual domicile (Article L-11(2) of the Electoral Code, as modified by *Law 2016-1048*). Moreover, from the same date and upon their request, voters, whatever their nationality, will be able to register in the electoral list of the municipality where they have been managers or majority/sole shareholders of a company registered in the tax role of municipal direct contributions for two consecutive years (Articles L-11(1) and LO227-3 of the Electoral Code, as modified by *Law 2016-1048*).

To exercise their right to vote, mobile EU citizens must register, upon their request, on a complementary voters list (*listes électorales complémentaires*, see above section 10.1). They can request such registration if they have the capacity to vote in their Member State of origin and meet all the conditions to be voters registered in a voters' list in France except for possession of the French nationality. Besides the information that must also be provided by French citizens, citizens of EU Member States other than France must support their request for registration with a written declaration indicating (1) their nationality and their address on the French territory, (2) the constituency where they have been registered in their Member State of origin, (3) that they have the right to vote in their country of origin, and (4) (only for the EP elections) that they will only exercise their right to vote for the EP in France.

In respect of the situation before 1 January 2019, according to Article R-5 of the Electoral Code, the general deadline to register on electoral lists (for both French citizens and other EU citizens) is 31 December of the year before the elections. The following situations allow for registration until the tenth day before the day of the elections:

- (i) turning 18 after 31 December of the year before the elections;
- (ii) moving for professional reasons or moving by public servants who have retired after 31 December of the year before the elections; or
- (iii) acquisition of the French nationality after 31 December of the year before the elections.

This system will change as of 1 January 2019 by virtue of the entry into force of *Law 2016-1048 of 1 August 2016*, which modifies the Electoral Code and introduces a single national electoral directory. Since the entry into force of the reform, registration on electoral list will be possible until 30 working days before the date of the election. French citizens residing abroad who are entitled, for the moment and as explained above, to be registered both on the electoral list of their consular district and on a municipal electoral list in France, will have to choose between one and the other. French citizens who have been resident abroad and are moving back to France will have to request radiation from the list of the consular district where they have been living in order to be able to register on a municipal electoral list in France. Radiation from an electoral list will become automatic upon inscription on another electoral list after the first three months of 2020. For *inter alia* the 2019 EP elections, the transitional provision of Article 16(2) of *Law 2016-2014 of 1 August 2016* sets the deadline by which registration on the electoral roll must be made as the last day of the second month preceding the elections (i.e. 31 March 2019).

Both French citizens and mobile EU citizens can request to be registered on electoral lists (1) online, through the official website of the French administration,<sup>10</sup> (2) at the municipality; or (3) by post.

Both French citizens living in France and abroad, as well as mobile EU citizens who have the right to vote for French municipal and EP elections can vote by proxy at all elections. To do so, they have to present themselves in person to the authority competent to validate the proxy (e.g. a court or a consulate in a third country) and fill a form, indicating the reason why they cannot vote in person, the name of their representative, and the duration during which the proxy is valid (one election, one year, or another duration up to three years). The representative must be registered on the electoral list of the same municipality as the voter. People with disabilities who cannot present themselves in person to the competent authorities can present a written request and request that the authorities (e.g. judicial police officers) go to their domicile to validate the proxy. The request must be presented together with a medical certificate attesting the impossibility to move. Mobile EU citizens can only represent other voters by

proxy in EP and municipal elections. Voting by proxy is regulated by Articles L-71 to L-78 of the Electoral Code.

French citizens living abroad can vote by internet to elect consular counsels (members, elected by French citizens living abroad, of an advisory body that formulates opinions on consular issues as well as issues of general interest). In 2012, French citizens living abroad were granted the same possibility – envisaged by Article L330-13 of the Electoral Code – for the legislative elections. For security reasons, this possibility was eliminated for the 2017 legislative elections. French President Emmanuel Macron has expressed his intention to reintroduce internet voting for French citizens living abroad on the occasion of the 2022 legislative elections. French citizens living abroad can vote via post only for legislative elections (Article L330-13 of the Electoral Code). The possibility to vote via internet or post is not open to French citizens living in France and mobile EU citizens residing on French territory.

### 10.3. MEASURES FACILITATING VOTING RIGHTS

In France, according to Articles L164-167 of the Electoral Code, for every elections voters receive the programmes and ballot papers at their domicile. The expenses are initially covered by parties, but are then completely refunded for those parties that obtain at least 5% of the votes. In the draft Financial Law of 2017, Article 52 proposed to ‘dematerialise’ electoral campaigning, rendering it electronic and eliminating the requirement to send paper versions of electoral programmes to voters.<sup>11</sup> The proposed Article was not adopted, *inter alia* because reception of electoral material via post by voters was considered a fundamental way to ensure their correct and complete information (as confirmed by documents on the examination of the proposed Article by the Senate).<sup>12</sup>

In respect of initiatives to make the right to vote simpler and more accessible, according to the 2017-2018 Roadmap of the French Ministry of Home Affairs,<sup>13</sup> one of the priorities of the current government is to guarantee the exercise of fundamental rights, adapting the way they are exercised to social and technological developments. This should be done through a reform of the electoral system, with a view to make the right to vote simpler and more accessible. A high level and pluralist Commission will be put in place to propose changes in the way elections are organised and a reconfiguration of constituencies for legislative elections. The procedure to be followed to be able to vote via proxy will be made simpler and dematerialised. The conditions for the exercise of the right to vote via internet will be scrutinised in-depth, taking into

account security concerns. Other simplifying measures will be proposed, including the dematerialisation of electoral campaigning, the standardisation of voting bulletins and the prohibition of voting machines (electronic information systems certified by the Ministry of Home Affairs as capable of recording votes in accordance with pre-defined regulatory standards). The envisaged calendar for this reform should be the following: the project of law would be presented during the first six months of 2018, in order to reform voting conditions and implement electronic voting in 2019.

According to Block 4 of a 2016-2017 Roadmap of the French Ministry for Home Affairs,<sup>14</sup> a series of measures adopted in the last few years have allowed for a greater participation of women in political life. In particular, Article 13 of *Law 2013-702 of 2 August 2013*<sup>15</sup> has allowed for more equality in Senate representation due to the increase in the number of senators elected through slate vote (*scrutin de liste*), which is extended to departments where three senators are elected. *Law 2013-402 of 17 May 2013*<sup>16</sup> reformed the election of departmental, municipal and community councillors (representative of a municipality within public establishments of inter-municipal cooperation): for municipalities with more than 1 000 inhabitants, lists have to alternate names of female and male candidates. For departmental elections, candidatures are binomial female/male, so that equal treatment between men and women is ensured. Article 60 of *Law 2014-873 of 4 August 2014*<sup>17</sup> and *Decree 2015-456 of 21 April 2015*<sup>18</sup> doubled the financial penalties for those parties that do not respect equality rules. This increase in financial penalties has taken effect starting from the legislative elections of 2017.

In respect of electoral information for mobile EU citizens, the official portal of the French Administration contains easy to access information on the right to vote of mobile EU citizens in France and the formalities and conditions to register for EP and municipal elections.<sup>19</sup>

According to Article L-71 of the French Electoral Code, voters attesting that they cannot vote in person due to health problems/disabilities can vote by proxy. According to Article L-62-2 of the French Electoral Code (introduced in the Electoral Code by *Law 2005-102 of 11 February 2005*),<sup>20</sup> voting sites and techniques have to be accessible for disabled voters, whatever their physical, sensory, intellectual or mental impairment. According to Article L-64 of the French Electoral Code, voters whose certified disability prevents them from introducing the ballot paper in the envelope, or put it in the ballot box, or operate the voting machine can be assisted by a voter of their choice. If voters cannot sign,

the elector chosen to assist them will do so and add “the elector cannot sign himself/herself”.

As explained above (section 10.1), the right to vote of disabled persons under tutorship can be maintained or suppressed by the judicial decision instituting or renewing the tutorship.

#### 10.4. STATISTICS

According to INSEE, in 2017, 44 million French citizens residing in France were registered on the electoral lists and could vote for Presidential and legislative elections.<sup>21</sup> Of these registered voters, 14% abstained from voting in all of the four rounds composing these two elections. Of the remaining registered voters, 86% voted at least once, while only 35% voted in all four rounds. Two out of ten registered voters only voted for the Presidential election. This choice is made more frequently by young people and immigrants (for the purpose of this statistics, immigrants are voters born abroad, who reside in France and have acquired French citizenship).

According to INSEE’s data from 15 February 2017, 1.3 million French citizens were registered on French electoral lists abroad.<sup>22</sup> Of these registered voters from abroad, 44% voted in the first round of the Presidential elections. The turnout of French citizens living abroad for the first round of the legislative elections in 2017 was 19.1%. According to the French Court of Auditors, the turnout of French citizens living abroad for the last EP elections for lists of MEPs for France (in 2014) was only 11%.<sup>23</sup>

As regards the turnout for the 2014 EP election, statistics from the European Parliament, the overall electoral turnout for the 2014 EP elections in France (including both French and EU mobile citizens) was 42.43%.<sup>24</sup>

According to INSEE statistics, on 1 March 2014, 1.2 million mobile EU citizens residing in France satisfied the conditions to vote at EP and municipal elections.<sup>25</sup> Of these mobile EU citizens, 23% (278 000 voters) were registered for the municipal elections, while 20% (245 000 voters) were registered for the EP elections (see Figure 10.1).

An interesting study by Rahsaan Maxwell published in the *Journal of Ethnic and Migration Studies* in 2010 uses data from the three elections (EP elections and two rounds of elections for regional councillors) held in France in 2004 to show that migrant-origin minorities (in particular, of Maghrebin origin and Caribbean origin) vote substantially less than native French citizens.<sup>26</sup> The turnout of voters of Maghrebin origin is around 15% lower than that of native French citizens,

Figure 10.1. Evolution of rate of registration of EU citizens on electoral lists in France



Source: INSEE, *Les listes électorales françaises au 1er mars 2014 : zoom sur les citoyens européens. Données complémentaires*, <https://www.insee.fr/fr/statistiques/1379723>.

while the turnout of voters of Caribbean origin is around 20% lower than that of native French citizens.

#### 10.5. LIST OF FRENCH LEGISLATION CONCERNING MUNICIPAL AND EUROPEAN PARLIAMENTARY ELECTIONS

##### 10.5.1. European Parliament elections

Law 77-729 of 7 July 1977 on the election of representatives to the European Parliament (*Loi n° 77-729 du 7 juillet 1977 relative à l'élection des représentants au Parlement*

européen):

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068600>

Electoral Code (Code électoral): [www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070239](https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070239)

##### 10.5.2. Municipal elections

Electoral Code (Code électoral): [www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070239](https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070239)

#### Notes:

<sup>1</sup> Law 2018-51 of 31 January 2018 on the procedure for submitting candidatures for elections (*Loi n° 2018-51 du 31 janvier 2018 relative aux modalités de dépôt de candidature aux élections*), available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00036559728](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00036559728)

<sup>2</sup> See Articles 2; 2-3; 2-7; 2-8; 4; 5; 6; 6-3; 10; 19-1; 23; 24; and 26 of Law 77-729 of 7 July 1977.

<sup>3</sup> See F. Vignal (2016), "Quand le Sénat votait le droit de vote des étrangers aux élections locales", *Public Sénat*, 18 March, [www.publicsenat.fr/lcp/politique/quand-senat-votait-droit-vote-des-etrangers-aux-elections-locales-1279614](http://www.publicsenat.fr/lcp/politique/quand-senat-votait-droit-vote-des-etrangers-aux-elections-locales-1279614).

<sup>4</sup> CNCDH (2017), "Avis sur le droit de vote des personnes handicapées. Citoyenneté et handicap: 'Voter est un droit, pas un privilège'", National Consultative Commission on Human Rights, Paris, January, [www.cncdh.fr/sites/default/files/170126\\_avis\\_droit\\_de\\_vote\\_des\\_pers.\\_handicapees\\_a5\\_vdef\\_1.pdf](http://www.cncdh.fr/sites/default/files/170126_avis_droit_de_vote_des_pers._handicapees_a5_vdef_1.pdf).

<sup>5</sup> Le Figaro (2018), "Le gouvernement défend le droit de vote pour tous les handicapés", *Le Figaro*, 21 February, [www.lefigaro.fr/flash-actu/2018/02/21/97001-](http://www.lefigaro.fr/flash-actu/2018/02/21/97001-)

[20180221FILWWW00386-le-gouvernement-defend-le-droit-de-vote-pour-tous-les-handicapes.php](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT0000221FILWWW00386-le-gouvernement-defend-le-droit-de-vote-pour-tous-les-handicapes.php).

<sup>6</sup> In France, there is no obligation to register at the municipality of residence. However, registration in the electoral list of the municipality is necessary to vote (Article L9 Electoral Code). Voters are registered on electoral lists upon request or, in certain cases, automatically (see section 10.2).

<sup>7</sup> Law 2018-509 of 25 June 2018 on election of representatives to the European Parliament (*Loi n° 2018-509 du 25 juin 2018 relative à l'élection des représentants au Parlement européen*), available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00037102048](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00037102048).

<sup>8</sup> Law 2016-1048 renewing the procedures for registration on the electoral lists (*Loi n° 2016-1048 du 1er août 2016 rénovant les modalités d'inscription sur les listes électorales*), available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00032958104](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00032958104).

### Notes (continued):

<sup>9</sup> See Article 5(1) of Decree 2018-350 of 14 May 2018, [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00036910998](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00036910998).

<sup>10</sup> <http://www.service-public.fr/>.

<sup>11</sup> The text of Art. 52 of Draft Financial Law 2017 available at [www.solidariteetprogres.org/IMG/pdf/plf2017\\_art52.pdf](http://www.solidariteetprogres.org/IMG/pdf/plf2017_art52.pdf).

<sup>12</sup> H. Marseille (2017), “Mission ‘Administration générale et territoriale de l’État’”, under “Examen de l’article rattaché: Article 52”, available at [www.senat.fr/commission/fin/pjlf2017/np/np02/np026.html](http://www.senat.fr/commission/fin/pjlf2017/np/np02/np026.html).

<sup>13</sup> See French Ministry of Home Affairs (2017), “Protéger, garantir et servir. La feuille de route du ministère de l’intérieur”, <https://media.interieur.gouv.fr/feuille-de-route/>.

<sup>14</sup> French Ministry of Home Affairs, “Feuille de route 2016-2017”, [www.egalite-femmes-hommes.gouv.fr/wp-content/uploads/2016/03/FeuilleRoute\\_INTERIEUR\\_2017.pdf](http://www.egalite-femmes-hommes.gouv.fr/wp-content/uploads/2016/03/FeuilleRoute_INTERIEUR_2017.pdf).

<sup>15</sup> Law 2013-702 of 2 August 2013 on the election of Senators (*Loi n° 2013-702 du 2 août 2013 relative à l’élection des sénateurs*), available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00027799541](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00027799541).

<sup>16</sup> Organic Law 2013-402 of 17 May 2013 on the election of municipal councillors, community councillors and departmental councillors (*Loi organique n° 2013-402 du 17 mai 2013 relative à l’élection des conseillers municipaux, des conseillers communautaires et des conseillers départementaux*), available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00027414202](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00027414202).

<sup>17</sup> Law 2014-873 of 4 August 2014 for true equality between women and men (*Loi n° 2014-873 du 4 août 2014 pour l’égalité réelle entre les femmes et les hommes*), available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00029330832](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00029330832).

<sup>18</sup> Decree 2015-456 of 21 April 2016, available at [www.legifrance.gouv.fr/eli/decret/2015/4/21/INTA1503276D/jo/texte](http://www.legifrance.gouv.fr/eli/decret/2015/4/21/INTA1503276D/jo/texte).

<sup>19</sup> See “Élections : droit de vote d’un citoyen européen en France”, *Service-Public.fr*, available at [www.service-public.fr/particuliers/vosdroits/F1937](http://www.service-public.fr/particuliers/vosdroits/F1937).

<sup>20</sup> Law 2005-102 of 11 February 2005 on Equal Rights and Opportunities, Participation and Citizenship of People with Disabilities (*Loi n° 2005-102 du 11 février 2005 pour l’égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*), available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000809647](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000809647).

<sup>21</sup> G. Buisson and S. Penant (2017), “Élections présidentielle et législatives de 2017 : neuf inscrits sur dix ont voté à au moins un tour de scrutin”, Insee, Paris, 19 October, [www.insee.fr/fr/statistiques/3138704](http://www.insee.fr/fr/statistiques/3138704).

<sup>22</sup> See “Campagne d’inscription sur les listes électorales”, Press release of B. Le Roux, Minister of Home Affairs, website of the French Ministry of Home Affairs, 8 March 2017, [www.interieur.gouv.fr/Archives/Archives-des-actualites/2017-Actualites/Campagne-d-inscription-sur-les-listes-electorales](http://www.interieur.gouv.fr/Archives/Archives-des-actualites/2017-Actualites/Campagne-d-inscription-sur-les-listes-electorales).

<sup>23</sup> Court of Auditors (2016), “L’organisation des élections pour les Français établis hors de France”, Ref. no. S2016-3241, Cour des comptes, Paris, 24 October, [www.afce.eu/sites/default/files/contenu/fichiers/20170110-refere-s2016-3241-organisation-elections-hors-france.pdf](http://www.afce.eu/sites/default/files/contenu/fichiers/20170110-refere-s2016-3241-organisation-elections-hors-france.pdf).

<sup>24</sup> European Parliament (2014), “Results of the 2014 European elections. Results by country: France”, Strasbourg, European Parliament, <http://www.europarl.europa.eu/elections2014-results/en/country-results-fr-2014.html>. See also statistics from Insee, available at [www.insee.fr/fr/statistiques/2409082](http://www.insee.fr/fr/statistiques/2409082).

<sup>25</sup> R. Merlen (2014), “Les listes électorales françaises au 1er mars 2014: zoom sur les citoyens européens”, Insee, Paris, 2 December, [www.insee.fr/fr/statistiques/1379723](http://www.insee.fr/fr/statistiques/1379723).

<sup>26</sup> R. Maxwell (2010), “Political Participation in France among Non-European-Origin Migrants: Segregation or Integration?”, *Journal of Ethnic and Migration Studies*, Vol. 36, No. 3, pp. 425-433.





## 11. Germany

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### 11.1. LEGAL

#### FRAMEWORK

In Germany, the right to electoral participation, together with other fundamental rights, is enshrined in the Basic Law. Article 20(2) provides that all state authority is derived from the people and exercised by the people through elections. The German Basic Law makes a distinction between European, Federal and other elections. In Article 28(1), the Basic Law sets out that in each *Land*, county and municipality, the people shall be represented by a body chosen in general, direct, free, equal and secret elections. Furthermore, in county and municipal elections, persons who possess citizenship of any Member State of the European Union are also eligible to vote and to be elected in accordance with European Union law. Article 38 of the Basic Law regulates the election of the *Bundestag*, the lower-chamber of German parliament. It provides that members of the German *Bundestag* shall be elected in general, direct, free, equal and secret elections. Any person who has attained the age of eighteen shall be entitled to vote and to stand as a candidate. Article 38(3) provides that further details will be regulated by Federal law. The Basic Law does not have any specific provisions on the elections for the European Parliament. For a table with an overview of the relevant legislation, please see Section 11.5.

Firstly, with regards to municipal elections, it must be noted that active and passive voting rights for municipal elections are not regulated on a Federal level. Instead, each *Land* has its own Constitution and, in the majority of cases, its own laws to regulate the exercise of voting rights. In general, the different *Länder* impose two different requirements: a minimum age and a required duration of residence in the municipality before the elections. As regard active voting rights, all *Länder* require the voter to be 16 years or older; some require a minimum age of 18 years. In addition, all *Länder* require a certain period of residence before the elections – ranging from 16 days to 3 months – within the municipality. As regards passive voting rights, a distinction needs to be made between the right to be elected to the municipal council and as mayor. Most *Länder* require that, in order to be elected to the municipal council, one must be 18 years or older and must have resided for at least three months within the municipality. To be elected as a mayor, additional age requirements apply, depending

on the *Land*. A detailed case study of the registration and voting conditions for municipal elections in 2 *Länder* (Baden-Württemberg and North Rhine-Westphalia) will be presented in Section 11.2).

Secondly, with regard to European Parliament elections, the legal framework can be found in the Federal “*Gesetz über die Wahl der Abgeordneten des Europäischen Parlaments aus der Bundesrepublik Deutschland*”, in short the *Europawahlgesetz* (EuWG). In §6 EuWG, the criteria for the exercise of active voting rights are set out for both German nationals and citizens of other EU Member States. When looking at the criteria for Germans living in Germany, there are two criteria. Firstly, the citizen must be 18 years or older. Secondly, the citizen must have lived for three months in Germany or in a different Member State of the European Union. German nationals living abroad can also be entitled to vote in the European Parliament elections in Germany, provided that they possess active voting rights for the Bundestag in conformity with §12(2) of the *Bundeswahlgesetz* (BWahlG).

Over the years, §12 BWahlG has undergone some changes due to several judgments of the Federal Constitutional Court. In 2012, the Court ruled unconstitutional the then §12(2), phrase 1, of the BWahlG, according to which German nationals living abroad have to comply with a residence requirement of three uninterrupted months in German territory at some point of their lives. The Federal Constitutional Court argued that the weight of the residence requirement does not justify compromising the principle of the universality of the vote. Following this judgment, the lower chamber of Parliament (*Bundestag*) passed the 21<sup>st</sup> reform of the BWahlG. The new §12(2) BWahlG enables Germans living abroad to vote for *Bundestag* elections if they either have resided for three months in Germany without any interruption after the age of 14, and if that residence occurred within the last 25 years. Alternatively, if the German national can prove that, although he or she is no longer living in Germany, he or she is still personally and directly acquainted with the political situation in Germany and affected by it, they also retain their voting rights. Finally, non-German EU citizens are also eligible to vote (at the European Parliament elections). The same criteria apply to mobile EU citizens as for Germans (§6 EuWG, discussed below). In addition, they must declare that they are not deprived of their voting rights in their home Member state and that they are willing to vote for the German Members of European Parliament instead of the Members of European Parliament in their home Member State.

In §6b EuWG, the criteria for the exercise of passive voting rights are set out in detail. These criteria are the same as for active electoral participation. §6a and §6b EuWG provide for exceptions. A German national is excluded from participating in the European elections if, as a result of a judicial order, he no longer possesses voting rights, or if he finds himself in a psychiatric hospital. For citizens of the European Union, the same exceptions apply. In addition, a citizen of the European Union may be excluded from the right to vote if, as a result of a civil or criminal judgment in his home Member State, he has lost the right to vote there in European Parliament elections.

Thirdly, in terms of the elections to the *Bundestag*, only German nationals are entitled to vote. The specifics for these elections are laid down in the aforementioned *Bundeswahlgesetz*. As mentioned above, Germans living abroad can vote for the lower chamber of Parliament in accordance with §12(2) BWahlG. However, these elections will not be further discussed, as only German citizens as defined in Art. 116 (1) of the German Basic Law are entitled to vote at these elections (§12 and §15 BWahlG).

## 11.2. REGISTRATION AND VOTING CONDITIONS

As established above, the laws setting out the registration and voting conditions for municipal elections differ from *Land* to *Land*. However, as a rule, mobile EU citizens are registered automatically in the electoral roll when they register as residents, as with their German counterparts. The exceptions to this general rule of automatic registration for mobile EU citizens are Bavaria (*Bayern*) and Saxony (*Sachsen*), where mobile EU citizens must request to be registered in the electoral roll for each election. In addition, they are obliged to declare their will to participate in those elections. Below, the procedures for registration and voting in two German *Länder* – Baden-Württemberg and North Rhine-Westphalia (*Nordrhein-Westfalen*) – will be set out in detail, in order to provide an example for Germany.

### 11.2.1. Municipal elections in Baden-Württemberg

In Baden-Württemberg, the municipal council is elected every five years. The next municipal elections will be held in 2019, 2024 and 2029. The specific registration and voting conditions are laid down in their *Kommunalwahlgesetz* (KomWG) and the *Kommunalwahlordnung* (KomWO). §5 KomWG provides that only those registered in the electoral roll in the municipality, or those possessing an absentee ballot card, are entitled to vote. In addition, it establishes that citizens registered in the electoral roll can only vote in person in their constituency, and

people holding an absentee ballot card can vote in any municipality of the *Land* or by post. §6 KomWG sets out that the mayor of each municipality has the duty to include all citizens entitled to vote in the electoral roll. This electoral roll must be made public and is accessible to the citizens between the 20<sup>th</sup> and 16<sup>th</sup> day before the elections. According to §4 KomWO, the mayor must inform all citizens in writing of their right to access the electoral roll at least one day before publication of the roll. The mayor has an overview of who is registered within the municipality, by virtue of §17(1) and (2) of the *Bundesmeldegesetz* (BMG), which places every citizen under the duty to register and deregister upon arrival to or departure from the municipality. §17 KomWG places the municipality under a duty to provide for the locations to cast votes and to provide for the necessary personnel. In addition, §23 KomWG provides that every location must be suitably furnished and, if possible, easily accessible for users with physical disabilities. The mayor has to publish in time which voting locations will be accessible for voters with physical disabilities and which location will not have such facilities. §18 KomWG sets out that each citizen on the electoral roll shall receive a voting paper at least one day before the election. Citizens intending to vote through an absentee ballot card must apply for this card. They can choose to collect it personally or to receive it by post. Finally, §19 KomWG provides that one may only vote in person, unless the person eligible to vote cannot read or write or cannot deliver his or her vote due to a physical disability. He or she may vote with the help of another person. People voting through an absentee ballot card must ensure that the card arrives at the latest on the day of the election and must confirm that they have voted personally and confidentially.

### 11.2.2. Municipal elections in Nordrhein-Westfalen

In Nordrhein-Westfalen, the municipal council will be elected every 5 years from 2020 onwards. The specific registration and voting conditions are laid down in their *Kommunalwahlgesetz* (KWahlG) and their *Kommunalwahlordnung* (KWahlO). §9 KWahlG provides that only those registered in the electoral roll in the municipality or those possessing an absentee ballot card are entitled to vote. It equally provides that absentee ballot cards are only distributed upon request from the voter. §19 KWahlO sets out that such a request may either be made orally or in writing. Absentee ballot cards can be requested up until two days before the elections, before 18.00. In case of sudden serious illness, request can be filed until 15.00 on the Election Day itself. §20 KWahlO provides the voter with the option to collect the absentee ballot card personally or to have it sent by post. §10(1) KWahlG provides that if 35 days before the election, it

is clear that a person is eligible to vote, he or she must be included on the electoral roll automatically. This is confirmed by §12 KWahlO. §10(2) KWahlG adds that a voter may only vote within his municipality, unless he possesses an absentee ballot card (§10(3) KWahlG). In accordance with §10(4), the electoral roll must be made public and must be made accessible to the citizens between the 20<sup>th</sup> and 16<sup>th</sup> day before the elections. According to §13 KWahlG, the mayor must inform all citizens in writing of their right to access the electoral roll at least one day before publication of the roll. §34a KWahlO places the municipality under a duty to provide for suitable locations to cast votes. In addition, every location must be suitably furnished and, if possible, easily accessible for users with physical disabilities. The mayor must publish in time which voting locations will be accessible for voters with physical disabilities and which location will not be accessible. §25 KWahlG obliges the voter to deliver his or her vote in person (see also §40 KWahlO), unless a physical disability prevents him or her from doing so. In the latter case, he or she may be assisted. This is confirmed in §41 KWahlO. §26 KWahlG sets out the rules for voting for those persons possessing an absentee ballot card. Voters holding such a card must send this card, together with their voting paper, to the mayor at the latest by 16.00 on Election Day. The voter must equally pledge that he or she voted personally and confidentially.

### 11.2.3. European Parliament elections

Contrary to the registration and voting conditions for the municipalities, the conditions for the European Parliament elections are laid down in the Federal *Europawahlordnung* (EuWO). §14 EuWO obliges the different electoral constituencies – as determined by §12 – to maintain a list of eligible voters. All German citizens that have a residence within a municipality in Germany are automatically entitled to vote according to §15(1), provided that they have had this residence 42 days before the European Parliament elections. A residence is usually defined as occupying an apartment or another type of dwelling or otherwise habitually residing there. A second residence or childhood residence also suffices. According to §15(2), German citizens that have exercised their right to free movement and reside in another Member State are entitled to vote in Germany, but must actively request their registration. Based upon §17(1), this request for registration must take place at least 21 days before the European Parliament elections. The request should be submitted at the municipality in Germany where they previously resided. Such a request must be made for every European Parliament election.

§17b provides that the registration of other citizens of the European Union is automatic only if he or she has already registered in Germany for previous election(s) of the European Parliament whilst residing in Germany. For situations that do not fall within the scope of §17b, §17a provides that the mobile EU citizen must register with the municipality at least 21 days before the election of the European Parliament. Mobile EU citizens must provide information on their nationality, address in Germany, the local authority or the constituency of his or her home Member State and the last electoral roll on which they were registered. In addition, they must solemnly declare that they wish to vote in the European Parliament elections in Germany only, that they are not excluded from the right to vote in the Member State of origin, that they have lived in Germany or in another Member State of European Union for three months and that they are over 18 years old.

At the latest one day before the voter list is made available for inspection, the relevant authority shall inform every person on the electoral list (§18). Any mobile EU citizens can request an absentee ballot card in accordance with §24 EuWO. According to §26, the request for such a card can be made in person, by post or digitally. The absentee ballot card is then sent by post to the voter (§27). With this absentee ballot card, German nationals and mobile EU citizens alike can vote by post in accordance with §59. Based upon §39, the different municipal authorities are under a duty to provide for the voting location and facilities. In addition, every location must be suitably furnished and, if possible, easily accessible for users with physical disabilities. The relevant municipal authority has to publish in time which voting locations will be accessible for voters with physical disabilities and which location will not be accessible. §49 sets out how a voter can cast his or her vote if he or she votes in person at a voting location in the municipality. §50 provides voters with a physical disability with the option to have a person assisting him or her in submitting his or her vote.

## 11.3. MEASURES FACILITATING VOTING RIGHTS

For the Federal and European elections, the Minister of Interior Affairs appoints a federal “*Wahlleiter*”. On the website of the *Wahlleiter*, information can be found on voting in the Federal and European elections. The same holds for the different *Länder*: in each *Land*, a *Wahlleiter* is appointed and corresponding information is published.

However, in general, it can be held that there have been no general campaigns to increase voter turnout or to incentivise certain groups of society to vote more. The only exceptions are the campaigns of Brandenburg

and Baden-Württemberg that informed young adults (16+) of their right to vote.

#### 11.4. STATISTICS

With regard to municipal elections, an average of 47% voter turnout can be witnessed.<sup>1</sup> However, the different *Länder* have not published any information on the voter turnout of mobile EU citizens in these elections. Other, more elaborate statistics are published and can be found on the websites of the different *Länder*.

In the European Parliament elections, a slightly higher turnout (48.1%) can be witnessed.<sup>2</sup> Of the 62.0 million citizens that were entitled to vote in Germany, 29.8 million citizens casted their vote. As established above, three groups of voters can be distinguished, namely Germans voting in Germany, Germans voting in Germany from abroad, and mobile EU citizens voting in Germany. As for the Germans voting in Germany from abroad, 13 700 registered with a municipality in Germany to exercise their voting rights. As for mobile EU citizens, an estimated 3.1 million mobile EU citizens are residing in Germany, while only 172 110 have registered with their municipality in order to vote for the German Members of European Parliament.

Not included in the number of citizens entitled to vote are those Germans that are living abroad and registered as a voter there. This was the case for 133 703 Germans living abroad.<sup>3</sup>

#### 11.5. LIST OF GERMAN LEGISLATION CONCERNING MUNICIPAL AND EUROPEAN PARLIAMENTARY ELECTIONS

##### 11.5.1. General

Federal Register Law, *Bundesmeldegesetz (BMG)*, by BGB, S. 1084, last amended by BGB S.2745, [www.gesetze-im-internet.de/bmg/index.html](http://www.gesetze-im-internet.de/bmg/index.html) (DE).

Law on the Federal Elections, *Bundeswahlgesetz (BWahlG)*, by BGB S.1288, last amended by BGB S.1116, <https://www.gesetze-im-internet.de/bwahlg/index.html> (DE).

##### 11.5.2. European Parliament elections

Basic Law for the Federal Republic of Germany, *Grundgesetz für die Bundesrepublik Deutschland (GG)*, by BGB, S.1, as last amended by BGB, S.2347, [www.gesetze-im-internet.de/gg/index.html](http://www.gesetze-im-internet.de/gg/index.html) (DE) | [www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html) (EN).

Law on the Election of Members of the European Parliament from the German Federal Republic, *Gesetz über die Wahl der Abgeordneten des Europäischen Parlaments aus der*

*Bundesrepublik Deutschland (Europawahlgesetz – EuWG)*, by BGB, S. 423, 555, 852, as last amended BGB S.1116, [www.gesetze-im-internet.de/euwg/](http://www.gesetze-im-internet.de/euwg/) (DE).

European Parliament Electoral Regulations, *Europawahlordnung (EuWO)*, by BGB, S.957, last amended by BGB S.570, [www.gesetze-im-internet.de/euwo\\_1988/index.html](http://www.gesetze-im-internet.de/euwo_1988/index.html) (DE).

##### 11.5.3. Municipal elections

As municipal elections are governed by legislation passed by each *Land*, the sub-section below will present the relevant German legislation regarding municipal elections in two *Länder*, namely Baden-Württemberg and North Rhine-Westphalia, will be presented here.

##### Baden-Württemberg

Law on the Municipal Elections, *Kommunalwahlgesetz (KWahlG)*, by GB 1983,429, last amended by GB S.221, 223, [www.landesrecht-bw.de/jportal/?quelle=jlink&query=KomWG+BW&psml=bsbawueprod.psml&max=true&aiz=true](http://www.landesrecht-bw.de/jportal/?quelle=jlink&query=KomWG+BW&psml=bsbawueprod.psml&max=true&aiz=true) (DE).

Municipal Elections Regulations, *Kommunalwahlordnung (KomWO)*, by GB 1983, 359, last amended by GB S.298, <http://www.landesrecht-bw.de/jportal/?quelle=jlink&query=KomWO+BW&psml=bsbawueprod.psml&max=true&aiz=true> (DE).

##### North Rhine-Westphalia

Law on the Municipal Elections in North Rhine-Westphalia, *Gesetz über die Kommunalwahlen im Lande Nordrhein-Westfalen (Kommunalwahlgesetz – KWahlG)*, by GV. NRW. S.454, 509, 1999 S.70, last amended by GV.NRW.S.1052, [https://recht.nrw.de/lmi/owa/br\\_text\\_anzeigen?v\\_id=4520040121111440485](https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=4520040121111440485) (DE).

Municipal Elections Regulations, *Kommunalwahlordnung (KWahlO)*, by GV. NRW. S.592, 967, last amended by GV.NRW.S.861, [https://recht.nrw.de/lmi/owa/br\\_text\\_anzeigen?v\\_id=5220040121111540552](https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=5220040121111540552) (DE).

## Notes:

<sup>1</sup> This average was calculated on the basis of data from the following sources:

- Baden-Württemberg: <https://www.statistik-bw.de/Wahlen/wahlbeteiligung.jsp?path=/Wahlen/Bundestag/>;
- Bavaria (*Bayern*): [https://www.wahlen.bayern.de/kw2014/endgerg\\_tab\\_rg\\_scha\\_bd.pdf](https://www.wahlen.bayern.de/kw2014/endgerg_tab_rg_scha_bd.pdf);
- Berlin: [https://www.wahlen-berlin.de/wahlen/be2016/afspraes/bvv/uebersicht\\_listenwahl\\_gemeinde-1-berlin\\_gesamt.html](https://www.wahlen-berlin.de/wahlen/be2016/afspraes/bvv/uebersicht_listenwahl_gemeinde-1-berlin_gesamt.html);
- Brandenburg: [https://www.statistik-berlin-brandenburg.de/regionalstatistiken/r-gesamt\\_neu.asp?Ptyp=410&Sageb=14005&creg=BBB&anzwer=9](https://www.statistik-berlin-brandenburg.de/regionalstatistiken/r-gesamt_neu.asp?Ptyp=410&Sageb=14005&creg=BBB&anzwer=9);
- Bremen: <https://www.wahlen.bremen.de/sixcms/media.php/13/Wahlergebnisse%20Stadt%FCrgerschaft%201999%20bis%202015.pdf>;  
<https://www.wahlen.bremen.de/sixcms/media.php/13/Wahlergebnisse%20StVV%201947%20bis%202015.pdf>;
- Hamburg: <https://www.hamburg.de/bezirkswahlen/4315006/wahlbeteiligung/>;
- Hesse (*Hessen*): <https://statistik.hessen.de/zahlen-fakten/wahlen/wahlen>;
- Lower Saxony (*Niedersachsen*): <https://www.merkur.de/politik/niedersachsen-wahlbeteiligung-kommunalwahl-stabil-zr-6738686.html>;

- Mecklenburg-Vorpommern: [https://wahlen.mvnet.de/dateien/2014\\_eu\\_kom/htm/KW2014-AnalyseV.pdf](https://wahlen.mvnet.de/dateien/2014_eu_kom/htm/KW2014-AnalyseV.pdf);
- North Rhine-Westphalia (*Nordrhein-Westfalen*): <https://www1.wdr.de/nachrichten/landespolitik/kommunalwahl/wahlbeteiligung-stichwahl-102.html>;
- Rhineland-Palatinate (*Rheinland-Pfalz*): <https://wahlen.rlp.de/kw/wahlen/2014/landesergebnis/index.html>;
- Saarland: <http://www.wahlergebnisse.info/3012.php>;
- Saxony (*Sachsen*): [https://www.statistik.sachsen.de/download/100\\_Berichte-B/B\\_VII\\_3-1\\_-\\_5j\\_14\\_SN.pdf](https://www.statistik.sachsen.de/download/100_Berichte-B/B_VII_3-1_-_5j_14_SN.pdf);
- Saxony-Anhalt (*Sachsen-Anhalt*): [http://kommunalwiki.boell.de/index.php/Kommunalwahl\\_in\\_Sachsen-Anhalt\\_2014](http://kommunalwiki.boell.de/index.php/Kommunalwahl_in_Sachsen-Anhalt_2014);
- Schleswig-Holstein: [https://www.kommunalwahlen-sh.de/startseite/KW%202018\\_Geschaetzte%20Wahlbeteiligung\\_17\\_30\\_Uhr.pdf](https://www.kommunalwahlen-sh.de/startseite/KW%202018_Geschaetzte%20Wahlbeteiligung_17_30_Uhr.pdf);
- Thuringia (*Thüringen*): <https://statistik.thueringen.de/datenbank/TabAnzeige.asp?tabelle=kr000236%7C%7C>;

<sup>2</sup> Statista (2014), "Wahlbeteiligung bei den Europawahlen in Deutschland von 1979 bis 2014", Statista, Hamburg, May, <https://de.statista.com/statistik/daten/studie/6818/umfrage/entwicklung-der-wahlbeteiligung-an-europawahlen-seit-1979/>.

<sup>3</sup> B. Gisart (2014), "Achte Direktwahl zum Europäischen Parlament in der Bundesrepublik Deutschland am 25. Mai 2014", *WISTA – Wirtschaft und Statistik*, July, pp-383-393, [https://www.destatis.de/DE/Publikationen/WirtschaftStatistik/Wahlen/AchteDirektwahl2014\\_72014.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/Publikationen/WirtschaftStatistik/Wahlen/AchteDirektwahl2014_72014.pdf?__blob=publicationFile), p. 299 and 384.





## 12. Greece

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ELIAMEP*

Greece's transition from a military dictatorship to democracy in 1974 marked the onset of the Third Hellenic Republic and of the longest period of stability in the country's otherwise turbulent history. The Constitution of 1974 established a parliamentary system and safeguarded electoral rights for all Greek citizens without discrimination based on political affiliation – an aspect of profound significance for democracy's restoration in a country where the left had been excluded from the post-World War II political system. Electoral participation in Greece is governed by a number of legislative statutes. Statutory rules define electoral rights in accordance with relevant constitutional provisions, such as the election of parliamentary representatives through direct, universal and secret ballot by citizens entitled to vote (Article 51, para. 3 of the Greek Constitution). It must be noted that voting in Greece is considered to be a civic duty. This conception finds expression in the constitutional provision according to which exercising the right to vote is compulsory (Article 51, para. 5 of the Greek Constitution).

### 12.1. LEGAL FRAMEWORK

In the framework of the Constitution, new legal acts are usually passed in advance of a national election, which codify pre-existing provisions and may introduce amendments. The electoral law for electing representatives in national parliament is Presidential Decree 26/2012 on "Codification of existing legal provisions for the election of Members of Parliament".<sup>1</sup> Electoral rights for local, municipal and regional elections are defined by Law 3852/2010 – the *Kallikratis* law – which brought about a major restructuring of local government entities in Greece, merging a large number of communes into a reduced number of municipalities.<sup>2</sup>

Regarding European Parliament (EP) elections, electoral rights related to Greek citizens living in Greece are regulated by Law 4255/2014,<sup>3</sup> and those related to Greek citizens living in another EU Member State are contained in Law 1427/1984.<sup>4</sup> The legal basis for the right of mobile EU citizens, who live in Greece, to vote and to stand as candidates in municipal elections is Presidential Decree 133/97,<sup>5</sup> transposing Directive 94/80/EC.<sup>6</sup> The right of mobile EU citizens living in Greece to vote and to stand as candidates in EP elections, derived from Council Directive 93/109/EC, was transposed into the Greek legal order

with Law 2196/94<sup>7</sup> and was complemented with Law 3216/2003.<sup>8</sup>

According to the Greek Constitution, the minimum age for a citizen to have the right to vote is specified by law. Besides the requirement of a minimum age, the law cannot otherwise abridge the right to vote except "in cases of legal incapacity or as a result of irrevocable criminal conviction for certain felonies" (Article 51, para. 3). Thus, mentally disabled people (according to the law, every citizen who finds himself/herself "in full judicial guardianship", P.D. 26/2012, Article 5) are deprived from the right to vote. As a general norm, prisoners are not disenfranchised. Exceptions are those convicted of serious crimes (which are specified by certain provisions of the Penal Code, Articles 59-66) that reflect severe "moral incapacity" of the person.

The persons entitled to vote and to stand as candidates in local-regional, national and European Parliament elections varies. Generally, voting in Greece is mandatory for all Greek citizens who are at least 18 years old,<sup>9</sup> with the exceptions noted in the preceding paragraph. In the latest revision of the electoral system that established proportional representation, the voting age for eligible electors has been lowered to 17 years.<sup>10</sup> Despite the compulsory nature of voting, the sanctions for citizens who do not vote are rarely implemented. The constitutional revision of 2001 removed a clause by virtue of which penal sanctions could be imposed by law on constituents who failed to take part in the electoral process (it stated that "exceptions [to exercising the right to vote] and penalties are defined by law"). Today, it is unclear whether abstaining from voting has any legal consequences. It could be argued that the compulsory nature of voting enshrined in the Greek Constitution has above all a symbolic value: it underscores the salience of voting as a civic duty essential for the functioning of the democracy.

In local government elections (municipalities and local communes), all registered residents of the respective municipality who are Greek nationals and mobile EU citizens,<sup>11</sup> and who are of a minimum age as determined by existing legislation applying to national elections, are allowed to vote and be elected. Only Greek nationals are eligible to vote and be elected in regional elections (for regional governor, and for member of regional council).<sup>12</sup> For Greek nationals, voting in local government elections is mandatory, except for persons over seventy years old, those who live abroad, and those who, on the day of the election, are in a place that is over 200 kilometres away from the municipality where they are registered to vote. The

electoral rules for participation in national elections are also valid for elections for municipal authorities and representatives of communes.<sup>13</sup> Mobile EU citizens over 17 years old who reside in Greece are also entitled to vote in municipal elections, under the same conditions as Greek nationals, but not in regional or national elections.

In an initiative of policy change, Law 3838/2010 had extended the right to vote and to be elected in municipal elections to ethnic Greeks and to third-country nationals (TCNs) who are residing in Greece and who are registered in special electoral rolls in accordance with provisions specified in the same law.<sup>14</sup> The same law also introduced a series of provisions that facilitate the acquisition of Greek nationality to second generation TCNs. In 2013, however, this law, including its provisions extending electoral rights to TCNs, was declared unconstitutional by the Council of State (Greece's high court in administrative matters) on the grounds that they violated the constitutionally enshrined principle of the 'Greek people'. The Council of State argued that the extension of local electoral rights to TCNs undermined the national character of the state and diluted the composition of the legitimate electorate.<sup>15</sup> It did so by conceptually bypassing the fact that electoral rights had already been extended to nationals of EU Member States by EU law, thus the diluted composition of the "legitimate electorate" was already a fact.

Greek nationals<sup>16</sup> and mobile EU citizens<sup>17</sup> of minimum 17 years old have the right to vote in EP elections. Both can exercise their right to vote in municipal and in EP elections on the condition that they are registered on the electoral lists at the municipality office/town hall of their place of residence (the registration of mobile EU citizens in the electoral lists follows the same procedure as for Greek nationals in national elections). Mobile EU citizens can exercise their right to vote on the condition that they have also not been disqualified from voting in their Member State of origin (Law 2196/1994, Articles 3 and 4), and on the basis of a number of other procedural requirements that are enshrined in Law 2196/1994 (Articles 4 and 5).

Greek nationals who live in another EU Member State can vote for the election of Greek representatives in the European Parliament at the Greek embassy or consulate of the area where they reside.<sup>18</sup> In order to do so, they must be registered in the electoral lists of a Greek municipality, and they must declare their intent to cast a vote in writing and in advance of the election at the respective embassy or consulate. On the basis of the declarations of intent to vote that it receives, the Greek Ministry of Interior creates special electoral catalogues.<sup>19</sup>

Greeks living abroad (not being another EU Member State), however, cannot exercise their right to vote in national elections, even if this right is explicitly guaranteed in the Greek constitution (Article 51, para. 4). The Constitution also stipulates that concerning Greeks living outside of the country, "the principle of simultaneously holding elections does not impede the exercise of their right to vote by postal vote or by other appropriate means, provided that the counting of votes and the announcement of the results is carried out when this is also carried out across the country" (Article 51, para. 4). Despite this constitutional provision, the Greek legislator has not yet activated this right through appropriate legislation. The longstanding failure to do so was contested before the European Court of Human Rights (ECtHR) in the case of *Sitaropoulos and others v Greece*.<sup>20</sup> The First Section of the ECtHR accepted that the longstanding inability or failure of successive governments to give effect to the voting rights of Greek nationals living abroad violated the right to free elections (Article 3 of Protocol 1 ECHR).<sup>21</sup> However, the Grand Chamber reversed the decision on the grounds that the ECtHR cannot mandate to national authorities when and how they will give effect to the respective constitutional provisions.

Greek nationals who are registered residents in a municipality in Greece can stand as candidates for mayor (if they have completed 21 years of age) and for member of municipal and local councils (if they are at least 17 years old). Mobile EU citizens also have the right to stand as candidates for member of municipal and local councils, but not for mayor.<sup>22</sup> Greek law identifies a conflict of interest for several categories of public sector officials but also of private sector personnel in enterprises that have a public contract, and who therefore, cannot stand as candidates in local government elections.<sup>23</sup> Greek citizens and mobile EU citizens are eligible to stand as candidates for EP elections if they have attained the age of 25 years on the day of the election (Article 55, para. 1 of the Greek Constitution).

Unlike the electoral rights for EU citizens in Greece, which have not preoccupied Greek public officials and public opinion more broadly, electoral rights of Greek nationals living abroad have been subject to heated political debates. In 2009, a draft law on the "Exercise of electoral rights at the general parliamentary elections by Greek voters residing abroad" was introduced by the conservative government of New Democracy – the first attempt to implement Article 51, para. 4 of the Greek Constitution. It failed as it could not secure the two-thirds majority of parliamentary representatives' vote, as required by the Constitution. The issue resurfaced in 2017, again at the initiative of

New Democracy, being the main opposition party at the time.

## 12.2. REGISTRATION AND VOTING CONDITIONS

In order to be able to vote, Greek nationals must be registered in the general electoral lists or in special electoral lists (*eklogikoi kataloghoi*) that are compiled for particular groups of voters. Before 1997, voters' registration was not automatic, but voters were expected to register and obtain the so-called "electoral booklet" (*eklogiko vivliario*). Following Law 2633/1998, the electoral lists were re-drafted on the basis of the municipal lists of Greek municipalities. The same law established common electoral lists for men and women and abolished the electoral booklet. Instead, it introduced a Special Electoral Number, assigned to every voter. The same procedure applies to Greek nationals living abroad.

Thus, since 1998, general electoral lists are compiled automatically (without any application) and are periodically updated by the Ministry of the Interior.<sup>24</sup> Every Greek national who is an eligible voter and is listed in the municipal registry is automatically included in the electoral list compiled by the same municipal authority. Even if, for whichever reason, a Greek national is not included in the electoral list of the municipality where s/he is registered, s/he can still vote (in local, national or European Parliament elections), as long as s/he submits a certificate of registration in the municipal rolls. Special electoral lists are established for particular groups, as explicitly provided for by law. Such groups include personnel of the Greek Police, the armed forces, the fire brigade, and port police, who serve their duties in places away from the municipality where they are registered to vote. Special electoral lists also exist for Greek sea workers who may vote at any port of Greece (if they are away from the municipality where they are registered to vote), and for inmates.

An important category of persons for whom special electoral lists are drafted are persons who live in another municipality from the one where they are registered voters (*eterodimotes*), and who wish to vote in their place of residence for a ticket in the constituency, where they are registered to vote. This is possible only for national and European Parliament elections and referenda. The '*eterodimotes*' who wish to vote in their place of residence must submit an application to the municipality where they reside, and they must do so before the last update of the electoral lists in order to be able to vote in forthcoming elections.<sup>25</sup>

In order to exercise their right to vote, mobile EU citizens must register in the electoral list of a Greek

municipality or commune.<sup>26</sup> Additionally, in order to exercise the right to vote in elections in a commune or municipality, a mobile EU citizen must know Greek, and must have resided in that commune or municipality for at least two years (a certification of the local police authority is required as proof of the latter). After registering in the commune, mobile EU citizens are included in special electoral catalogues. The application process for mobile EU citizens to be registered in the municipality's electoral rolls is fairly easy and similar to the procedure applicable to Greek nationals: it requires submission of a certificate of residence by the relevant local-municipal authority, identification document and a solemn declaration stating the nationality and that the fact that the mobile EU citizen has not been disqualified from the right to vote in his/her Member State of origin, (Law 2196/1994, Article 4).

Knowledge of Greek language for mobile EU citizens exercising their right to vote in local-municipal elections is verified by the local supervisory committee on the day of the election. Knowledge of Greek language is also required if mobile EU citizens run as candidates for member of the local or municipal council, and in this case, the fluency is verified by the competent body that proclaims candidates (the First Instance Court).<sup>27</sup> However, these language tests hardly take place in practice.

Mobile EU citizens who live in Greece have the right to be elected in European Parliament elections and to run as candidates on similar terms as Greek nationals as defined by the relevant legislation for electing MEPs. In depositing his/her declaration to stand for EP elections, a non-Greek EU citizen must also submit a declaration in which s/he indicates her nationality, the municipality, in which s/he is a registered voter, and that s/he is not a candidate for MEP in another Member State. S/he must also submit a certificate of the competent authorities of the Member State of origin that s/he has not been disqualified from the right to vote or be elected in the country of his/her origin (Law 2196/1994, Article 5, para. 2). Registration conditions for municipal and for European elections are the same.

Citizens in Greece cannot vote via post, internet or other means outside the polls, even if the constitution (as previously mentioned) allows postal vote for Greeks living abroad. So far, this is not a possibility in any elections, and for any groups, including nationals living abroad, mobile EU citizens or people with disabilities. All eligible voters must exercise their right to vote in person at the polls.

### 12.3. MEASURES FACILITATING VOTING RIGHTS

A few general measures have been put in place to facilitate access to the polls. For instance, Greek legislation provides for special leave to be granted to employees of the public sector (including the judiciary, the police, and the army), so that they can travel to the municipality where they are registered to vote. Such leave can also be made available to employees of the private sector, following a relevant decision by the Minister of Employment and Social Security.<sup>28</sup> This also applies for mobile EU citizens voting in local-municipal and EP elections. The possibility for someone to participate in national and EP elections by casting a vote in his/her place of residence instead of travelling to the municipality where he/she is registered can also be seen as a measure to facilitate access to the polls. There are no specific measures or initiatives aimed at promoting the mobile EU citizens' right to vote in municipal elections.

Similarly, there are no measures or initiatives aimed at facilitating the right to vote and political representation for ethnic minorities such as the Roma. Greek law gives priority to citizens with disabilities in the voting process who, however, have to come to the voting station in person. It stipulates that "voters who have a physical disability have the right to turn to a member of the returning board or to a representative of the judicial authority, who are obliged to assist them [to cast their vote]".<sup>29</sup> Prior to an election, the Ministry of Interior issues circulars indicating what such assistance could entail. It includes practical and physical measures that enable a person with disabilities to physically enter the polling station and to access the voting booth.

Since 2001, Greece has introduced gender quotas in party ballots for local-regional, national and EP elections to promote the political representation of women. The year 2001 was a turning point in this regard, because the amended Constitution included a provision that deemed positive measures legitimate and in accordance with substantive equality (amended Article 116, para. 2 of the 2001 Constitution). In 2001, a legal provision requiring at least one third of candidates from each sex in the party ballots for local and regional elections, passed with the support of MPs, who saw it as an act of compliance with the aforementioned amendment.<sup>30</sup> The 2001 "quota law" included a rigorous sanction in the form of non-acceptance and non-registration by the First Instance Court (*protodikeio*) of those party ballots that did not meet the mandated quota. This sanction made it particularly unpalatable to political parties, in spite of its lax design, but despite several challenges before

domestic courts, the constitutionality of gender quotas in party ballots has been upheld.<sup>31</sup>

Despite the affirmation of its constitutionality, the gender quota law was not only weak by design, but it has further been diluted through interpretive formulations and legislative amendments. To begin with, the one-third quota was applied in an open list proportional electoral system, and therefore did not include any placement mandate for candidates from the underrepresented sex to be placed in winnable positions. Furthermore, the quota was applied to the entire list of party candidates running in a municipality/commune, which could include as many as double the number of the members who could be elected in the municipal or local council. Further diluting its potential to increase the number of women elected was the Socialist government's specification in 2002 that the one-third gender quota applied to the total number of electoral candidates included in the party lists for *all* local councils in the country, rather than for each local council separately.<sup>32</sup> This watered-down formulation was incorporated in a legislative amendment in 2006, according to which the one-third candidate quota was to be applied to the *total number* of a party's candidates running for election in the municipal council, the communes' council, and the local councils of municipalities and communes, rather than to a party's list of candidates for each of these elected bodies separately.<sup>33</sup>

In 2008, a similarly structured gender quota was also introduced for national elections, which provided for a one-third quota for each party's candidates *across the country*.<sup>34</sup> The fact that the quota applied to the number of party candidates in the entire country meant that more female candidates would be included in towns and urban centres and fewer in small towns and the provinces, in effect weakening the potential for more female candidates to be elected. The "Kallikratis" 2010 reform mentioned above, which merged a large number of communes into a smaller number of municipalities, carried on the one-third gender quota and also extended it to elections for regional councils.<sup>35</sup> In 2014, a one-third gender quota was also introduced for candidates for EP elections.<sup>36</sup>

### 12.4. STATISTICS

Voter turnout among Greek nationals in elections for the national parliament has been steadily declining since 2000. When in the 1980s, voter turnout was between 75-81%, since 2000 it decreased to 70% and, since the onset of the economic crisis in 2009-2010, it saw a further decline to 62.5% in the 2012 elections and 64% in the 2015 elections.<sup>37</sup> A similar level of citizens' participation was also evidenced in the July



2015 referendum in Greece (62%).<sup>38</sup> A similarly declining trend of electoral participation among Greek nationals is evidenced in the EP elections. In the 1980s and 1990s, such participation amounted to 71-78% of registered voters. Since 2000, it dropped to 63% in 2004 and to 52% in 2009 and increased again to 60% in 2014 (this last increase may have been due to the fact that EP elections were held at the same time as elections for municipal and local councils, in which the turnout was the same).<sup>39</sup> Voter turnout among Greek citizens in municipal and local elections in 2014 was 61% in the first round and 60% in the second round.<sup>40</sup>

According to data from January 2016, which is recorded in a recent European Commission report, there are 180 025 mobile EU citizens of voting age who live in Greece (or 1.95% of the country's total population of voting age).<sup>41</sup> It is also reported that 10.8% of mobile EU citizens are registered to vote in municipal elections.<sup>42</sup> This is roughly consistent with data provided by the Greek Ministry of Interior, and shows that 19 102 mobile EU citizens voted in the 2014

local and municipal elections in Greece – an increase from the 14 961 EU citizens who had voted in the 2010 local and municipal elections. Most of them are from the United Kingdom, Bulgaria, Germany, Italy, Cyprus and Romania.<sup>43</sup> At the same time, only 13 098 mobile EU citizens voted in the same year (2014) in the EP elections. A total of 14 973 Greeks living abroad applied to vote in the 2014 EP elections.<sup>44</sup>

#### Notes:

<sup>1</sup> See Greek Government Gazette, No. 57, 15 March 2012. Presidential Decree 26/2012 replace Presidential Decree 96/2007 on “Codification of existing legal provisions for the election of Members of Parliament”, Greek Government Gazette, No. 116, 5 June 2007.

<sup>2</sup> Law 3852/2010 on “New architecture of local self-government ad decentralized administration – Kallikratis Program”, Greek Government Gazette, No. 87, 7 June 2010. The electoral provisions of Kallikratis in practice rendered inapplicable the relevant provisions contained in Law 3463/2006 “Enactment of the code of municipalities and communes” (Greek Government Gazette, No. 114, 8 June 2006).

<sup>3</sup> Law 4255/2014 “Election of Members of European Parliament and other provisions”, Greek Government Gazette, No. 89, 11 April 2014.

<sup>4</sup> Law 1427/1984 “Exercise of voting rights in European Parliament elections by Greeks who live in the territory of other member states of the European Economic Community”, Greek Government Gazette, No. 40, 9 April 1984.

<sup>5</sup> Presidential Decree 133/97 “Exercise of the right to vote and be elected in local and municipal elections by EU citizens who live in Greece but who are not Greek citizens, in compliance with Council Directive 94/80/EC of 19 December 1994”. Greek Government Gazette, No. 121, 12 June 1997.

<sup>6</sup> Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, *OJ L* 368, 31.12.1994, p. 38–47.

<sup>7</sup> Law 2196/94, “Enactment of Council Decision 93/81/EEC of 1 February 1993 related to the election of Members of European Parliament by direct and universal ballot...” Greek

Government Gazette, No. 41, 22 March 1994. Law 2196/94 amended Presidential Decree 353/1993 on “Codification of all legal provisions for the election of Members of Parliament”. Greek Government Gazette, No. 152, 11 September 1993.

<sup>8</sup> Law 3216/2003 “Enactment of Council Decision of 25 June and of 23 September 2002 amending the electoral act for Members of European Parliament, which is annexed to Council Decision 76/787/EEC”, Greek Government Gazette, No. 312, 31 December 2003.

<sup>9</sup> Presidential Decree 26/2012, Article 4, para. 1.

<sup>10</sup> Article 1, Law 4406/2016 “Proportional representation of political parties, extension of voting rights and other provisions”, Greek Government Gazette, No. 133, 26 July 2016.

<sup>11</sup> Law 3852/2010 – Kallikratis, Article 10, para. 1-3.

<sup>12</sup> Law 3852/2010 – Kallikratis, Article 116.

<sup>13</sup> Law 3852/2010 – Kallikratis, Article 11, para. 2; Article 12.

<sup>14</sup> Law 3838/2010, “Contemporary provisions on Greek nationality and political participation of ethnic Greeks and legally resident Third Country Nationals”, Articles 14-18. Greek Government Gazette, No. 49, 24 March 2010.

<sup>15</sup> See Greek Council of State, Decision No. 460/2013. The decision confirmed the earlier decision of the 4th Chamber of the Council of State, Decision No. 350/2011.

<sup>16</sup> Presidential Decree 26/2012, Article 4; Law 4255/2014, Article 1; and Law 4406/2016, Article 1.

<sup>17</sup> Law 2196/94, Article 3, para. 1.

<sup>18</sup> Law 1427/1984, Article 1.

<sup>19</sup> Law 1427/1984, Article 2.

<sup>20</sup> ECtHR (Grand Chamber) 15 March 2012, *Sitaropoulos and Others v Greece*, Appl. no. 42202/07, <http://hudoc.echr.coe.int/eng?i=001-109579>.



Notes (continued):

<sup>21</sup> See ECtHR (First Section) 8 July 2010, *Sitaropoulos and Others v Greece*, Appl. no. 42202/07, <http://hudoc.echr.coe.int/eng?i=001-99807>.

<sup>22</sup> Law 3852/2010 – Kallikratis, Article 13.

<sup>23</sup> Law 3852/2010 – Kallikratis, Article 14.

<sup>24</sup> Electoral catalogues are compiled by municipal authorities on the basis of municipal registers (*dimotologhia*), and they are submitted to the Ministry of the Interior. From 1 January until end of February each year, municipal authorities also update the electoral catalogues by adding new eligible voters. The new voters (those who become of voting age) are automatically included in the electoral catalogues of the municipality, in the registers of which they are listed, unless they submit a statement to declare in which electoral constituency they wish to be registered as voters. See Presidential Decree 26/2012, Article 10.

<sup>25</sup> For national elections, see Presidential Decree 26/2012, Article 95, para. 5. For ‘*eterodimotes*’ in European Parliament elections, see Law 2196/1994, Articles 8-10.

<sup>26</sup> The procedure for mobile EU citizens to register in electoral catalogues in Greece is defined by Law 2196/1994, that determines the process and conditions of getting registered to vote for non-Greek EU citizens, in conjunction with the relevant provisions that apply to Greek nationals (Presidential Decree 26/2012 “Codification of all legal provisions for the election of Members of Parliament”).

<sup>27</sup> Presidential Decree 133/1997 “Exercise of the right to vote and be elected in municipal and local elections for EU citizens who live in Greece but who are not Greek nationals, in compliance with EU Council Directive 94/80/EC”, Article 3, para. 3. Greek Government Gazette, No. 121, 12 June 1997.

<sup>28</sup> For local government elections, this is provided for in Law 3852/2010 – Kallikratis, Article 11, para. 3.

<sup>29</sup> Presidential Decree 26/2012, Article 83, para.3.

<sup>30</sup> Law 2910/2001, Art. 75 § 1. “Entry and stay of foreigners and other provisions”.

<sup>31</sup> For a detailed analysis of the political and legal context of gender quotas, see Dia Anagnostou (2018), “The Protracted Struggle for Gender Quotas in Greek Politics: Constitutional Reform and Feminist Mobilization in the EU Context”, in: É. Lépinard and R. Rubio-Marín (eds.), *Transforming Gender Citizenship: The Irresistible Rise of Gender Quotas in Europe*, Oxford: Oxford University Press, pp. 157-185.

<sup>32</sup> This clarification was provided with Law 3051/2002 in view of the October 2002 elections for municipal and local councils.

<sup>33</sup> Law 3463/2006, Art. 34 § 3.

<sup>34</sup> Law 3636/2008, Art. 3.

<sup>35</sup> However, the “Kallikratis” law also reformulated the quota provision to determine the number of female candidates to be placed in the ballot as one third of the total number of the elected positions in each body (rather than as one third of the total number of candidates on the ballot, which is much higher). In effect, the Kallikratis reform significantly reduced the number of women being recruited as candidates in the ballots fielded by parties for local, municipal, and regional elections, even as it extended the quota to the regional level.

<sup>36</sup> Law 4255/2014, Art. 3 § 3.

<sup>37</sup> Data obtained from the IDEA Voter Turnout database.

<sup>38</sup> Data from the website of the Greek Ministry of Interior.

<sup>39</sup> Data obtained from the IDEA Voter Turnout database.

<sup>40</sup> Data from the website of the Greek Ministry of Interior.

<sup>41</sup> European Commission (2018), Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2018) 44 final, Brussels, 25.1.2018, p. 3.

<sup>42</sup> Ibid, p. 6.

<sup>43</sup> Data from the website of the Greek Ministry of Interior.

<sup>44</sup> Data from the website of the Greek Ministry of Interior.



## 13. Hungary

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### 13.1. LEGAL FRAMEWORK

The right to vote in Hungary is anchored in the Fundamental Law of 2011.<sup>1</sup> According to Article XXIII(1) of the Fundamental Law, all Hungarian nationals of age are entitled to vote and to be elected in elections for the National Assembly, local government representatives and mayors and for elections for the European Parliament. Article XXIII(2) extends voting rights to adult mobile EU citizens in Hungary for elections for local government representatives and at European Parliament elections. The specific conditions for the exercise of the right to vote at municipal and European Parliament elections are stipulated in other legislation. The relevant Hungarian legislation in respect of European Parliament elections are Act XXXVI of 2013 on Electoral Procedures<sup>2</sup> (as last modified by Act LXXXIX of 2013)<sup>3</sup> and Act CXIII of 2003 on the election of Members of the European Parliament.<sup>4</sup> For municipal elections, relevant Hungarian legislation include the aforementioned Act XXXVI of 2013 on Electoral Procedures, as well as Act L of 2010 on the Election of Local Government Representatives and Mayors.<sup>5</sup>

Active and passive voting rights are the same for the Hungarian citizen and the (mobile) citizen of the Union, but the person proposing a candidate can only be a citizen of that constituency. No right to vote

who has been excluded from the exercise of this right by the court decision (due to his/her mental state or for a severe crime has been sentenced) or the Union citizen if his/her right to practice the voting right is excluded in the country of his nationality by virtue of the law of the State or by decision of his / her judicial or official authority;

who has not reached the age of majority,

who does not meet the requirements as specified in the act passed by a qualified majority (eg the presence of registered residency in Hungary).

Active and passive rights to vote at European Parliamentary and the municipal/mayor's elections are divided into 4 groups:

Hungarian nationals in possession of registered residence (address) in Hungary

automatic accession to the registry of voters on the basis of the registered address (population register) and each voter in the registry shall be noticed, and they can vote personally in voting circle

but persons staying abroad in the period/day of election have to claim to be put on the registry of voters in embassies in advance – and each of them shall be noticed, they can vote personally in embassies/consular offices

Union citizens (nationals of other MS of the EU) in possession of registered residence (address) in Hungary, practicing the right to free movement in Hungary – they must claim to be put on the registry of voters – and each of them shall be noticed, and they can vote personally in voting circle,

Hungarian nationals without registered residence (address) in Hungary – they have to claim to be put on the registry of voters, and each of them shall be noticed and they can vote either personally in Hungary in a voting circle or in letter,

Hungarian nationals and Union citizens in possession of registered residence (address) in Hungary in a settlement – they can vote only in the place of residence at municipal and mayor's elections.

In addition, everyone has the right to participate in a local referendum, who has the right to vote in the election of local government representatives and mayors. At the same time, the self-governments of the national/ethnic minorities and the national parliamentarians can only be elected by Hungarian citizens as member of the autochthon minorities (living as a community in Hungary for longer than hundred years, such as Roma, Slovaks, Germans, Greeks, Serbians, etc).

There is no reform foreseen in the short or mid-term in absence of unified, strong political opponents in the national parliament and political party system.

### 13.2. REGISTRATION AND VOTING CONDITIONS

What is the difference between the Hungarian national and the (mobile) Union citizen in voting procedure?

Union citizen has to claim to be put on the registry of voters to the members of the European Parliament, if s/he wants to practice his/her right to vote in Hungary and s/he is not excluded from this right by virtue of his/her national law, because there is no automatic/administrative accession to the registry. In order to control these requirements (preventing abuse and dual votes) the Hungarian National Election Board

contacts with responsible election body in other MS of the EU);

Union citizen can vote only in the place of residence in Hungary personally, voting in letter is never applicable.

The election must be set for Sunday within a period set by the European Union. If a Sunday within a period specified by the European Union falls on a public holiday, Easter or Pentecost Sunday, the election of the Members of the European Parliament shall be set for another day within a period specified by the European Union.

The precise time limits for the proceedings, marked with a calendar day (day of election, registration claims, deletion from the registry, notification on registry, notification of a place of residence, claim to assistance in exercising the right) will be published in a ministerial decree before each election beyond the general rules:

A national of another Member State of the EU may, **at the latest on the 16th** day preceding the vote, request its centralized listing, which includes, apart from its personal data, its declaration that it exercises its right to vote only in Hungary and the designation of the settlement or constituency in whose register it was last recorded in the Member State of nationality. **At the latest on the 10th day** preceding the vote, the Central Register may require that its centralized listing should not include the election of members of the European Parliament.

The National Election Office shall notify the central authorities of the Member States of the European Union competent for the reception of such data during the European Parliament elections **on the latest 15th day** before the vote on their nationals who are included on the voter register. The notification contains the data of the voter (name, gender, place of birth and time, nationality, municipality or constituency whose list of contacts was the last person in the state of his / her nationality).

On the basis of a notification of the election of members of the European Parliament to Hungarian citizens registered in another Member State of the European Union, the voters concerned are removed from the voting register by the National Electoral Office. The Office shall, at the request of the competent body responsible for data processing at the European Parliament election, provide data on the electoral rights of a non-voting citizen in the elections to the European Parliament in the Member State

concerned, requesting or nominating in the Member State concerned, within 3 days.

The National Electoral Commission shall reject the registration of the candidate or cancel the candidate who has been registered as a candidate in another Member State of the European Union and who has no right to vote in response to a reply from the competent authority of the candidate country's nationality.

At the local government (municipal and mayor's) elections, EU citizens with registered address in Hungary are entitled to active and passive voting rights: they can participate in the voting and may also take part in the nomination. As the right to vote automatically qualifies them, therefore, unlike the EP election, they do not have to register themselves to be able to exercise their right to vote personally as nationals (personally in the local polls).

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### 13.3. MEASURES FACILITATING VOTING RIGHTS

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Each person with right to vote and elect is entitled:

to apply to the mobile voting ballot (to the place of residence or detention on the day of the election) due to his/her health conditions or other reasons, 48 hours before the election;

to apply other means of exercising the right to vote, such as to get a notification of a Braille-writing, to get information material in easily-understanding form, to use a Braille-written voter's ballot sheet in the polling station and during the voting movement, or to vote in an accessible ballot room;

upon request, instead of the inexplicable voter, by indicating this fact, two members of the election committee sign the ballot slip, the voter who cannot read or who is impeded by physical disability or other reasons in the vote, the helper he chooses - in the absence of the helper, in presence of two members of the election committee may assist him/her,

claim to the registration from a non-native voter may be submitted on-line and in English, French or German language;

an information letter is posted to adult resident Union citizens on how to access to the registry of European Parliamentary election.

Specific initiatives aiming at facilitating the right to vote of mobile nationals, Union citizens, women, Roma and settled migrants and refugees (at municipal elections) have not made. Despite of supporting measures defined in the law the voting activity of

disabled/handicapped persons has not been properly managed (some complaints were published in press, e.g the requested mobile voting ballot did not arrive to hospitals, elderly homes). On the other side, polls of Hungarian nationals without residence and address in Hungary (ethnic minorities in adjacent states mainly) has been facilitated by the governmental resources (through many activists and NGOs, their right to vote in letter).

Some examples of the National Election Office's efforts making publicity of the elections: organized briefings for members of the diplomatic corps and journalists; assisting voters with public broadcasting spots or announcements, with ballot box posters in Hungarian; co-operation with the European Parliament Information Office during the preparation; Election Booklets assisting the preparation and preparation of candidate and nominating organizations and election bodies; continuously operated the [www.valasztas.hu](http://www.valasztas.hu) website and developed a data monitoring system in 10 386 polling stations and 96 foreign delegations; each first voter who grew 18 (adult age) between April 7 and May 25, 2014 received a memo card; sending of statutory election notices. These measures were financed from the planned 7 billion HUF organizational expenditures.

#### 13.4. STATISTICS

Available statistics and data on:

<http://www.valasztas.hu/ep09vt/v1.html>;  
<http://www.valasztas.hu/dyn/ep14/vertai/hu/v1.html>;  
[http://www.valasztas.hu/ep2004/04/hu/06/6\\_0.html](http://www.valasztas.hu/ep2004/04/hu/06/6_0.html)

At the 2014 elections: 2915 nationals of the other European Union member states were enrolled in voting register in Hungary for the election of members of the European Parliament, of which 1619 voters on 25 May 2014 included voters' lists. This is a small percentage because more than 107,000 EU citizens resident in Hungary have been informed by the National Election Office (NVI) up to the end of January 2014 that they would exercise their right to vote in the EP elections in Hungary instead of their home country. Before the vote, 7504 mobile Hungarian nationals living in another Member State requested to cast their votes in another Member State. In 2014 there was only a Union (Polish) citizen among the candidates of EP members. The turnout rate was 28.97% in Hungary, which was much below the EU average (42.61%).

#### Notes:

<sup>1</sup> Text of the Fundamental Law of Hungary available at [http://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary\\_20180629\\_FIN.pdf](http://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary_20180629_FIN.pdf).

<sup>2</sup> Act XXXVI of 2013 on Electoral Procedures (2013. évi XXXVI. törvény a választási eljárásról), available at <https://net.jogtar.hu/jogszabaly?docid=A1300036.TV>.

<sup>3</sup> Act LXXXIX of 2013 amending Act XXXVI of 2013 on Electoral Procedures (2013. évi LXXXIX. törvény a választási eljárásról szóló 2013. évi XXXVI. törvény módosításáról), available at <https://mkogy.jogtar.hu/jogszabaly?docid=a1300089.TV>.

<sup>4</sup> Act CXIII of 2003 on the election of Members of the European Parliament (2003. évi CXIII. törvény az Európai Parlament tagjainak választásáról), available at <https://net.jogtar.hu/jogszabaly?docid=A0300113.TV>.

<sup>5</sup> Act L of 2010 on the Election of Local Government Representatives and Mayors (2010. évi L. törvény a helyi önkormányzati képviselők és polgármesterek választásáról), available at <https://net.jogtar.hu/jogszabaly?docid=A1000050.TV>.



## 14. Ireland

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### 14.1. LEGAL FRAMEWORK

The Irish Constitution explicitly makes reference to the right to vote at elections for the President, the Lower House (*Dáil Éireann*) of the National Parliament (*Oireachtas*), elections for local governments, and at referenda. The specific modalities concerning elections for electoral participation in elections and referenda in Ireland are laid down in separate legislation. For a list of relevant legislation for (municipal and European Parliament) elections in Ireland, see Section 14.5).

As regards the active right to vote, the following categories of eligible voters are entitled to vote at the following elections in Ireland. Resident Irish citizens (over the age of 18 and whose name appears on the Register of Electors) may vote at all elections and referenda. Resident British citizens may vote at national *Dáil* elections, European elections and municipal elections. (Other) resident European Union (EU) citizens (over the age of 18) may vote at European and local elections. However, a mobile EU citizen, other than a British citizen, who was not registered to vote in previous European elections in Ireland, must also complete certain formalities, further described in Section 14.2. Finally, non-EU citizens may vote at local elections only.

In respect of the right to stand as a candidate at municipal/local elections, individuals are eligible to be elected to a local authority if they are ordinarily resident in Ireland and are at least 18 years old. One does not have to be an Irish citizen. Certain people are disqualified from becoming members of a local authority, for instance, a member of the European Commission, Parliament or Courts; a Minister of the Government or a Minister of State; Members of an *Garda Síochána* (the Irish police force); judges; individuals who are currently imprisoned for a term longer than 6 months; and individuals who have failed pay local authority charges.

For the right to stand as a candidate for European Parliament elections in Ireland, Irish citizens aged 21 years or over may stand for European Parliament elections. Other EU citizens residing in Ireland and standing as a candidate in European Parliament elections must declare that they are not standing in any other country and that they are not disqualified from standing.

If the candidate for European Parliament elections in Ireland is not an Irish or British citizen, the nomination paper must be accompanied by a statutory declaration (available from the returning officer), which includes a declaration that the candidate has not been deprived, through an individual criminal or civil law decision, of the right to stand as a candidate at the European Parliament election in their home country. The information in the statutory declaration is sent to the person's home country for confirmation and to guard against dual candidacy.

There is currently a legislative initiative aimed at reducing the voting age for local and European elections to 16 years.<sup>1</sup> In March 2018, the Bill was presented to the Irish Senate (*Seanad*).<sup>2</sup> There has also been much campaigning to change the rules regarding overseas voting (see below), but no proposed reform are currently foreseen.

### 14.2. REGISTRATION AND VOTING CONDITIONS

In order to exercise the right to vote in local elections, one must ensure that one's name has been entered on the Electoral Register. To be eligible to be included on the Register of Electors, one must 1) be at least 18 years old on the day the Register comes into force (15 February), and 2) have been ordinarily resident in the State on 1 September in the year preceding the coming into force of the Register. For inclusion in the Register of Electors, one must complete an application form RFA.

If an individual is qualified to vote but has missed the deadline to include his/her name on the Electoral Register, he/she can apply to be included in a Supplement to the Register on form RFA2. Applications for inclusion on the list of postal voters must be received by 25 November at the latest.

The registration conditions for municipal and European elections are the same. If an individual is on the Register of Electors, a polling card will be sent to his/her home before the date of the (municipal or European) election. The polling card will include the elector number and will inform the voter where he/she can vote.

As a general rule, voting in person is required at an official voting centre. However, there are certain exceptions to this general rule. An individual may be eligible for postal voting if he/she is:

- A full-time member of the Defence Force;
- A member of the *Garda Síochána*; or
- An Irish diplomat or his/her spouse posted abroad.



An individual may also be eligible for postal voting if he or she cannot go to a polling station on account of:

- Physical illness or disability
- Studying full time at an educational institution in Ireland, which is away from one's registered home address.
- Being unable to vote at one's local polling station because of one's occupation
- Being unable to vote at one's polling station because of internment (prison) or as a result of an order of a court.

One can qualify to be on a list of special visitors if one lives in hospitals, nursing homes or similar institutions and wish to vote at these locations. Applications to be entered on the special voters list must be made by 25 November preceding the election and, in the case of a first application, must be accompanied by a medical certificate.

Irish citizens living abroad cannot be entered on the Register of Electors. This means that such citizens cannot vote in an election or referendum in Ireland. The only exception to this rule is in the case of Irish officials on duty abroad (and their spouses), who may register on the postal voters list.

#### 14.3. MEASURES FACILITATING VOTING RIGHTS

The main measures put in place to facilitate the access to the polls are those as described above and several measures in the fields of disability and gender equality (described below).

There are no special measures/initiatives that are in place aiming at promoting mobile EU citizens' right to vote in municipal elections. As outlined above, British citizens may vote at local elections, and other mobile EU citizens (over the age of 18) may also vote at local elections. Studies have shown that the actual participation of mobile citizens in local elections in Ireland is rather low. As also highlighted above, mobile Irish citizens living in other EU countries are deprived of the right to vote. This has attracted a lot of criticism and calls for reform.

No specific measures or initiatives are in place to facilitate the political participation of linguistic or ethnic minorities in Ireland. There are, however, several arrangements in place to assist people with certain disabilities to exercise their voting rights. First, if a person with a physical illness or disability cannot vote at the polling station assigned to them, they may vote at another polling station in the same constituency which may be more accommodating or accessible, provided they have received authorisation from the returning officer in charge. This is laid out in

Section 100 of the 1992 Electoral Act. They are also entitled to be helped to vote at the polling station by a companion or the presiding officer.

In respect of voting in a referendum for people with a visual impairment, the Electoral Regulations 2016 provide for a ballot paper template, which allows visually impaired people to vote independently in a referendum. This option is available if one does not want to be assisted by a companion or presiding officer in marking the ballot paper in a referendum. There is currently no template for use in an election.

The Electoral (Amendment) Act 1996 also introduced the option of postal voting for people with certain disabilities (i.e. those unable to go in person to vote at the polling station by reason of physical illness or physical disability). The individual concerned must apply to the county council or City Corporation in order to be entered on the postal voters list by the 25th of November of each year. The application form must be accompanied by a medical certificate for a first application.

Finally, voting through the system of 'special voting' is provided for those in nursing homes, hospitals or similar institutions, who are unable to come to the polling station. In such cases, special presiding officers are accompanied by the police to bring the ballot paper to the voter.

In respect of facilitation of the right to vote and political representation of women, Article 16 of the Irish Constitution (*Bunreacht na hÉireann*) prohibits discrimination on the grounds of sex in eligibility for membership of *Dáil Éireann* and in respect of the right to vote at an election for members of *Dáil Éireann*.

In 2012, legislative gender quotas were introduced. The legislation – The Electoral (Amendment) (Political Funding) Act, 2012 – provides, at part 6 thereof, that payments to political parties "shall be reduced by 50 per cent, unless at least 30 per cent of the candidates whose candidatures were authenticated by the qualified party at the preceding general election were women and at least 30 per cent were men". The 30% gender threshold came into effect at the 2016 general election. The threshold is due to rise to 40% from 2023 onwards. Legislative gender quotas apply at general elections only (and therefore not at municipal and European Parliament elections).

The main obstacle to vote is inaccessibility for persons with disabilities. The National Disability Authority notes that, while it is open to someone to register to vote as a postal voter at the normal registration stage, the statutory deadlines for registration once an election or other poll has been called are extremely tight – one or two days after the official Electoral Order in some

cases. As the Academic Network of Disability Experts (ANED) country reporter points out, this gives rise to difficulties for those who just become aware of this option at election time. In addition, the deadline for return of postal votes comes before the final week of the election campaign. In the 2011 Presidential Election, postal votes had to be returned before the final TV debate, and according to the ANED country report, citing the National Disability Authority, this had a major role in the voting intentions of many people.

#### 14.4. STATISTICS

According to available statistics, 78 648 mobile EU citizens were registered to vote at municipal elections in Ireland in 2016, or 24.3%.<sup>3</sup>

Voter turnout at various Irish elections and referenda are available from various sources. The recorded turnout for the most recent Presidential election in 2018 was 1 492 338 voters, or 43.87% of the eligible electorate of 3 401 681.<sup>4</sup> This was lower than the voter turnout for the latest *Dáil* elections in 2016, which saw a turnout of 2 151 293 votes cast, or 65.09% of the total electorate.<sup>5</sup> Similar voter turnout was recorded for the 2018 Referendum on the Thirty-sixth Amendment of the Constitutional Bill 2018 (2 159 655 or 64.13% of the total electorate).<sup>6</sup>

The voter turnout for recent municipal and European elections were substantially lower. In 2004, an official turnout of 59-60% was recorded for local elections,<sup>7</sup> a level almost maintained in 2009 (58% turnout).<sup>8</sup> However, in 2014, turnout dropped back to 51.6%,<sup>9</sup> the second lowest official turnout level in Irish local elections. In the 2014 European Parliament elections, the voter turnout was 52.44%.<sup>10</sup> Unfortunately, more detailed breakdown of voter statistics by nationality or belonging to linguistic or ethnic minority communities is not available.

As regards representation of women, Ireland is lagging behind the European average in not having female political party leaders. However, the country ranks above average for female representation in local elections. Statistics show that less than a quarter (22.2%) of TDs were women in 2016, and they accounted for only 21.4% of members of local authorities. However, these figures were an improvement on 2013, when just over 15% of TDs and less than a fifth of local authority members were women.

#### 14.5. LIST OF IRISH LEGISLATION CONCERNING MUNICIPAL AND EUROPEAN PARLIAMENTARY ELECTIONS

The (main) applicable Irish legislation for municipal and European Parliament elections is as follows:

Constitution of Ireland (*Bunreacht na hÉireann*), [https://www.taoiseach.gov.ie/eng/Historical Information/The Constitution/Bunreacht na hÉireann - Dec 2018.pdf](https://www.taoiseach.gov.ie/eng/Historical%20Information/The%20Constitution/Bunreacht%20na%20hEireann%20-%20Dec%202018.pdf).

Electoral Act 1992, Act No. 23 of 1992, <http://www.irishstatutebook.ie/eli/1992/act/23/enacted/en/index.html>.

European Parliament Elections (Voting and Candidature) Regulations 1994, S.I. No. 14/1994, <http://www.irishstatutebook.ie/eli/1994/si/14/made/en/print>.

Local Elections Regulations 1995, S.I. No. 297/1995, <http://www.irishstatutebook.ie/eli/1995/si/297/made/en/print>, as last amended.<sup>11</sup>

Electoral (Amendment) Act 1996, Act No. 43 of 1996, <http://www.irishstatutebook.ie/eli/1996/act/43/enacted/en/index.html>.

Electoral Act 1997, Act No. 25 of 1997, <http://www.irishstatutebook.ie/eli/1997/act/25/enacted/en/index.html>.

European Parliament Elections Act 1997, Act No. 2 of 1997, <http://www.irishstatutebook.ie/eli/1997/act/2/enacted/en/index.html>, as last amended.<sup>12</sup>

Electoral (Amendment) Act 1998, Act No. 4 of 1998, <http://www.irishstatutebook.ie/eli/1998/act/4/enacted/en/index.html>.

European Parliament Elections (Forms) Regulations 1998, S.I. No. 415/1998, <http://www.irishstatutebook.ie/eli/1998/si/415/made/en/print>.

Electoral (Amendment) Act 2001, Act No. 38 of 2001, <http://www.irishstatutebook.ie/eli/2001/act/38/enacted/en/index.html>.

Electoral (Amendment) Act 2002, Act No. 4 of 2002, <http://www.irishstatutebook.ie/eli/2002/act/4/enacted/en/index.html>.

Electoral (Amendment) Act 2004, Act No. 15 of 2004, <http://www.irishstatutebook.ie/eli/2004/act/15/enacted/en/index.html>.

Electoral (Amendment) Act 2006, Act No. 33 of 2006, <http://www.irishstatutebook.ie/eli/2006/act/33/enacted/en/index.html>.

Electoral (Amendment) Act 2009, Act No. 4 of 2009, <http://www.irishstatutebook.ie/eli/2009/act/4/enacted/en/index.html>.

Electoral (Amendment) (No.2) Act 2009, Act No. 9 of 2009,

<http://www.irishstatutebook.ie/eli/2009/act/9/enacted/en/index.html>.

Referendum Acts 1992 to 2001.<sup>13</sup>

Electoral Regulations 2016, S.I. No. 537/2016,  
<http://www.irishstatutebook.ie/eli/2016/si/537/made/en/print>.

#### Notes:

<sup>1</sup> See Electoral (Amendment) (Voting at 16) Bill 2016, Bill 63 of 2016.

<sup>2</sup> See the history of the Bill on the website of the Houses of the *Oireachtas*,  
<https://www.oireachtas.ie/en/bills/bill/2016/63/>.

<sup>3</sup> See European Commission (2018), Report from the Commission to the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2018) 44 final, Brussels, 25.1.2018, p. 16, Table 1.1.

<sup>4</sup> For detailed statistics on the 2018 Presidential elections in Ireland, including breakdown by constituency, see  
<https://www.presidentialelection.ie/2018-results-all-data/>.

<sup>5</sup> Houses of the Oireachtas Service (2016), “32nd General Election. 26 February 2016. Election Results”, Houses of the Oireachtas, Dublin, pp. 64-65, Table 2,  
[https://data.oireachtas.ie/ie/oireachtas/electoralProcess/electionResults/dail/2016/2016-04-28\\_32nd-dail-general-election-results\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/electoralProcess/electionResults/dail/2016/2016-04-28_32nd-dail-general-election-results_en.pdf).

<sup>6</sup> See the results of the 2018 Referendum on the website of the Referendum Returning Officer,  
<https://www.referendum.ie/archive/referendum-on-the-thirty-sixth-amendment-of-the-constitution-bill-2018/>.

<sup>7</sup> See S. Donnely (2004), “The best local election turnout in nearly 20 years”, *The Irish Times*, 14 June,  
<https://www.irishtimes.com/news/the-best-local-election-turnout-in-nearly-20-years-1.1144684>.

<sup>8</sup> See Environment, Heritage and Local Government (2009), “Local Elections 2009: Results, Transfer of Votes and Statistics. Volume 2: Borough and Town Councils”, Environment, Heritage and Local Government, Dublin, pp. 139-141, Table A,

<https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/LocalGovernment/Voting/FileDownloadLoa d%2C23416%2Cen.pdf>.

<sup>9</sup> Environment, Community and Local Government (2014a), “Local Elections 2014: Results, Transfer of Votes and Statistics”, Environment, Community and Local Government, Dublin, pp. 330-331, Table A,  
[https://www.housing.gov.ie/sites/default/files/publications/files/local\\_elections\\_2014\\_results\\_book.pdf](https://www.housing.gov.ie/sites/default/files/publications/files/local_elections_2014_results_book.pdf).

<sup>10</sup> Environment, Community and Local Government (2014b), “European Parliament Election Results 2014”, Environment, Community and Local Government, Dublin,  
<https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/LocalGovernment/Voting/FileDownloadLoa d%2C38450%2Cen.pdf>; European Parliament (2014), “Results of the 2014 European elections. Results by Country: Ireland”, European Parliament, Strasbourg,  
<http://www.europarl.europa.eu/elections2014-results/en/country-results-ie-2014.html>.

<sup>11</sup> For a list of all amendments affecting the Local Elections Regulations, 1995, see  
[http://www.irishstatutebook.ie/eli/isbc/si1995\\_251-300.html](http://www.irishstatutebook.ie/eli/isbc/si1995_251-300.html).

<sup>12</sup> For a list of all amendments affecting the European Parliament Elections Act, 1997, see  
[http://www.irishstatutebook.ie/eli/isbc/1997\\_2.html](http://www.irishstatutebook.ie/eli/isbc/1997_2.html).

<sup>13</sup> The ‘Referendum Acts 1992 to 2001’ refers to the official collective citation of Referendum Acts and Referendum (Amendment) Acts adopted between 1992 and 2001). These Acts are applicable to voting at referenda in Ireland. For the list of Referendum Acts 1992 to 2001, see  
<http://www.irishstatutebook.ie/eli/ResultsTitleAct.html?q=R eferendum+Act&years=1992-2001>.



## 15. Italy

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### 15.1. LEGAL

#### FRAMEWORK

In Italy, direct elections take place for three constitutional bodies: the two chambers of Parliament, regional councils and Presidents, and city councils and mayors. Moreover, Italy elects 73 members of the European Parliament; and local elections are held for the *consigli circoscrizionali* (local consultative assemblies) in cities over 250.000 inhabitants. The recently adopted 'Rosatellum' law<sup>1</sup> regulates general parliamentary elections, which take place every five years. It was used for the first time during the March 2018 elections. Italian citizens over the age of 18 elect the *Camera dei Deputati*, while active franchise for the *Senato della Repubblica* is limited to Italian citizens over 25 years of age.

Regional elections take place every five years, unless the mandate of the President of the Region is terminated earlier. The 15 'ordinary' regions (*Regioni a Statuto Ordinario*) are allowed to determine the details of the electoral system within the principles set up by Law 43/1995 of 23 February 1995. Specific constitutional laws regulate electoral participation in 'special' regions (*Regioni a Statuto Speciale*) and in the two autonomous provinces of Trento and Bolzano. In all 19 regions and the two provinces, electoral participation is open only to Italian citizens (over the age of 18) residing in the country or abroad. Italian citizens residing abroad remain in fact registered in the electoral lists of the last Italian municipality where they resided.

Legislative Decree 267/2000 of 18 August 2000 regulates the participation at municipal elections.<sup>2</sup> The Italian system provides for direct elections of members of municipal councils (*consigli comunali*) and of mayors (*sindaci*). Italian citizens and EU citizens residing in Italy over the age of 18 are entitled to vote. The participation of the latter category is regulated by Legislative Decree 197/1996 of 12 April 1996.<sup>3</sup> On the other hand, non-EU citizens residing in Italy cannot participate at municipal elections. All Italian citizens above age 18 can be elected to the city councils and to the mayor position, independently on where they reside. EU citizens may also run for elections, but only for the position of city counsellor (not of mayor) in their city of residence.<sup>4</sup> EU citizens may also be called to become members of the *giunta comunale* (the executive body assisting the

mayor), but not as vice-mayors.

Finally, Law 18/1979 of 24 January 1979 regulates the procedures for the elections of the Italian members of the European Parliament,<sup>5</sup> while Law Decree 408/1994 of 24 June 1994 regulates the participation of EU citizens residing in Italy to EP elections.<sup>6</sup> Italian and EU citizens residing in Italy over the age of 18 are entitled to vote. Italian citizens residing in other EU Member States may decide whether to exercise their right to vote in Italy or in their Member State of residence. As for passive franchise, Italian and EU citizens residing in Italy over the age of 25 can be elected to the European Parliament. In addition to the requirements concerning registration procedures and cases of incompatibility and ineligibility provided by Law 18/1979, Article 4 of DL 408/1994 provides that EU citizens must give an official address in Italy, indicate where they are registered in the country of origin and state that they are not running in another Member State. Moreover, their declaration must be accompanied by a certification from the competent authority in their Member State of origin that they have not lost their right to electoral participation there.

The new legislature has just started, and there is as yet no concrete proposal to reform the systems just described. However, it is fairly likely that the electoral law for Parliament will once again be the subject of heated discussions in the next years. There is less debate, on the other hand, on regional and municipal elections systems.

### 15.2. REGISTRATION AND VOTING CONDITIONS

For Italian citizens, registration in the electoral lists is automatic. Voters receive a *tessera elettorale* (voter ID card) shortly after their 18<sup>th</sup> birthday and can use it to participate at all direct elections. EU citizens, on the other hand, must present a specific request for registration in a separate 'electoral list' (*lista elettorale aggiunta*) to their municipality if they want to participate at municipal or European elections. They do not have to renew their registration for subsequent elections, unless they move to a different municipality.

The registration procedures for municipal and European elections are almost identical. For the former, EU citizens have to declare their citizenship, their residence in Italy and their last address in the country of origin and present a request for registration in the municipality records, if they have not yet done so.<sup>7</sup> As for European elections, EU citizens must additionally explicitly declare their intention to vote in Italy (and not in their country of origin), as provided by

Article 2 of DL 408/1994. They have also to declare in their request for registration that they possess the right to vote in their country of origin and have not lost it for example as a result of a criminal conviction.

For municipal and regional elections, citizens can only vote in person at the polls. The rule applies to both Italian citizens and for EU citizens entitled to vote. For parliamentary elections, voters living temporarily or permanently abroad may vote via post. In parliamentary elections, Italian citizens abroad vote at elections for a set number of MPs representing Italian citizens abroad (12 at the Chamber, 6 at the Senate).<sup>8</sup>

### 15.3. MEASURES FACILITATING VOTING RIGHTS

With few exceptions, there seem to be few strategies and measures specifically designed to facilitate access to polls. One measure that deserves to be mentioned is that the Ministry of Interior traditionally strikes deals with transportation companies (Alitalia, Trenitalia, etc.), in order to offer discounts to Italian citizens traveling back to the municipality in which they formally reside and are registered in the electoral list, so to facilitate the exercise of their right to vote. Citizens residing in Italy can in fact only vote in person in the specific electoral district where they are registered. University students living outside their municipality of formal residence are among the main targets of the measure. Forms of reimbursement of travel costs are also provided to Italian citizens living abroad when they return to Italy for municipal and regional elections.

In the early 2000s and until quite recently, polls were open on two days (usually Sunday all-day and Monday morning) to incentivise electoral participation, but recently the government decided to move back to single-day voting (Sunday, all day) as a cost-reducing measure. In general terms, voting polls are quite diffuse in the territory, even in smaller districts and peripheral areas.

There seems to be no general measure aiming at promoting the participation of mobile EU citizens in municipal election. However, in cities where there is a rather high number of EU citizens, webpages might explain and highlight the possibility offered to EU citizens to vote in municipal elections and the requirements they need to fulfil.<sup>9</sup>

As for voting rights of minorities and their political representation, specific measures are taken in particular for linguistic minorities in two regions, Valle d'Aosta and Friuli-Venezia-Giulia, and in the autonomous province of Bolzano (respectively, French, Slovenian and German-speaking minorities). For example, in European Parliament elections, parties

representing those linguistic minorities are exempted from the national 4%-threshold, if they have an agreement with a party fulfilling that threshold and running in all national districts.<sup>10</sup> There is also a system of 'over-representation' in place in the national parliament for areas in which linguistic minorities reside (limited to Valle d'Aosta and Trentino-Alto Adige). Moreover, all electoral communication in those areas is bilingual.

In recent years, the legislature has also adopted a series of measures with the goal to improve political representation of women. The new *Rosatellum law* (Article 10) regulating parliamentary elections provides that party lists may not contain more than 60% of candidates of one gender, and that no more than 60% of the top candidates may be of one gender (Italy does not have a preference vote system, so candidates are elected on the basis of their position in the list). Moreover, lists are composed following an alternation of gender (if the first candidate is male, the second must be female, and vice versa). In municipal elections, on the other hand, voters may now express two preference votes for candidates to the city council, provided that they pick two candidates of different gender (see Law 215/2012).<sup>11</sup> Moreover, the lists shall not contain more than two-thirds of candidates of one gender.

Lastly, there seem to be no major obstacles to the right to vote. Italian elections generally have a relatively high turnout rate.<sup>12</sup> In this sense, there seems to be no general strategy aiming at facilitating the right to vote of certain categories of citizens, with the partial exception of university students as noted above.

### 15.4. STATISTICS

There is no national data publicly available on the number of mobile EU citizens registered in the electoral lists. As for Italians citizens living abroad, in December 2017 there were 4 973 942 citizens with voting rights. More than half lived in Europe (2 685 515).<sup>13</sup>

Voter turnout (official data is available on the website of the Ministry of Interior)<sup>14</sup> for the last parliamentary elections of March 2018 was 72.94% for the Chamber of Deputies, and 73.01% for the Senate. The small variation is due to the partially different electorate for the two chambers: only Italian citizens over 25 can vote for the Senate. For Italians living abroad, the overall turnout was significantly lower, at 29.84% voter turnout for the Chamber of Deputies. There are no significant differences between the turnout of Italian voters in EU and non-EU Member States (the overall data for Europe is 29.89%).



For the last European elections (2014), the voter turnout in Italy was 58.69%. There are no specific numbers available for mobile EU citizens living in Italy. Municipal elections are not concentrated in the same year; therefore there are no national data available. In one of the biggest rounds in recent years, held in 2016,

the turnout in bigger cities was between 54 and 57 % (Turin 57.18%; Milan 54.65%; Rome 57.03%; Naples 54.12 %). There is no separate data available for mobile EU citizens.

#### Notes:

<sup>1</sup> Law 165/2017 of 3 November 2017 (*Legge 3 novembre 2017, n. 165, Modifiche al sistema di elezione della Camera dei deputati e del Senato della Repubblica. Delega al Governo per la determinazione dei collegi elettorali uninominali e plurinominali*), <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2017-11-11&atto.codiceRedazionale=17G00175>.

<sup>2</sup> Legislative Decree 267/2000 of 18 August 2000 (*Decreto Legislativo 18 agosto 2000, n. 267, Testo unico delle leggi sull'ordinamento degli enti locali*), <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2000-09-28&atto.codiceRedazionale=000G0304>.

<sup>3</sup> Legislative Decree 197/1996 of 12 April 1996 (*Decreto Legislativo 12 aprile 1996, n. 197, Attuazione della direttiva 94/80/CE concernente le modalita' di esercizio del diritto di voto e di eleggibilita' alle elezioni comunali per i cittadini dell'Unione europea che risiedono in uno Stato membro di cui non hanno la cittadinanza*), <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1996-04-15&atto.codiceRedazionale=096G0205>.

<sup>4</sup> Article 5 of the LD 197/1996.

<sup>5</sup> Law 18/1979 of 24 January 1979 (*Legge 24 gennaio 1979, n. 18, Elezione dei membri del Parlamento europeo spettanti all'Italia*), <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1979-01-30&atto.codiceRedazionale=079U0018>.

<sup>6</sup> Law Decree 408/1994 of 24 June 1994 (*Decreto-Legge 24 giugno 1994, n. 408, Disposizioni urgenti in materia di elezioni al Parlamento europeo*), <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1994-06-27&atto.codiceRedazionale=094G0456>. The Law Decree was converted into Law by Law 483/1994 of 3 August 1994 (*Legge 3 agosto 1994, n. 483, Conversione in legge, con modificazioni, del decreto-legge 24 giugno 1994, n. 408, recante disposizioni urgenti in materia di elezioni al Parlamento europeo*),

<http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1994-08-06&atto.codiceRedazionale=094G0526>.

<sup>7</sup> Article 1 of LD 197/1996.

<sup>8</sup> Articles 56 and 57 of the Italian Constitution.

<sup>9</sup> See for example in Milan:

[http://www.comune.milano.it/wps/portal/ist/it/partecipa/votare/cittadini\\_ue](http://www.comune.milano.it/wps/portal/ist/it/partecipa/votare/cittadini_ue).

<sup>10</sup> Law 10/2009 of 20 February 2009 (*Legge 20 febbraio 2009, n. 10, Modifiche alla legge 24 gennaio 1979, n. 18, concernente l'elezione dei membri del Parlamento europeo spettanti all'Italia*), <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2009-02-23&atto.codiceRedazionale=009G0018>.

<sup>11</sup> Law 215/2012 of 23 November 2012 (*Legge 23 novembre 2012, n. 215, Disposizioni per promuovere il riequilibrio delle rappresentanze di genere nei consigli e nelle giunte degli enti locali e nei consigli regionali. Disposizioni in materia di pari opportunita' nella composizione delle commissioni di concorso nelle pubbliche amministrazioni*), <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2012-12-11&atto.codiceRedazionale=012G0237>.

<sup>12</sup> See <https://elezionistorico.interno.gov.it/index.php>.

<sup>13</sup> See Annex to the Decree of the President of the Republic of 28 December 2017 (*Decreto del Presidente della Repubblica 28 dicembre 2017, Assegnazione alle circoscrizioni elettorali del territorio nazionale e ai collegi plurinominali di ciascuna circoscrizione nonche' alle ripartizioni della circoscrizione Estero del numero dei seggi spettanti per l'elezione della Camera dei deputati*), published in the *Gazzetta Ufficiale*, Serie Generale n. 302 of 29 December 2017, [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2017-12-29&atto.codiceRedazionale=17A08775&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2017-12-29&atto.codiceRedazionale=17A08775&elenco30giorni=false).

<sup>14</sup> See <https://elezionistorico.interno.gov.it/index.php>.



## 16. Latvia

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### 16.1. LEGAL FRAMEWORK

The Latvian electoral legislation framework covers the process of direct elections for the Parliament (*Saeima*) and municipal and city councils. Since 1992, the basic features of the current framework of parliamentary elections in Latvia, inherited from the 1922 law, have remained largely intact. The *Saeima* Election Law, as in force on 12 February 2018,<sup>1</sup> provides for a type of proportional representation party-list system with some distinctive features, particularly the arrangements for preference voting.

With regard to municipal and city council elections, according to the City Council and Municipality Council Election Law (as in force on 1 January 2014),<sup>2</sup> they are held every four years. The right to vote had been granted to citizens of Latvia, other citizens of the European Union registered in the Population Register, as well as third-country nationals who have reached the age of 18 on the day of the election, have been registered on the Voters' Register and filed with their place of residence on the administrative territory of the respective local government at least 90 days before the day of the election, or persons who own real estate which is filed with the territory of the respective local government according to the procedure set out by law and do not fall under any of the limitations (Article 5(1) of the City Council and Municipality Council Election Law). The aforementioned set of limitations includes those who have been adjudged incompetent according to the procedure stipulated by law, who are undergoing punishment in penal institutions, and (in case of non-Latvian EU citizens) those who have no right to vote in the EU Member State of which they are citizens (Article 6 of the City Council and Municipality Council Election Law).

The right to stand as a candidate in local elections has been granted to Latvian and EU citizens, aged over 18, who are registered in the Population Register (Article 8(1) of the City Council and Municipality Council Election Law). Third-country nationals aged 18 and over may also stand as a candidate in local elections, provided they (a) have lived in the territory of the respective local government for at least 10 months, (b) have worked in the territory of the respective local government for at least 4 months, or (c) own real estate filed in the territory in question (Article 8(2) City Council and Municipality Council Election Law). Article

9 disenfranchises from standing as candidates, among others, people who are serving sentences in penitentiaries, who are adjudged incompetent in accordance with the procedure set by law, who have previously committed a grave or especially grave crime, and those who had been active in the Communist Party of Latvia after 13 January 1991 or have at any time belonged to the salaried state security or intelligence staff of the USSR or another country.

Finally, the European Parliament elections process is defined by the Law on Elections to the European Parliament, as last amended on 31 October 2013.<sup>3</sup> The voters are citizens of Latvia or other EU Member States residing in Latvia, aged over 18, and (for mobile EU citizens) not restricted from voting in the country of origin (Article 2(2) of the Law on Elections to the European Parliament). The minimum age requirement to run as a candidate at European Parliament elections is 21 years old for Latvian and EU citizens (Article 4(1) of the Law on Elections to the European Parliament).

Persons who have been convicted for a crime retain their have active voting rights for European Parliament elections in Latvia (see Article 3 of the Law on Elections to the European Parliament).<sup>4</sup> However, according to Article 5 of the Law on Elections to the European Parliament, convicted persons may be restricted in their passive electoral rights (i.e. standing as a candidate for European Parliament elections) if s/he:

- is currently serving a prison sentence;
- has been convicted for a (very) serious crime, unless s/he has been deemed to have been rehabilitated;
- is currently subjected to trusteeship by a court ruling in accordance with the law; or
- has been penalised with a prohibition from standing as a candidate for national, European and/or municipal elections, unless s/he has been exonerated or his/her criminal record has been set aside/expunged.

Furthermore, persons serving a prison sentence are disenfranchised for municipal elections, according to the City Council and Municipality Council Election Law (Article 6(2) and 9(1)(1) thereof).<sup>5</sup>

### 16.2. REGISTRATION AND VOTING CONDITIONS

The Electoral Register Law<sup>6</sup> provides for an automatic registration of citizens on the electoral lists by the corresponding offices and also includes the legal norms arising from Council Directive 93/109/EC.<sup>7</sup> According to Article 21 of the Electoral Register Law, decisions

regarding the inclusion, refusal to include or exclusion of a person from the Register may be appealed in a court in accordance with the procedures specified in the Administrative Procedure Law. The court shall examine an application not later than within three working days from initiation of the matter, and the following court judgment shall be executed immediately.

According to the general provisions of Article 5 of the City Council and Municipality Council Election Law, mobile EU citizens have to register themselves on the Voters' Register and file the application with their place of residence on the administrative territory of the respective local government at least 90 days before the day of the election, except for those who own real estate within the territory of the respective local government according to the procedure set out by law, and do not fall under any of the limitations regarding criminal records or have no right to vote in the country of origin.

If a citizen of the European Union who is not a Latvian citizen wishes to exercise his/her voting rights in elections to the European Parliament in the Republic of Latvia, he/she shall submit, in person or by post, an application to the Central Election Commission indicating their wish to vote in the Republic of Latvia and an undertaking not to exercise voting rights in another Member State of the EU no later than 30 days before the elections.

The conditions for registration of residence for the local elections for non-nationals are identical to Latvian citizens. All residents are registered according to the Population Register Law.<sup>8</sup> Article 3 of the Law provides that citizens, non-citizens, residence permit-holders, and residence card-holders should be registered in the Population Register. According to Article 15, those Latvian citizens and non-citizens residing abroad for longer than six months should inform the Office of Citizenship and Migration Affairs thereof.

Currently, postal voting is only available in Latvia during the elections to the European Parliament and national elections to *Saeima*, and is restricted to voters residing in foreign states. A voter for the European Parliament elections shall submit an application for postal voting to the diplomatic or consular missions specified by the Central Election Commission not later than 42 days before Election Day, either in person or by post. The deadline to register for the *Saeima* elections as a postal voter is longer, i.e. 22 days. Other possibilities to vote outside polling stations are foreseen for voters facing health issues and their carers, as, if an individual voter cannot arrive at the polling station, the election commission, upon the written request of the voter or a person authorised by him/her, has to organise secure

voting where the voter is located. The latter clause is provided for all the elections – European Parliament elections, *Saeima* elections, as well as municipal and city councils elections.

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### 16.3. MEASURES FACILITATING VOTING RIGHTS

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Based on the current stage of the electoral process regulation, there seems to be few incentives for facilitating access to exercising electoral rights. The official website of the Central Election Commission of Latvia offers several e-training courses – on how to become a voluntary observer, on the *Saeima* election procedure and on the organisation of referenda.<sup>9</sup> Voting arrangements are made for soldiers and national guardsmen participating in international missions, as well as for voters in penitentiaries, and voting can also be held on ships sailing under the flag of Latvia and registered in the Republic of Latvia. In order to exercise such rights, the ship owner must submit a proposal to the Central Election Commission regarding establishing of polling station and polling station commission no later than 60 days before the elections.

There are also quite few facilitation tools to engage mobile EU citizens in political life of the country. In Latvia, this approach was adopted with individual letters being sent to non-nationals in 15 languages (Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Italian, Lithuanian, Polish, Romanian, Spanish and Swedish). Application forms for registration in order to exercise the right to vote at the 2014 European Parliament elections in Latvia were sent in English. Information for nationals of other EU Member States regarding the procedure for registration for the 2014 European Parliament elections was also published on the Central Election Commission's website.<sup>10</sup>

Latvia has no legislation or recommendations regarding gender quotas in political or economic spheres. The representation of women in decision-making positions is around the EU-28 average, according to the EIGE Gender Equality Index of 2015.<sup>11</sup>

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### 16.4. STATISTICS

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The number of mobile EU citizens in Latvia had not been made publicly available on websites from official sources. Data from 2009 and 2014 were collected in particular studies and by the European Parliament. Accordingly, in 2009, the number of registered voters among non-nationals was 248 (2.9% of all mobile EU citizens in Latvia), with only a minute increase in 2014 reaching only 326 people (3.6%). It has to be noted that



these figures do not represent the actual voter turnout, but only their presence in the registers.

At the 12<sup>th</sup> elections to the *Saeima* in October 2014, 87 493 eligible Latvian voters abroad had been registered; the turnout, however, amounted only to

23 116 voters coming to the polling stations. The overall turnout in Latvia in the 2017 municipal and city councils elections was relevantly higher, as it attracted 727 467 citizens (50.39% of registered voters).

#### Notes:

<sup>1</sup>

[https://www.cvk.lv/pub/upload\\_file/Saeima\\_Election\\_Law\\_2018\\_ENG.pdf](https://www.cvk.lv/pub/upload_file/Saeima_Election_Law_2018_ENG.pdf).

<sup>2</sup> <https://www.cvk.lv/pub/public/29842.html>.

<sup>3</sup> <https://www.cvk.lv/pub/public/30380.html>.

<sup>4</sup> See also K. Kruma (2013), “Access to Electoral Rights: Latvia”, *EUDO Citizenship Access to Electoral Rights Report* RCSAS/EUDO-CIT-ER 2013/14, European University Institute, Florence, June, pp. 3-4, [http://cadmus.eui.eu/bitstream/handle/1814/29816/ER\\_2013\\_14-Latvia-FRACIT.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/29816/ER_2013_14-Latvia-FRACIT.pdf?sequence=1).

<sup>5</sup> See also *ibid*.

<sup>6</sup> <https://www.cvk.lv/pub/public/30641.html>.

<sup>7</sup> Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, *OJ L 329*, 30.12.1993, pp. 34-38.

<sup>8</sup> <https://likumi.lv/ta/en/en/id/49641>.

<sup>9</sup> <https://www.cvk.lv/pub/public/30083.html>.

<sup>10</sup> For the information in EU languages other than Latvian or English, see <https://www.cvk.lv/pub/public/30728.html>.

<sup>11</sup> <http://eige.europa.eu/gender-equality-index/2015/domain/power/LV>.



## 17. Lithuania

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### 17.1. LEGAL FRAMEWORK

According to Article 34 of the Constitution of Lithuania, adopted in 1992,<sup>1</sup> the right to vote belongs to all citizens who have reached 18 years old, except for those declared to be legally incapacitated by the court. The general legal framework on holding elections and referenda is further detailed in particular laws, specifically the Law on Elections to the *Seimas* (as last amended on 17 May 2018),<sup>2</sup> the Law on Presidential Elections (as last amended on 14 May 2015),<sup>3</sup> the Law on Elections to the European Parliament (as last amended on 30 June 2016)<sup>4</sup> and the Law on Elections to Municipal Councils (as last amended on 17 May 2018).<sup>5</sup> There are also other regulations covering the functioning of the Central Electoral Commission, political parties and running political campaigns.

According to the Law on Elections to Municipal Councils, municipal councils are elected for a four-year term, with municipal council elections held under a proportional system with preferential voting (Article 1). The right to vote at elections for municipal councillors is available to all permanent residents of the respective municipality, who are 18 years of age on polling day (Article 2). The permanent resident status is, according to Article 2(3) of the Law on Elections to Municipal Councils, is applicable to any citizen of the Republic of Lithuania, citizens of other EU Member States or any other person with the right of permanent resident in Lithuania who, with not less than 90 days before polling day, declared his or her place of residence within the territory of that municipality pursuant to legal acts of the Republic of Lithuania.

Permanent resident of a municipality in Lithuania, who is at least 20 years of age on polling day, may stand as a candidate for municipal elections in the respective municipality (Article 2(2) of the Law on Elections to Municipal Councils); this applies to all permanent residents as defined in the Law (see above), and therefore includes Lithuanian citizens and citizens of other EU Member States. The right to be elected to the office of mayor of a municipality, however, is restricted citizens of the Republic of Lithuania.

Elections for members of the European Parliament from Lithuania, i.e. twelve MEPs, are held under a system of proportional representation with preferential voting (Article 1(3) of the Law on Elections to the European Parliament). The right to vote at

European Parliament elections in Lithuania is restricted to citizens of Lithuania and other EU Member States who have reached the age of 18 years, unless they have been legally declared incapable by the courts (Article 3(1) of the Law on Elections to the European Parliament). The right to stand as a candidate at European Parliament elections has been granted to Lithuanian citizens and citizens of other EU Member State, permanently residing in Lithuania, who are at least 21 years of age on polling day (Article 3(4) of the Law on Elections to the European Parliament). In both cases, the eligible voter/candidate may only vote or stand as a candidate at European Parliament elections in one EU Member State.

With regard to European Parliament elections, Lithuanian nationals and mobile EU citizens shall be considered as “permanently residing” in Lithuania if he/she has “declared his place of residence in the Republic of Lithuania and the data relating to his place of residence in the Republic of Lithuania have been entered on the Residents’ Register of the Republic of Lithuania prior to the reference date” (Article 4(4) of the Law on Elections to the European Parliament).

Mentally disabled persons are disenfranchised from all elections (see Article 34(3) of the Constitution).

### 17.2. REGISTRATION AND VOTING CONDITIONS

The electoral laws of Lithuania regulating national elections and referendums establish an identical voter registration procedure (this procedure is also almost identical to the procedure for European and municipal elections). According to this procedure, automatic registration of voters has to be applied. Voters are further entitled to request corrections of their data in electoral rolls or to enter their names therein when they are missing.

There are three types of electoral rolls: 1) national electoral roll; 2) municipal (city or regional) or single-member constituency (for parliamentary elections) electoral rolls; and 3) polling stations district rolls. The detailed registration procedure in national elections and referendum is as follows<sup>32</sup>: eligible voters are automatically included in electoral rolls according to the data contained in the population register or possessed by other authorities; voters are entitled to have access to their personal data in electoral registers and to request corrections; voters who are not included in the register are entitled to request that they be so included; municipal and single-member constituency rolls are drawn up from the national roll; while polling stations rolls are derived from the



respective municipal or single-member constituency rolls.

The registration procedure for non-resident citizens is almost the same as that for citizen residents. However, there are some slightly different technical details: eligible voters residing abroad are automatically included in electoral rolls; the rolls of citizens of the Republic of Lithuania residing abroad have to be drawn up in accordance with the national electoral roll and the information possessed by diplomatic missions and consular establishments; the preliminary rolls are drawn from the national roll according to the data contained in the population register about the respective citizens' departure and supplemented by the data contained in registers of diplomatic missions and consular establishments; the preliminary rolls must be delivered to those diplomatic missions and consular establishments which are responsible for updating the data and preparing the final rolls; a diplomatic mission or consular establishment has to submit to the Central Electoral Commission, at least fifteen days before the elections or a referendum, the completed electoral roll as well as a report about its updating.

Mobile EU citizens may vote and stand as candidates in municipal elections following the established procedure – having, with not less than 90 days before polling day, to declare the place of residence (or if s/he had declared but such declaration was revoked in accordance with Article 8(1) of the Law on Declaration of the Place of Residence) pursuant to legal acts of the Republic of Lithuania within the territory of that municipality or if, with not less than 90 days before polling day, were included in this municipality in the records of persons who do not have a place of residence. The only requirement for EU citizens to participate in the European Parliament elections is the same – to have their place of permanent residence in Lithuania, which must be declared according to the same procedures applied to citizen residents.

With regard to the national elections, Latvians who are temporarily absent on election day have several possibilities to cast their votes. Firstly, they may personally cast their vote at diplomatic missions and consular establishments. Alternatively, provided they have informed the diplomatic mission or consular service of their address abroad, they may send their vote by post to the diplomatic mission or consular service. For military personnel stationed abroad the commanders of military units are responsible for making postal voting accessible to their staff. Voting is possible on ships provided that there are at least five voters aboard; the ship has left a port of the Republic of Lithuania not later than four days prior to an election

day and will not return until after the election day; and where there is no possibility for voters in these ships to vote in their polling stations or by post, or in a diplomatic mission or consular establishment of the Republic of Lithuania. Early postal voting at designated municipal premises is possible for voters who are unable to come to a polling station on election day due to their leave abroad, but who are leaving the country no sooner than the Wednesday or Thursday preceding election day. Non-resident citizens must cast their vote at diplomatic missions and consular establishments in person on election day or by post.

As for the European and municipal elections, voting in the polling station where the voter is registered, by way of paper ballot, is the normal method of voting. As a rule, voting in polling stations located elsewhere in the national territory is not allowed. There is only one minor exception to this rule, applied in the parliamentary and municipal elections: a voter can vote in another polling station belonging to the same single-member constituency provided that he/she has not yet voted and if, by means of electronic communication (if available) between the polling station and the electronic electoral roll, this fact can be confirmed<sup>6</sup>.

Postal voting is available for citizen residents as a matter of exception in designated locations, and only for citizen residents who cannot vote in their polling stations on election day for the following reasons: 1) in healthcare, social care or guardianship facilities – for voters who are under medical treatment or special care in these facilities and due to their health or age are not able to vote in their polling stations; 2) in military units stationed in Lithuania – for voters who perform mandatory military service and due to their service are not able to vote at their polling stations; 3) in penal institutions – for voters who are under arrest or serving a prison sentence; 4) at home – for disabled voters, voters with temporary working incapacity, and voters aged 70 and over, provided that due to their health they are unable to come to a polling station and have requested that they be allowed to vote at home; 5) at municipal premises – for voters who are unable to come to a polling station on an election day early voting has to be organised by a municipal (or singlemandate constituency) electoral commission on the Wednesday and Thursday preceding an election day in the premises of municipal institutions.

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### 17.3. MEASURES FACILITATING VOTING RIGHTS

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Based on the 2011 census, national minorities in Lithuania comprise about 15% of the population. Poles

are the largest minority with 6.6 per cent of the population, followed by Russians (5.8%), Belarusians (1.25), and other smaller minority groups. Anyhow, ballots are only available in Lithuanian language. At the elections to Seimas in October 2016, the Central Electoral Commission of Lithuania informed the OSCE/ODIHR Needs Assessment Mission that it plans to prepare comprehensive voter education materials for different categories of voters, including in Polish and Russian languages. However, interlocutors representing national minorities voiced their concern about a lack of meaningful voter information, as well as ballots, in minority languages.

The portal of the Central Electoral Commission of Lithuania operates in Lithuanian and English. In the same elections of 2016, voters were given a possibility to check their data in voter lists at precinct election commissions, through a dedicated telephone hotline and online, and to request corrections, with their decisions appealable to regional administrative courts within three days.

In recent years the Seimas of Lithuania has not addressed the issue of gender equality in political representation; gender quotas had only been introduced in the statute of the Social-Democratic Party. In 2018, Lithuania's Security Department had expressed scepticism towards the prospects of introducing e-voting as a possible measure to facilitate the access to the polls.

The Central Electoral Commission took action to promote public interest in European Parliament elections and sent personal letters to all 3,993 mobile EU citizens that were entitled to take part in the 2014 European elections, informing them of the possibility and of the personal details that they would have to provide to be included in the Lithuanian electoral roll. These letters were sent together with the registration forms to the addresses which the EU nationals in question had declared as their place of residence in Lithuania. Both the letters and the forms were sent in English, German, French, Latvian, Polish and Italian. Full information was also published on the official website of the Central Electoral Commission (also in English).

One of the main problems in the scope of electoral process facilitation in Lithuania seems to be some evidence of vote buying at European Parliament elections, opposed by the strong civil society. E.g., a civil society organization *White Gloves* aims to strengthen transparency in the democratic conduct of the European elections. In the recent elections, *White Gloves* succeeded in having votes suspected of irregularities excluded from the count. The organization has also launched a website and a hotline to report on irregularities. The campaign encouraged people to observe what was happening during the elections and to report any suspicious activities in the interest of promoting greater transparency.

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#### 17.4. STATISTICS

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Usually the turnout of nationals residing in Lithuania remains relevantly high (with 50,64% voters turnout for Seimas elections in 2016), while their compatriots overseas demonstrate small interest in political life. E.g., for the parliamentary elections of 2016, only 3,249 citizens registered to vote abroad and 279 to vote aboard ships.

Lithuania has shared the number of mobile EU citizens who actually voted in 2014 European Parliament elections – 175, i.e. 62,9% out of those who registered as eligible voters (278 people). The overall popular turnout to these elections was one of the highest in EU (47,35%), reportedly owing to the temporal coincidence with national Presidential elections, following the pattern of same coincidence in 2004.

The legal framework provides for the participation of national minorities in the electoral process on an equal basis. The establishment of political parties based on ethnic grounds is permitted. The Electoral Action of Poles in Lithuania – Christian Families Alliance, the Russian Alliance, and the Union of Russians are the registered political parties representing national minority interests.

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#### Notes:

<sup>1</sup> The text of the Constitution of the Republic of Lithuania is available at

<http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

<sup>2</sup> Law on Elections to the Seimas (*Seimo rinkimų įstatymas*), Law No. I-2721 of 9 July 1992 (as last amended by Law No. XIII-1167 of 17 May 2018), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/514bd720754811e8a76a9c274644efa9>.

<sup>3</sup> Law on Presidential Elections (*Prezidento rinkimų įstatymas*), Law No. I-28 of 22 December 1992 (as last

amended by Law No. XII-1796 of 16 June 2015), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/cb22d4521f5811e79f4996496b137f39>.

<sup>4</sup> Law on Elections to the European Parliament (*Rinkimų į Europos Parlamentą įstatymas*), Law No. IX-1837 of 20 November 2003 (as last amended by Law No. XII-2583 of 30 June 2016), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/138dcb809e0e11e796fec328fe7809de>.



**Notes (continued):**

<sup>5</sup> Law on Elections to Municipal Councils (*Savivaldybių tarybų rinkimų įstatymas*), Law No. I-532 of 7 July 1994 (as last amended by Law No. XIII-1166 of 17 May 2018), <https://e->

[seimas.lrs.lt/portal/legalAct/lt/TAD/b5ca3332754911e8a76a9c274644efa9](https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b5ca3332754911e8a76a9c274644efa9).

<sup>6</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/89e6d1a0f58111e5bf4ee4a6d3cdb874?jfwid=tu0odnkka>



## 18. Luxembourg

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### 18.1. LEGAL

#### FRAMEWORK

In Luxembourg, the right to participate in elections, together with all fundamental political rights, is enshrined in the Constitution of 2016.<sup>1</sup> In general, Luxembourg nationals are eligible to exercise their political rights, including the right to vote, but national laws may lay down the requirements (Article 9(1) Constitution of Luxembourg). As far as non-Luxembourg nationals are concerned, the second section provides that national laws may confer on them certain political rights under certain conditions. All Luxembourg nationals are equal before the law, which means they all have access to public office under the same conditions (Article 10bis(2) Constitution of Luxembourg). According to that same Article, non-Luxembourg nationals may be granted access to public office under conditions laid down by national laws. The Constitution contains some explicit provisions on electoral participation. Accordingly, Article 51 of the Constitution of Luxembourg provides that the Members of the Chamber of Deputies are directly elected on the basis of universal suffrage. The electorate in these so-called legislative elections has to fulfil the conditions laid down in Article 52, which will be discussed below. In addition, the Constitution mentions the municipal elections in Article 107. Thus, the municipal council is elected by the inhabitants of the municipality, but the conditions to exercise the right to vote and be elected are laid down by national laws (Article 107(2) Constitution of Luxembourg). However, an omission in the Constitution is the European Parliament elections. These are only regulated by national laws.

First, electoral participation in the municipal elections is regulated by the *Loi électorale du 18 février 2003* (hereinafter: Electoral Law).<sup>2</sup> For the purpose of the municipal elections, each municipality is a constituency (Article 197 Electoral Law) and the elections are held either according to the relative majority system in municipalities of less than 3.000 inhabitants (Article 199 Electoral Law) or according to the proportional representation system in municipalities of more than 3.000 inhabitants (Article 226 Electoral Law). Article 2 lays down the conditions that must be fulfilled in order to be able to participate in the municipal elections. The main requirement is that individuals are over 18 years of age on the date of the elections. In addition, they

may not be deprived of any of the political rights, either in Luxembourg or in the country of origin. An individual is excluded from the right to vote if convicted of a crime, if deprived of its right to vote by judicial sentence, or if the individual is in guardianship (Article 6 Electoral Law). Furthermore, Article 2 of the Electoral Law makes a distinction between Luxembourg nationals, citizens of the European Union and non-EU nationals. Luxembourg nationals must reside within Luxembourg. EU citizens must have resided in Luxembourg for a period of five years prior to the municipal elections, with an uninterrupted stay during the year prior to the municipal elections. Non-EU citizens must have resided in Luxembourg for a period of five years, with an uninterrupted stay during the year prior to the municipal elections and possess a valid residence card. If individuals satisfy these conditions, their right to vote is determined by their registration on the electoral lists (Article 4 Electoral Law). The rules relating to the registration on the electoral lists will be elaborated on in Section 18.2. As far as the right to be elected is concerned, Article 192 of the Electoral Law provides for the conditions that must be fulfilled, which are in essence the same as the conditions for the right to vote for both Luxembourg nationals and non-Luxembourg nationals. The one difference between the required conditions for those two groups is that non-Luxembourg nationals must reside for more than six months in the municipality. Individuals who have been deprived of the right to vote under Article 6 are unable to be elected, as are those who no longer enjoy the right to be elected following a judicial sentence (Article 193 Electoral Law). Articles 194 and 195 of the Electoral Law indicate the individuals who may not be elected into the municipal council or may not be mayor or alderman, most notably: ministers, soldiers, members of the national police, judicial authorities and certain civil servants. As the Electoral Law has been recently amended in March 2018, no new amendment is expected in the near future.

Second, as is the case with municipal elections, electoral participation in the European Parliament elections is regulated by the Electoral Law. For the purpose of the European Parliament elections, Luxembourg is one single constituency (Article 281 Electoral Law). Article 3 of the Electoral Law lays down the requirements that have to be fulfilled in order to be able to participate in the European Parliament elections. There are three main conditions: voters must be over 18 years of age on the date of the elections, they must be either Luxembourg nationals or citizens of any other Member State of the European Union, and they may not be deprived of any political rights, neither

in Luxembourg, nor in the Member State of origin. Again, Article 6 Electoral Law identifies when a person is excluded from the right to vote. Furthermore, Article 3 Electoral Law provides that Luxembourg nationals must reside in Luxembourg. If they do not, Luxembourg nationals are allowed to vote by post. EU citizens must have resided in Luxembourg on the moment of the registration on the electoral lists. However, those EU citizens who are not allowed to vote in their Member State of origin because of their residence in Luxembourg, but who have not been living in Luxembourg for five years, are exempted from fulfilling that requirement. Finally, the right to vote is determined by the registration on the electoral lists (Article 4 Electoral Law).

Turning to the right to stand as a candidate for European Parliament elections, Article 285 of the Electoral Law provides for the requirements that must be fulfilled in order to be able to stand during the European Parliament elections. Accordingly, four general requirements must be satisfied. First, an individual must be either a Luxembourg national or a national of another Member State of the European Union. Second, that individual may not be deprived of any political rights in Luxembourg or in the Member State of origin. Third, that individual must be over 18 years old on the date of the elections. Fourth, Luxembourg nationals must be resident in Luxembourg, whereas EU citizens must have their domicile in Luxembourg on the moment of nomination. This means that they must have been resident in Luxembourg for six months. Moreover, EU citizens have to submit an official declaration establishing their nationality, date and place of birth, last address in their Member State of origin, address in Luxembourg, the electoral list they were last part of; and declare that they will not exercise their right to be elected for the European Parliament in another Member State and that they are not excluded from the right to be elected in their Member State of origin. In addition, they have to submit a valid identification document. Next to those mentioned in Article 6 of the Electoral Law, individuals who have lost their right to stand in the European Parliament elections by way of judicial sentence, are not eligible (Article 286 Electoral Law). According to the information provided on the online platform [myguichet.lu](http://myguichet.lu), the majority of a list must consist of Luxembourg nationals. In addition, the list has to be supported by either 250 electorates or one sitting Luxembourg Member of the European Parliament, which must also be the case for each individual EU citizen.<sup>3</sup> As the Electoral Law has been recently amended in March 2018, no new amendment is expected in the near future.

Third, electoral participation in the national legislative elections is governed by the Electoral Law as well. However, only Luxembourg nationals can participate in these elections (Article 1 Electoral Law), so it is not necessary to discuss these here.

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## 18.2. REGISTRATION AND VOTING CONDITIONS

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As mentioned in the previous paragraph, the right to vote is determined by the registration on the electoral lists, according to Article 4 of the Electoral Law. Each municipality has its own electoral list, for which the mayor and aldermen of the municipality are responsible (Article 7 Electoral Law). Article 8 of the Electoral Law governs the registration on electoral lists, again drawing a distinction between Luxembourg nationals and non-Luxembourg nationals. Luxembourg nationals are automatically registered in the electoral lists (Article 8(1) of the Electoral Law).

In respect of municipal elections, according to Article 8(2), non-Luxembourg nationals have to file a request to be registered in the electoral lists, unless they have been registered for previous municipal elections. That request must consist of a formal declaration containing the nationality, date and place of birth, last address in the country of origin, address in Luxembourg and a statement that the EU citizen is not deprived of his right to vote. In addition, a valid identification card and an official document certifying the length of stay in Luxembourg have to be submitted as well. Once registered, non-Luxembourg nationals remain registered on the electoral lists and can only be de-registered if the individual no longer fulfils the conditions or requests to be deregistered (Article 8(4) Electoral Law). According to Article 12(1) of the Electoral Law, mobile EU citizens have the possibility to register until 87 days before the voting date, as that is when the electoral lists are closed. However, this does not apply to those who become eligible by attaining the age of 18 after this date and before the voting date, as they are put on a reserve list. Those who are registered on the electoral lists are under an obligation to exercise their right to vote (Article 89 Electoral Law).

Concerning the registration on the electoral lists for the European Parliament elections, the same conditions apply under Articles 7 and 8, as is the case for the obligation to vote (in case of mobile EU citizens, following their registration on the electoral list) under Article 89 Electoral Law. Thus, mobile EU citizens intending to participate at European Parliament elections in Luxembourg for the first time are required to request their registration on the electoral list (Article 8(3) Electoral Law).



In general, the right to vote is to be exercised in person at the polling stations. It is up to the mayor and aldermen to convene the electorate and designate the polling station where each voter should exercise his or her right to vote (Article 68 Electoral Law). However, the Electoral Law allows for an exception to this general rule: the right to vote via post. According to Article 262 of the Electoral Law, all voters are entitled to apply to vote by post at municipal elections. In order to be allowed to vote via post, the individual concerned must file a request with the mayor and aldermen via post (Article 263 Electoral Law). Nowadays, the request can be made online through the myguichet.lu platform. The request must be made on plain paper or on a predetermined form, which must indicate the full name, date and place of birth, profession, nationality, home address, as well as the address where the convocation letter must be sent to (Article 264 Electoral Law). The request must be made at least 25 days before the elections take place for applicants in Luxembourg (Article 265 Electoral Law); voters intending to vote by post from abroad are required to submit the request at the latest 40 days before Election Day.

The mayor and aldermen verify whether all conditions are satisfied. If this is the case, they will send the individual concerned the letter of convocation, which consists of the list with candidates, instructions, an electoral envelope and a transmission envelope and a voting ballot, at least 20 days before the elections. If the conditions are not satisfied, they will notify the individual concerned of their refusal (Article 266 Electoral Law). The voting ballot must then be folded in four and placed in the electoral envelope, which must be placed in the transmission envelope and must be sent to the post office, which must retain the transmission envelopes until the day of the elections, when the transmission envelopes are transferred to the polling stations (Article 271 Electoral Law). At the polling station, the transmission envelopes are opened, the names of the voters are written down and the electoral envelopes are put together in a special urn (Article 273 Electoral Law). Finally, one of the members of the polling station mixes the electoral envelopes, opens them and puts the voting ballot in the urn (Article 274 Electoral Law).

For European Parliament elections, all eligible voters are entitled to vote by post under the same conditions as in municipal elections, according to Articles 328 to 341 of the Electoral Law.

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### 18.3. MEASURES FACILITATING VOTING RIGHTS

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Through its designated website<sup>4</sup> and campaigns in the media, the Luxembourg government aims to inform

the public of their rights and obligations in the legislative, municipal and European Parliament elections. In preparation for the European Parliament elections of 2014, the Luxembourg government published a detailed brochure on electoral participation, which was available in French and in German.<sup>5</sup> In addition, the website provides practical information on the polling stations, as well as information on how to exercise the right to vote via post. Polling stations are usually set up in public buildings, such as schools, which should in general be accessible to voters with disabilities. Moreover, voters with disabilities have a right to be helped by a guide and/or a supporter when exercising their right to vote in person, in addition to having their ballot in braille (see Article 79 Electoral Law).

Regarding the promotion political participation and representation of women, the Law of 15 December 2016<sup>6</sup> amended the law on the financing of political parties.<sup>7</sup> Now, the funding of political parties is made conditional upon the equal representation of both sexes. The funding of political parties is decreased in an increasing manner: the more the candidates on a list of at least 24 candidates are of the same sex, the more the funding of the political party will be decreased. The percentages of decrease in funding range from 25% to 95%, depending on the inequality; for European Parliament elections, the decrease in funding ranges from 25% to 75% (Article 2 Law regulating the Financing of Political Parties, as amended). This amendment will only partially apply to the legislative elections of 2018: only half of the funding of the political parties can be subject to a decrease (Article 4 of the Law of 15 December 2016). Afterwards, the general rule as laid down Article 2 will apply.

In preparation for the most recent municipal elections in Luxembourg, held on the 8<sup>th</sup> of October 2017, the Luxembourg government launched the “I can vote” website (“je peux voter”).<sup>8</sup> The website formed part of a public awareness and information campaign to encourage mobile EU citizens and third country nationals to sign on to the electoral register and thus exercise their right to vote. The campaign was coordinated by the Luxembourg Reception and Integration Agency (OLAI). The website was available in French, German, English, Portuguese and Luxembourgish. In addition, leaflets in Italian, Spanish, Chinese, Arab, Polish and Croatian were available as well. Furthermore, the website provided for a quiz to test your knowledge on the municipal elections and a FAQ-platform. The website has been updated to reflect the 2019 European Parliament elections.

#### 18.4. STATISTICS

The official website of the Luxembourg government on the elections contains extensive statistical data on the municipal elections.<sup>9</sup> During the municipal elections of 2017, there were 103 constituencies, with a total of 666 polling stations. The candidates of 46 of these were elected by proportional representation, while the candidates of 53 of these were elected by relative majority, and the remaining four were governed according to the Law on Municipal Fusion. A total of 3 575 candidates were eligible, out of whom 1 274 were women and 2 301 were men. 3 308 Luxembourg nationals were candidates, only 267 candidates were non-Luxembourg nationals. According to the European Commission, 225 were EU citizens, out of whom 17 got elected.<sup>10</sup> There were 285 319 voters registered: 250 979 Luxembourg nationals and 34 340 non-Luxembourg nationals. 248 885 ballots were deposited, but only 228 904 were valid. In addition, 17 206 individuals voted via post. It is impossible to identify the number of mobile EU citizens who

exercised their right to vote in the municipal elections, as no difference is made between EU citizens and third country nationals.<sup>11</sup>

In respect of European Parliament elections, no distinction was made concerning the number of Luxembourg nationals and non-Luxembourg nationals who exercised their right to vote. The only statistical data that was available for the 2014 European Parliament elections are the following. A total of 264 433 voters were registered, but only 226 218 actually exercised their right to vote. Only 203 772 valid ballots were deposited, as 22 446 were either void or left blank.<sup>12</sup>

During the national legislative elections of 2018, as indicated above, only Luxembourg nationals have a right to vote. In addition to voting in person, they can also exercise their right to via mail when unable to go to the polling stations. In total, 233 014 ballots were deposited, of which 216 177 were valid. In addition, 38 276 Luxembourg nationals voted via post.

#### Notes:

<sup>1</sup> Constitution of the Grand Duchy of Luxembourg of 17 October 1868 (*Constitution du Grand-Duché du Luxembourg*), consolidated text available at <http://legilux.public.lu/eli/etat/leg/recueil/constitution/20171020>.

<sup>2</sup> Electoral Law of 18 February 2003 (*Loi électorale du 18 février 2003*), as last amended by the Law of 18 August 2018. The consolidated version of the Electoral Law, as well as relevant Luxembourg electoral legislation, is available at <http://data.legilux.public.lu/file/eli-etat-leg-recueil-elections-20180625-fr-pdf.pdf>.

<sup>3</sup> See: <https://guichet.public.lu/de/citoyens/citoyennete/elections/elections-europeennes/candidat-election-europeennes.html>.

<sup>4</sup> See <https://elections.public.lu/fr.html>.

<sup>5</sup> See: <http://luxembourg.public.lu/en/publications/o/elections/index.html>.

<sup>6</sup> Law of 15 December 2016 (*Loi du 15 décembre 2016 portant: 1. modification du Code du travail; 2. modification de l'article 2 de la loi modifiée du 21 décembre 2007 portant réglementation du financement des partis politique*), <http://legilux.public.lu/eli/etat/leg/loi/2016/12/15/n2/10>.

<sup>7</sup> Law on 21 December 2007 regulating the financing of political parties (*Loi du 21 décembre 2007 portant réglementation du financement des partis politiques*), text as last amended available at <http://data.legilux.public.lu/file/eli-etat-leg-recueil-elections-20180625-fr-pdf.pdf>.

<sup>8</sup> <http://www.jepeuxvoter.public.lu/en.html>.

<sup>9</sup> See <https://elections.public.lu/fr.html>.

<sup>10</sup> COM(2018)44 final, p. 7.

<sup>11</sup> <https://elections.public.lu/fr/elections-communales/2017/resultats.html>.

<sup>12</sup> <https://elections.public.lu/fr/elections-europeennes/2014/resultats.html>.

## 19. Malta

### 19.1. LEGAL FRAMEWORK

The Maltese Constitution sets out that Malta is a democratic republic founded on work and respect for the fundamental rights and freedoms of the individual (Art.1). It stipulates two types of direct elections: the elections to the House of Representatives (Articles 51-58) and the elections to the Local Council (Art. 115A). There is no mention of the European Parliament Elections in the Constitution.

The legal framework regulating municipal elections can be found in *Chapter 363 of the Local Councils Act*.<sup>1</sup> Art. 8 (1) stipulates that the election of councillors shall be held every five years by means of the system of proportional representation using a single transferable vote. The next elections are to take place in 2019 and shall as much possible be held on the same day as the elections for the European Parliament (Art. 8(1)).

When looking at active voting rights, Art. 5 (1) provides that every Maltese national that has attained the age of 16 years and has not been convicted of any offence related to the election of members of the Local Councils or of the Administrative Committees<sup>2</sup> shall be entitled to vote in the elections of the Local Councils and of the Administrative Committees. Art. 5 (2) reiterates this rule for every national of a Member State of the European Union. An additional requirement is laid down in Art. 7 which provides that in order to be eligible to vote, one must either be a part of the Electoral Register or be a part of the European Union Electoral Register which relates to the locality for which local councillors are to be elected. Art. 57 of the Maltese Constitution jointly with Art. 15 of *Chapter 354 - General Elections Act*<sup>3</sup> provides that in order to be registered in the Electoral Register, one must be a Maltese Citizen and 16 years or older. In addition, the Maltese national must have resided six months in Malta— either continuously or in the aggregate - during the eighteen months immediately preceding his registration in the Electoral Register. This report will elaborate on this residence criterion below within the context of the elections to the House of Representatives. The criteria for being part of the European Union Electoral Register are equally covered below.

In terms of passive voting rights, Art. 11 provides that any person registered as a voter in the Electoral Register or the European Union Electoral Register, with the exception of public officials, will be allowed to stand as a candidate in Local Council Elections. Art. 12 provides further restrictions as to who cannot stand as a candidate. It excludes the following persons:

- a) members of the House of Representatives or of any similar institution in another Member State of the European Union; (aa) members of the European Parliament;
- b) members of any disciplined force<sup>4</sup> as defined in article 47(1) of the Constitution of Malta;
- c) persons employed by the Council for which elections are to be held or Executive Secretaries in any one of the Local Councils;
- d) persons who hold any office the functions of which involve any responsibility for or in connection with the conduct of any election of members of the Council or the compilation of or revision of any electoral register;
- e) undischarged bankrupts who have been adjudged or otherwise declared bankrupt under any law in force in Malta;
- f) persons who are interdicted or incapacitated for any mental infirmity or for prodigality by a court in Malta, or is otherwise determined to be of unsound mind;

Finally, Art. 5 (1) and Art. 5 (2) provide that the minimum age for the exercise of passive voting rights is 18 years.

The rules for the European Parliament Elections are laid down in *Chapter 467 - European Parliament Elections Act*.<sup>5</sup> For the purpose of the European Parliament Elections, the territory of Malta constitutes one single electoral division (Art. 8). Art. 7 provides that the election takes place according to the principle of proportional representation by means of a single transferable vote.

In terms of active electoral rights, Art. 10 provides that every person whose name appears in the Electoral Register or in the European Union Electoral Register and who has not been convicted of any offence relating to the election of members to the House of Representatives, to the members of Local Councils or to the Members of European Parliament shall be entitled to vote. However, it must be noted that five requirements must be met in order to be part of the European Union Electoral Register (Art. 11). Firstly, that person must be a national of an EU Member State and may not appear in the Electoral Register. This first criterion aims to exclude a double registration, that is a registration in both the Electoral Register and the European Union Electoral Register. Secondly, he or she must be in possession of a valid identification document in accordance with the *Identity Card and other Identity Documents Act*.<sup>6</sup> This means that a Maltese voter must have a valid Maltese e-ID card and that an EU-citizen needs a valid e-Residence Card. This

identification document continues to fulfil the traditional function of physical identity papers. In addition, it entails access to the online services of the Maltese Government. Thirdly, the voter must be 16 years or older and must have resided in Malta or any other EU Member State six months during the eighteen months preceding his registration in the register. Fourthly, the person must declare that he or she will only exercise his right to vote in the European Parliament Elections for the Maltese Members of the European Parliament. Finally, the voter must declare that he or she is not deprived of his right to vote in his home Member State. If any of these five criteria is not met, the voter will not be added to the European Union Electoral Register. The voter will equally not be registered in the European Union Electoral Register if he or she is of unsound mind, serving a sentence of imprisonment exceeding twelve months or if he or she is convicted of any offence related to the election of members of the House of Representatives, of members of Local Councils or members of the European Parliament (Art. 12). Within the context of the European Parliament Elections Act, a person is considered of unsound mind if he or she is interdicted or incapacitated for any mental infirmity by a court in a Member State or is otherwise determined in a Member State to be of unsound mind.

Art. 18 specifies that if a person possesses the active electoral right by his or her registration in the Electoral Register or in the European Union Electoral Register, he or she is also entitled to stand as a candidate for European Parliament elections, except for public officers who might be restricted by other regulations. Art. 19 restricts the working of Art. 18 by excluding:

- 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.

With regard to the elections for the House of Representatives, only those registered in the Electoral Register are entitled to vote. As established above, only Maltese nationals are entitled to vote (Art. 57 a)) and a residence criterion is laid down (Art. 57 c)). According to this last requirement, the Maltese national must have resided six months in Malta – either continuously or in the aggregate - during the eighteen months immediately preceding his registration in the Electoral Register. In a landmark ruling in 2003, the Constitutional Court in Malta gave a broad interpretation to the word 'residence'. It ruled that

"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>7</sup>

Although this judgment gives a broad interpretation of residence, this still means that Maltese nationals that have exercised their rights under the freedom of movement can be disenfranchised from the elections to the House of Representatives. This report will not elaborate any further on the elections to the House of Representatives, as these elections only concern Maltese citizens residing in Malta.

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## 19.2. REGISTRATION AND VOTING CONDITIONS

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When looking at the registration for municipal elections, one must distinguish again between the Electoral Register and the European Union Electoral Register. Art. 21 of *Chapter 354 of the General Elections Act* provides that Maltese citizens will be registered automatically in the Electoral Register if they meet the requirements set out in this *Chapter* and in the Maltese Constitution as specified above. Such an automatic registration for the European Union Electoral Register does not exist. Art. 14 of *Chapter 467 of the European Parliament Elections Act* sets out that persons will only be registered in the European Union Electoral Register if they, apart from satisfying the requirements of Art. 11 as set out above, declare to the electoral

commission that they are resident in Malta, that they will exercise their right to vote in Malta only and that they have not been deprived of their right to vote in their Home Member State. In addition, they must provide information on their nationality, the date on which they took up residence in Malta or in any other Member State, their address in Malta, the locality or constituency in their home Member State or any other Member State on the Electoral Roll of which their name was last registered. Finally, they must have a valid identity document.

With regard to the actual voting for the municipal elections, one must bear in mind that Malta uses a strict policy of exclusive in-country voting. This means that voters cannot cast their votes outside of Malta.<sup>8</sup> This becomes clear when looking at the procedure leading up to the day where (EU)-citizens go to the polls. Art. 15 of the *Local Councils (Elections) Regulation 1993*<sup>9</sup> provides that the electoral commission will issue a notice in the Gazette setting out the day of the election at least 35 days before the day fixed for the municipal elections. Art. 16 then sets out that within three days of the publication of the Notice, the electoral commission will issue another notice in the Gazette specifying the place where, and date and time when the commissioners will receive nominations of candidates for election as councillors and the places where, and the days and hours when voting shall be held. Then, within 19 days of the publication of the notice, the electoral commission will send each voter a voting document by post (Art.17). According to Art. 39 (2) one cannot vote without this voting document. On election day, the voter will hand this voting document over to the commissioner at the polling station, who will then give him or her a ballot paper (Art. 39 (4)). Art. 33 (1) provides that the electoral commission will not provide more than one polling station for each locality and that as far as possible that polling place is within the locality.

Regarding the European Parliament Elections, the same difference between voters that are part of the Electoral Register and voters included in the European Union Electoral Register persists. This means that Maltese citizens that are included in the Electoral Register are automatically entitled to vote in the European Parliament Elections. European Union Citizens must first register in the European Union Electoral Register.

Also for these elections, Malta has opted for exclusive in-country voting. This has consequences for the procedures to be followed in the weeks before the actual voting takes place. Art. 9 of the *Chapter 467 of the European Parliament Elections Act* obliges the electoral commission to publish a notice in the Gazette

specifying the date of the European Parliament Elections. By virtue of Art. 21 of *Chapter 467 of the European Parliament Elections Act*, the provisions of the *Chapter 354 of the General Elections Act* apply to the conduct of the European Parliament Elections. Art. 45 of the *Chapter 354 of the General Elections Act* provides that within three days of the notice in the gazette, the place where, and date and time when the electoral commission will receive nominations of candidates. In addition, the places where, and the days and hours when voting shall be held, will be published. Art. 46 (1) sets out that the electoral committee will serve on every voter a voting document within 19 days of that first publication. The possession of such a voting document serves as a strict precondition for voting (Art. 70 (2)). On election day, the voter will hand this voting document over to the commissioner at the polling station, who will then give him or her a ballot paper (Art. 70 (4)).

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### 19.3. MEASURES FACILITATING VOTING RIGHTS

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As mentioned above, Malta uses an exclusive in-country voting system. However, in order to make sure that most citizens have the opportunity to vote, there are two exceptions.

Firstly, Art. 77 (3A) (A) provides that for both municipal elections and European Parliament Elections, those that have received a voting document and have declared under oath before the electoral commission that he or she will not be in Malta or that he or she will be hospitalised on the day of the election, may vote 7 days before the polling day.

Secondly, the Maltese government subsidizes flights back to Malta for eligible voters that are abroad for state representation, work purposes, studying purposes or medical treatment. These eligible voters can purchase return Airmalta flight tickets at a lower accessible rate so that they can cast their votes in Malta.<sup>10</sup>

Furthermore, special attention is paid to the ability of handicapped persons to vote during the elections. With regard to municipal elections, an attempt is made at making the polling stations accessible for handicapped persons, including persons in wheelchairs (Art. 33 (2) *Local Councils (Elections) Regulation 1993*). Furthermore, any voter who can prove that he or she is unable to mark his ballot paper by reason of blindness, other physical cause or illiteracy, may request help from an assistant commission to mark the paper on his behalf. Alternatively, that voter may also request the provision of a Braille Template as well as a playback listening device (Art. 41 (1)). Finally, one must notice that special rules exist for those voting from



retirement homes and hospitals (Artt. 48-52). The same actions are undertaken for European Parliament Elections (Art. 64 (3), Art. 72 (1) and Artt. 80-84 *Chapter 467 - European Parliament Elections Act* respectively).

There were no other specific campaigns incentivising Maltese Citizens or other EU-citizens to vote during the Municipal and European Parliament Elections.

#### 19.4. STATISTICS

With regard to municipal elections, an average of 73,9% voter turnout can be witnessed.<sup>11</sup> However, the different municipalities have not published any

information on the voter turnout of EU-citizens in these elections. There are equally no centrally collected official data about EU-citizens that stood as a candidate or got elected in municipal elections.

In the 2014 European Parliament Elections, there was a similar voter turnout (74,8%). No estimates exist as to how many EU-Citizens were eligible to vote and how many of them did vote. However, in 2011 roughly 21,000 EU-citizens were registered on the Local Council Electoral Register and should thus also have been registered on the European Union Electoral Register.<sup>12</sup>

#### Notes:

<sup>1</sup> Chapter 363 – Local Councils Act, as amended by Legal Notice 53 of 1995, Act XII of 1995; Legal Notices 170 of 1995, 28, 97 of 1996; Acts: VIII, XIII, XV of 1996; Legal Notice 205 of 1996; Act XVI of 1997; Legal Notices 107 of 1997, 87, 255 of 1998, Act XXI of 1999; Legal Notices 7, 19, 77 of 2001, 48, 79, 153 of 2002; Act XII of 2002; Legal Notice 117 of 2003; Acts XVI of 2003, III of 2004; Legal Notice 326 of 2004; Act I of 2005; Legal Notices 76, 158, 272 of 2005, 111, 181 of 2006; Acts II, XXI of 2007; Legal Notices 82, 96, 372, 425 of 2007, 26, 128, 161 of 2008; Acts XVI of 2008, XVI of 2009; Legal Notice 179 of 2010; Act V of 2011; Legal Notices 230, 231, 313 of 2011, 213, 426 of 2012, 36 of 2013; Acts VII, XVI of 2014; Legal Notice 157 of 2014; Acts XXIV, XL of 2015, and Legal Notices 268 of 2017 and Act XIX of 2018 and XXVIII of 2018, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8833&l=1>, last accessed on Thursday 29th of November 2018

<sup>2</sup> The Administrative Committees are elected pursuant to Art. 47A of Chapter 363 of the Local Councils Act juncto Schedule No. 9 Chapter 363 of the Local Councils Act. The Administrative Committees are only elected in certain areas.

<sup>3</sup> Chapter 354 General Elections Act, as amended by Acts XXIV of 1995, XV of 1996; Legal Notice 178 of 1996; Acts VI of 2001, XVI of 2002 and XXI of 2007; Legal Notice 425 of 2007; Acts VII of 2009, XIV of 2012; Legal Notice 426 of 2012; Acts VII, XVII of 2014; Legal Notice 284 of 2014; Act XXIV of 2015, Legal Notice 350 of 2017, , IV of 2018 and XIX of 2018, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8824&l=1>, last accessed on Thursday 29th of November 2018

<sup>4</sup> Art. 47 (1) of the Maltese Constitution clarifies that a member of the disciplined force includes members of the naval, military or air force of the Government of Malta; members of the Malta Police Force; members of any other

police force established by law in Malta and members of the Malta Prison Service.

<sup>5</sup> Chapter 467 - European Parliament Elections Act, as amended by Legal Notices 427 of 2007, 308 and 426 of 2012, 77 of 2014, Act VII of 2014 and IV of 2018, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8933>, last accessed on Thursday 29th of November 2018

<sup>6</sup> Chapter 258 Identity Card and other Identity Documents Act, as amended by Acts XXVI of 1981, XIII of 1983 and XI of 1993; Legal Notice 423 of 2007; and Act III of 2008. This Act was substituted by means of LEGAL NOTICE 308 of 2012 (made under the provisions of the European Union Act), as amended by Legal Notice 426 of 2012 and Act XV of 2014, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8751&l=1>, last accessed on Thursday 29th of November 2018

<sup>77</sup> Daniela DeBono; Report of the EUDO Citizenship Observatory: Access To Electoral Rights Malta,p.5; Judgement of the Civil First Hall (Constitutional Jurisdiction), Vassallo Dr. Harry Noe Vs Kummissjonarju Elettorali Principali Noe Et Noe, 21 March 2003

<sup>8</sup> Daniela DeBono; Report of the EUDO Citizenship Observatory: Access To Electoral Rights Malta,p.2

<sup>9</sup> Local Councils (Elections) Regulation 1993, Schedule 3 of the Chapter 363 – Local Councils, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8833&l=1>, last accessed on Thursday 29th of November 2018

<sup>10</sup> Daniela DeBono; Report of the EUDO Citizenship Observatory: Access To Electoral Rights Malta,p.4

<sup>11</sup> [https://www.um.edu.mt/\\_\\_data/assets/excel\\_doc/0009/207369/tr-turnout1.xls](https://www.um.edu.mt/__data/assets/excel_doc/0009/207369/tr-turnout1.xls), last accessed on Monday the 29th of October 2018

<sup>12</sup> Daniela DeBono; Report of the EUDO Citizenship Observatory: Access To Electoral Rights Malta,p.8

## 20. The Netherlands

### 20.1. LEGAL FRAMEWORK

In the Netherlands, the right to electoral participation, together with all other fundamental rights, is enshrined in the Dutch Constitution. All individuals residing in the Netherlands are treated equally (Article 2). However, only Dutch nationals are on an equal footing eligible for public office (Article 3). The general right to electoral participation, together with the right to vote, is laid down in Article 4. Accordingly, every Dutch national has the right to participate in elections, by voting and/or by running as a candidate. However, national legislation may set limits and exceptions to this general right. As far as non-Dutch nationals are concerned, the Constitution does not refer to them regarding electoral participation in general, although it does not remain completely silent on their participation. Returning to the right to participate in elections, the Dutch Constitution provides that the members of the both Chambers of the Dutch Parliament (*Staten-Generaal*) are to be elected through proportional representation (Article 53). The members of the Second Chamber are elected directly by the Dutch nationals who are over 18 years old, although national legislation may limit the electoral participation of Dutch nationals living abroad (Article 54). The second section indicates who may be excluded from the right to vote: those individuals who are convicted by a court of law in last instance, depriving them of their political rights. The members of the First Chamber are elected indirectly by the provincial councils (Article 55). In order to be eligible for either of the chambers of parliament, an individual must have the Dutch nationality, be over 18 years old and not be excluded from the right to vote (Article 56). Article 59 states that any other matter concerning the right to vote and the national legislative elections must be regulated by national legislation. According to Article 129, the members of the provincial councils and municipal councils are to be elected by the residents thereof, who are Dutch nationals and satisfy the other conditions as required for the national legislative elections: they must be over 18 years old and not be excluded from the right to vote. The same conditions apply for the eligibility of candidates for both councils. Furthermore, national legislation may attribute the right to electoral participation in the municipal elections to non-Dutch nationals, provided they fulfil the conditions that are required for Dutch nationals (Article 130). However, the Constitution does not mention the European Parliament elections. These are only regulated by national legislation.

First, electoral participation in the municipal elections is governed by the *Kieswet* (hereinafter: the Electoral

Law). For the purposes of the municipal elections, each municipality forms a constituency and elections are held on the basis of proportional representation, as was already identified on the basis of the Constitution. Article B3 makes a distinction between EU citizens and third country nationals. Accordingly, the residents of the municipality may participate in the municipal elections if they are over 18 years old on the day of the elections. Those who are not EU citizens (i.e. third country nationals) may only participate in the municipal elections if they have had legal residence in the Netherlands for an uninterrupted period of five years prior to the day of nomination and are not part of a diplomatic or consular delegation or part of the family household of such a person. Thus, EU citizens and Dutch nationals resident in the municipality may participate in the municipal elections if they are over 18 years old on the day of the elections. Residency is determined by Article B4 as the actual place of residence. In essence, this condition is satisfied if the individual has an address in the municipality and is registered with the competent authorities.

Although the Constitution delegates the legislative power to confer the right to be a member of the municipal council on non-Dutch nationals to the legislator, the Electoral Law remains silent on their eligibility. Conversely, it is the *Gemeentewet* (hereinafter: Municipal Law) that lays down the requirements for the eligibility of non-Dutch nationals. Accordingly, Article 10 makes a distinction between EU citizens, including Dutch nationals, and third country nationals. The former must be resident in the municipality, be over 18 years old and not be excluded from the right to vote. The latter must satisfy an additional requirement, being legal and uninterrupted stay of at least five years prior to the day of nomination. In addition, they will need to apply as a candidate for the municipal elections on the Monday between 30 January and 5 February (Article F1 Electoral Law). However, each political party will have to deliver a depository fee (Article H14) and multiple declarations of the intent to vote (Article H4). The same goes for “one man parties”. Individuals can only be excluded from the right to vote by a judicial decision in last instance, following which the Minister of Justice will notify the mayor of the exclusion (Article B5). If an individual satisfies the conditions, it is up to the mayor and aldermen to register that individual as a voter (Article D1). An important derogation to these general rules is made regarding the residence requirement. As long as Dutch nationals file a declaration of intent to move to the municipality upon their election, the residence requirement does not need to be fulfilled. It

is not clear whether this derogation also applies to EU citizens.

Second, electoral participation in the European Parliament elections is also governed by the Electoral Law. For the purposes of the European Parliament elections, the Netherlands is a single constituency (Article Y12). Article Y3 lays down the conditions that must be fulfilled by Dutch nationals and EU citizens to be able to participate in the elections for the European Parliament. There are two main conditions that both groups must fulfil: they must be over 18 years old on the day of the elections and they may not be excluded from the right to vote in the Netherlands (or their country of origin regarding the EU citizens). In addition, EU citizens must have their actual residence in the European part of the Netherlands. Dutch nationals living in the Caribbean part of the Netherlands are treated as if living abroad and thus allowed to vote via post, as will be discussed below. Again, Article B5 determines when a person is excluded from the right to vote, as this provision applies equally to the European Parliament elections (Article Y2). Concerning the right to be elected to the European Parliament, Article Y4 provides that Dutch nationals are eligible if they satisfy the conditions that are required for the eligibility to the chambers of parliament by Article 56 of the Constitution: having Dutch nationality, being over 18 years old and not being excluded from the right to vote. Furthermore, EU citizens can be elected to the European Parliament if they have their actual place of residence in the European part of the Netherlands, are over 18 years old and are not excluded from the right to be elected. Dutch nationals who are resident outside of the Netherlands can file a request to vote for the European Parliament elections in the Netherlands, in accordance with Articles Y2 jo. D3, but they will have to declare that they will not exercise their right to vote in their Member State of residence. This declaration is not required when residing in a third state. In addition, EU citizens either participate in the European Parliament elections in the Netherlands or in their Member State of origin (Article Y31). They must file a written request to be registered on the electoral list, the so-called Y32 form, which the EU citizen receives at the moment they register with their municipality. That request must contain at least the address in the Netherlands and the last address in the Member State of origin where the EU citizen was registered as a voter, a valid identification document, and a declaration that the individual concerned is not excluded from the right to vote in the Netherlands or in the Member State of origin and that the individual will only exercise the right to vote in the Netherlands.

A number of amendments to the Electoral Law are in the pipeline or pending entry into force. These

amendments concern, among others, the rights of disabled persons, the rights of Dutch nationals to vote from abroad, and the constitutional position of the special municipalities or public bodies Bonaire, Saba and Sint Eustatius (hereinafter: the BES Islands) which will all be touched upon below.

Thirdly, electoral participation in the national legislative elections is governed by the Electoral Law as well. However, only Dutch nationals can participate in these elections (Article B1). The same is applicable for the participation in the elections of the provincial councils.

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## 20.2. REGISTRATION AND VOTING CONDITIONS

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As mentioned before, the mayor and aldermen are responsible for the registration of the voters in their municipality who satisfy the conditions mentioned above (Article D1 Electoral Law). More detailed rules relating to the elections in general and the registration and voting conditions in particular can be found in the *Kiesbesluit* (hereinafter: the Electoral Decision). For the registration on the electoral list, a distinction is made between the national elections (i.e. the national legislative elections, provincial council elections and municipal elections) and the European Parliament elections.

On the one hand, registration on the electoral lists for the national elections is an automatic process. The mayor and aldermen of each municipality deduce the necessary information from the Dutch population register in order to determine the eligibility of the residents of that municipality (Article D1 Electoral Decision), with the help of the Immigration and Naturalisation Service (hereinafter: IND). When registering voters, the mayor and aldermen include the following data on the electoral list: the full name, the date of birth, the address and the nationality (Article D2). As long as an individual satisfies the conditions, that person remains registered (Articles D6 Electoral Law and D2 Electoral Decision).

On the other hand, registration on the electoral lists for the European Parliament elections is not always an automatic process. As Article Y2 Electoral Law provides that the same rules apply to the European Parliament elections as to the national elections, the registration on the electoral lists of Dutch nationals living in the Netherlands is an automatic process. However, the mayor and aldermen only register the EU citizens as voters on the electoral list if they file a written request (Article Y32 Electoral Law). That request must contain at least the address in the Netherlands and the last address in the Member State of origin where the EU citizen was registered as a voter, a valid identification

document, and a declaration that the individual concerned is not excluded from the right to vote in the Netherlands or in the Member State of origin and that the individual will only exercise the right to vote in the Netherlands. The necessary forms to request the registration on the electoral list are forwarded by the mayor and aldermen to the EU citizen. Once registered, EU citizens retain their right to vote in European Parliament elections until they are removed from the electoral list, either because they no longer fulfil the necessary conditions, or because they requested to be removed (Article Y33), or if the person concerned acquires the Dutch nationality (Article Y33a) because from then on that person will be automatically registered.

In general, the right to vote is to be exercised in person at the polling stations (Article J5 Electoral Law). The mayor convenes the electorate through poll cards (Article J7) and informs the voters of the polling stations throughout the municipality where each voter can exercise his or her right to vote (Article J4). However, the Electoral Law allows for exceptions to this general rule. There are three exceptions: voting via a voter card, voting via proxy and via postal vote. There have also been some experiments on voting via internet and via a smartphone-application, but these will not be considered.

First, voting via a voter card allows the voter to exercise the right to vote for the organ to be elected in another municipality than the one where the voter is supposed to vote (Article K1 Electoral Law). It is evident that this exception does not apply to the municipal elections, since the organ to be elected is the municipal council, which can only be elected within the territory of the municipality. Nowadays, voters are no longer bound to one polling station, but are free to cast their vote in their preferred polling station within their municipality. The exception applies to all other national elections to the extent that voters remain within the constituency, as well as to the European Parliament elections. The voter may request, in writing at least five days before the elections or in person at least a day before the elections, a voter card with the mayor of the municipality (Article K3). Once the request is authorised, the voter will receive the voter's pass, which the voter is obliged to use when exercising the right to vote (Article K4).

Second, voting via proxy allows the voter to exercise the right to vote when the voter is not able to reach the polling station in person (Article L1). It is possible to vote via proxy, either by written request or by passing on the voting pass or voter's pass (Article L2). The written request must be filed with the mayor of the municipality at least five days before the elections

(Article L7) and based on the designated form, also identifying the proxy (Article L8). When passing on the voting or voter's pass, that pass is transformed into the certificate of proxy by signature (Article L14). Once a proxy is granted, it can no longer be withdrawn (Article L5). The proxy is required to cast his or her own vote at the same time (Article L3) and may not accept more than two proxy votes per election (Article L4). The proxy must also possess the certificate of proxy in order to vote by proxy (Article L6). The proxy hands over the certificate of proxy to the chairman of the polling station in order to vote (Article L17).

Third, voting via post allows the voter to exercise the right to vote when the voter is not able to reach the polling station in person because of residence abroad or temporary absence at the time of the elections (Article M1). The Dutch nationals living abroad are registered by the mayor and aldermen of The Hague (Article D2), but can only vote via post if they do not have the right to vote via voter card or proxy (Article M1). Furthermore, they have to file a request to vote via post with the mayor of The Hague in accordance with the designated form (Article D3). The Dutch nationals who are temporary absent have to file a request to vote via post in accordance with the designated form to the mayor of their municipality, who will forward it to The Hague (Article M3). Those who are allowed to vote via post receive the following: a ballot (which can be sent at a later date), a retour envelope, a postal vote certificate, an envelope for the ballot, and a manual for the voter (Article M6). Article M7 provides for the procedure to be followed: the voter must cast his or her vote, fold the ballot and put it in the designated envelope, sign the postal vote certificate, add a copy of an ID that is valid at the moment of nomination, and put everything in the retour envelope and send it with sufficient stamps to the municipality of The Hague. The chairman of the polling station opens the retour envelope and takes the postal vote certificate, the copy of the identification document and the envelope containing the ballot, checks the validity of the former two, and passes the envelope containing the ballot to another member of the polling station who deposits it in the urn (Article M10), but only if received before 15:00 on the day of the elections<sup>1</sup>.

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### 20.3. MEASURES FACILITATING VOTING RIGHTS

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Through its designated website of the Kiesraad, the national body responsible for the organisation of the elections (<https://www.kiesraad.nl/>), which is available in Dutch and English, the Dutch government aims to inform the public of their rights and obligations in all elections taking part on the Dutch territory. Next to



general information on elections, the website in particular provides for information on how and when to register as a voter, the opening hours of the polling stations, how to cast a vote, etc. However, the English version of the website does not mention the Y32 form at all.

Polling stations are usually set up in public buildings such as schools, which should in general be easily accessible to voters with disabilities. In addition, Article J4 Electoral Law provides that the mayor and aldermen must make sure that at least 25% of the polling stations within their municipality are organised in such a way that voters with physical disabilities can exercise their right to vote as independent as possible. The mayor may require special schools to make available the classrooms that meet these needs, if necessary subject to financial compensation.

There are no real linguistic minorities in the Netherlands who are recognized. However, the province Friesland, or Fryslân, has a somewhat special status, as both Dutch and Frisian are recognised as official languages, according to Article 2 Wet gebruik Friese Taal (hereinafter: Law on the use of Frisian). In addition, mayors (Article 65 Municipal Law), aldermen (Article 41a Municipal Law) and members of the municipal council (Article 14 Municipal Law) are allowed to take their oaths of office in both Dutch and Frisian, and Article H2 Electoral Decision allows the lists of the candidates for the provincial council elections, the municipal elections and the water boards elections to be drafted in Frisian.

Another special status, as was previously mentioned, is conferred on the special municipalities or public bodies, the BES Islands. As far as the island council elections are concerned, which are the Caribbean counterparts of the municipal council elections, Dutch nationals must be resident and over 18 years old. Non-Dutch nationals, including EU nationals, must fulfil the additional requirement of legal residence of five years prior to the elections (Article Ya14 Electoral Law). Furthermore, only Dutch nationals are allowed to exercise their right to vote in the European Parliament elections and in the same way as in the European part of the Netherlands (Article Ya13 Electoral Law), whereas the other EU citizens are not allowed to participate in the European Parliament elections. Thus, the electoral rights of EU citizens in the BES Islands differ from those of EU citizens in the European part of the Netherlands. Although the BES Islands are part of the Netherlands, they are situated outside the European part of the Netherlands, which means they are considered Overseas Countries and Territories. Therefore, EU legislation does not apply automatically on their territory and they are considered to be “third

countries”. Thus, EU citizens residing in the BES Islands are considered to live in third countries for the purposes of EU law. The foregoing explains why these EU citizens do not enjoy the same rights in the Caribbean part of the Netherlands as in the European part of the Netherlands, as was also explained by the Dutch government when the 2010 reform of the BES Islands was initiated.<sup>2</sup>

Regarding the promotion of political participation and representation of women, the Dutch legislator remains silent. The legislator has not adopted any legislation trying to promote the political participation and representation of women, although the debate increased over the course of the past years, exemplified by a series of judicial decisions on the internal rules of a political party which prohibited women from standing as candidates<sup>3</sup>. In the Netherlands, the political participation of women is the following: 35% in the Second Chamber, 28% in the municipal councils, 21% aldermen, 22% mayors, 40% in government, and 42% Dutch members of the European Parliament.

The Dutch government did not take any particular measures to facilitate the electoral participation of EU citizens and third country nationals during the municipal elections of 2018, nor did it launch any campaigns to inform the non-Dutch nationals of their rights and obligations in the municipal and European Parliament elections. However, where the central government does not act, the municipalities do. The results of an enquiry commissioned by the Dutch government showed that during the municipal elections of 2014, 30% of the municipalities provided information to non-Dutch nationals residing on their territory via websites, folders, etc., although in more than 90% of the municipalities that information was not provided for in more than one language.<sup>4</sup> According to that same study, 61% of the municipalities provided information to the EU citizens residing on their territory concerning the European Parliament elections via websites, folders and personal letters. This time, the information was not distributed in more than one language in 64% of the municipalities.<sup>5</sup> It seems that the distribution of information to non-Dutch nationals concerning their participation in elections is fragmented and insufficient, as this differs from municipality to municipality. Following the complaint of a Czech national living in a Dutch municipality, the Dutch National Ombudsman in essence agreed with the findings of the aforementioned study. The municipality in question should be more active in its approach to inform the EU citizens, even in case the EU citizen moved from one Dutch municipality to another.<sup>6</sup>





## 20.4. STATISTICS

In the Netherlands, not much statistical data is collected on electoral participation, as most official results only include the absolute number of voters. In the 2014 municipal elections, 12.489.683 people were allowed to vote, this figure also includes non-Dutch nationals. 6.744.390 of them actually exercised their right to vote. However, no distinction can be made between Dutch nationals and EU citizens and third country nationals because voting bureaus only receive the voting pass, which does not include the nationality of the voter. In 2014, 352.733 EU citizens were 18 years old, but not every EU citizen was allowed to vote, as some of them only turned 18 years old after the date of the elections. In the 2018 municipal elections, 12.461,540 people were allowed to vote, with 6.849.788 exercising their right to vote. In that year, 455.139 EU citizens were 18 years old, but again not all of them were allowed to vote as some only turned 18 years old after the election date.

During the 2014 European Parliament elections, 12.815.496 people were allowed to vote, including EU citizens and Dutch nationals living abroad. 4.782.251 voters exercised their right to vote and 48.169 EU citizens were registered as a voter in accordance with

the Y32 form. The turnout of EU citizens is very low, as 352.733 EU citizens were over 18 years old in 2014. The Dutch nationals living abroad exercised their right to vote as well. 23.799 Dutch nationals living abroad requested to be registered as a voter, but casted their vote using different means. 21.017 Dutch nationals casted their vote via post, 1.804 did so via a voter card and the remaining 978 exercised their right to vote via a vote by proxy.<sup>7</sup> Comparing these numbers to those of 2009 shows a significant decrease in the number of requests for registration, as 39.601 requests for registration had been granted in 2009. This can be explained by referring to the case law of the European Court of Justice. In the *Eman and Sevinger* ruling<sup>8</sup>, the Court ruled that Dutch nationals living in the, at that time, Caribbean part of the Netherlands (Aruba, Curacao, Sint-Maarten and the BES Islands) had to be treated as Dutch nationals living abroad, thus requiring them to register if they wanted to vote. This was eventually done by 20.944 of them.<sup>9</sup> This explains the higher number of registrations in 2009, but the decrease in 2014 can be best explained by the 2010 reform of the BES Islands. Following this reform, Dutch nationals living in the BES Islands no longer needed to register, but are automatically entitled to vote.

### Notes:

<sup>1</sup> As was ruled by a Dutch court of first instance: Rechtbank Den Haag 9 Maart 2017, ECLI:RBDHA:2017:2723.

<sup>2</sup> Kamerstukken II 2008/09, 31 956, nr. 3 (Memorie van Toelichting), pp. 5, 9 and 16-17.

<sup>3</sup> See for the final judicial decision: HR 9 April 2010, ECLI:NL:HR:2010:BK4549.

<sup>4</sup> GfK, Evaluatie gemeenteraadsverkiezingen en verkiezingen Europees Parlement 2014, 28 August 2014, pp. 14-15.

Available at: <https://kennisopenbaarbestuur.nl/media/123925/evaluatie-gemeenteraadsverkiezingen-en-verkiezingen-europees-parlement-2014.pdf>.

<sup>5</sup> Ibidem, pp. 75-77.

<sup>6</sup> De Nationale Ombudsman, Rapport 2015/090, 8 June 2015. Available at: <https://www.nationaleombudsman.nl/system/files/rapport/20150090%20%20R%20%20201408968%20%2008-06-2015.pdf>.

<sup>7</sup> KIESRAAD, Kerngegevens verkiezingen van leden van het Europees Parlement 22 mei 2014, p. 9.

<sup>8</sup> C-300/04, *Eman and Sevinger*, ECLI:EU:C:2006:545.

<sup>9</sup> KIESRAAD, Statistische gegevens verkiezing Europees Parlement 2009, p. 10.

## 21. Poland

### 21.1. LEGAL FRAMEWORK

The basic regulation related to electoral rights of individuals and local elections can be found in provisions of the 1997 Constitution of the Polish Republic. According to its Art. 62 Polish citizens who will be at least 18 the latest on the day of the vote may elect representatives for the local governments. This right is not afforded, by virtue of the same provision to individuals who by virtue of a court decision have been incapacitated or deprived of public or electoral rights.

The Constitution distinguishes two types of self-government bodies: the legislative (commune and municipal councils, district “powiat” councils and voievodship councils “sejmiki wojewódzkie”) and the executive ones (heads of communes, mayors and presidents of cities). The Polish basic law, however, determines the model of elections to legislative bodies only. According to Art. 169(3) of the Constitution such elections are common, equal, direct and take place through a secret ballot. The remaining rules and procedures are to be specified through subsequently adopted legislation (issues pertaining to nominating candidates and conducting elections, conditions of validity of elections, the mode of elections, and dismissal of executive bodies of local government units).

In 2011 the Polish legislator decided to condense the electoral law. On 5 January 2011, in place of previously binding dozen legal acts, the Polish Parliament adopted the Electoral Code, which exhaustively regulates the area of electoral law.<sup>1</sup> The Code provides for all the principles and procedures of submission of candidates, conducting and validity of elections to the following bodies:

1. the Parliament (the Sejm and the Senate) of the Republic of Poland;
2. the President of the Republic of Poland;
3. the European Parliament;
4. the self-government bodies;
5. the posts of heads of communes and municipal mayors and presidents.

The Electoral Code consists of a section dedicated to general provisions applicable to all the types of elections (Section I and II) as well as election-specific parts (Section V: Elections to the European Parliament, Section VII and VIII on local elections).

It must be emphasized that the currently in force Electoral Code has been severely amended by the Act of 11 January 2018 amending acts in order to enhance the participation of citizens in the process of election,

functioning and control of public bodies.<sup>2</sup> The planned reform is foreseen to enter into force in two stages: the first one on 1 January 2019 and the second one on 1 November 2019. This report was written on the basis of the currently in force Electoral Code, including, however, information on changes which will affect within the coming months the organisation and execution of local elections and elections to the European Parliament.

Even though from the perspective of the subject matter of the present report the reform is not very substantial, the very philosophy and organisational core of the electoral process will change. In order to shed light on this evolution, this report has been enhanced by the inclusion of the overview of the core aspects of the coming change and their very modest evaluation.

The Electoral Code<sup>3</sup> in its Art. 10 provides for the overview of the active suffrage rights in the Republic of Poland, in particular in relation to both the legislative and the executive bodies of the local government.

#### 1. Elections to the European Parliament

The following have a right to vote (the active voting right) in elections to the European Parliament:

- a Polish citizen who is at least 18, the latest on the day of the vote;
- a citizen of the European Union who is not a Polish citizen who is at least 18 the latest on the date of the vote and permanently<sup>4</sup> resides on the territory of the Republic of Poland;
- any individual included in the electoral register (ex officio or on request) or holding a certificate of confirming his/her voting rights.

#### 2. Elections to the legislative bodies of the local government

The following have a right to vote in the elections to the communal legislative self-government bodies (to the commune/municipal councils)

- a Polish citizen who is at least 18, the latest on the day of the vote, and permanently resides on the territory of this commune;
- a citizen of the European Union who is not a Polish citizen who is at least 18, the latest on the date of the vote, and permanently resides on the territory of the commune;
- any individual included in the electoral register (ex officio or on request).

In the elections to the regional legislative self-government bodies (the district ‘powiat’ councils and

the voivodship councils 'Sejmik wojewódzki'), the right to vote (active suffrage) is granted to:

- a Polish citizen who is at least 18 on the day of the vote, and permanently resides on the territory of the powiat and voivodship, respectively;
- any individual included in the electoral register (ex officio or on request)

**It must be emphasized that European Union citizens cannot vote in the elections at the district "powiat" and voivodship levels.**

### **3. Elections to the executive bodies of the local government**

In the elections of heads of communes, mayors and city presidents, the right to vote (the active suffrage right) is afforded to:

- a person who has the right to choose the council of that commune (also an EU citizen);
- any individual included in the electoral register (ex officio or on request).

### **4. The active suffrage rights are not afforded to:**

- individuals deprived of public rights by a final judgement of a court;
- individuals deprived of electoral rights by a final and legally binding decision of the Tribunal of State;
- individuals incapacitated by a final and legally binding court decision.

The Electoral Code<sup>5</sup> in its Art. 11 provides for the overview of the passive suffrage rights in the Republic of Poland.

### **1. Elections to the European Parliament**

In the elections to the European Parliament, the right to be elected (the passive suffrage right) is granted to:

- an individual having active suffrage rights who is at least 21 on the day of the vote and has resided in the Republic of Poland or any other Member State of the European Union for minimum five years.

### **2. Elections to the legislative bodies of the local government**

In the elections to the legislative bodies of the local government the passive suffrage right is afforded to:

- any individual enjoying the right to elect members of these bodies.

### **3. Elections to the executive bodies of the local government**

In the elections for a commune head, a mayor and a president of the city, the passive electoral rights have been afforded to:

- a Polish citizen with the right to vote in these elections, who is 25 at the latest on the day of the vote, however, the candidate does not need to be a permanent resident in the area of the commune in which he is a candidate.

### **4. The passive electoral rights are not afforded to:**

- any individual who has been validly sentenced to imprisonment for an intentional indictable crime or an intentional fiscal offence;
- who was subject of the final and valid court sentence determining the loss of the passive suffrage rights in line with Art. 21a(2a) of the Act of 18 October 2006 on the Disclosure of Information on Documents of State Security Agencies from the period between the years 1944-1990 and the Content of such Documents;<sup>6</sup>
- any European Union citizen who is not a Polish citizen deprived of the active suffrage rights in his country of origin.

There are two major reforms pending entry into force (adopted in January 2018) and control by the Constitutional Court following the motion from the President of the Republic of Poland (adopted in July 2018). Both are very much controversial and subject to public debate. We will discuss the imminent changes from a perspective of their general and more concrete impact on the local and European Parliament elections.

It must be observed that the planned changes of the Electoral Code in Poland must be considered the broader constitutional context. Since 2015 the party which had the majority in the Parliament "Law and Justice" has introduced multiple changes in the Polish constitutional and legal system which gave rise to concerns of lawyers and citizens alike. On the European level the concern manifested itself in the implementation of, first, the Commission's Rule of Law Framework and subsequently of the Art. 7 TEU sanctioning mechanism. In the words of the European Commission: 'over a period of two years, the Polish authorities have adopted more than 13 laws affecting the entire structure of the justice system in Poland, impacting the Constitutional Tribunal, Supreme Court, ordinary courts, National Council for the Judiciary, prosecution service and National School of Judiciary. The common pattern is that the executive and legislative branches have been systematically enabled to politically interfere in the composition, powers, administration and functioning of the judicial branch'.<sup>7</sup> Of similarly problematic character were the changes

introduced to the media laws and the rules on public assemblies.

**1. The Act of 11 January 2018 amending acts in order to enhance the participation of citizens in the process of election, functioning and control of public bodies.<sup>8</sup>**

**1.1 The electoral administration and control process**

From the perspective of the Electoral Code Act of 11 January 2018 amending acts in order to enhance the participation of citizens in the process of election, functioning and control of public bodies of importance are the steps taken by the government aiming to alter the functioning of the Supreme Court.<sup>9</sup> This is the case because the control of the electoral process belongs to the competence of the Supreme Court, which is a body deciding over the validity of parliamentary, presidential and European Parliament elections. This means that the control over the correct organisation of the elections will be conducted by two bodies whose members will be appointed either directly (Polish Electoral Commission) or indirectly (Supreme Court) by the legislature.

On the other hand, the control over the validity of local elections lies, in the competence of district courts. These courts are also subject to an enhanced political influence, this time resulting from the enhancing of the competence of the Minister of Justice.

Finally, the appointment of electoral commissioners and their competence catalogue requires has been amended.

**The Polish National Electoral Commission**

Under the currently binding rules the Polish National Electoral Commission is a sole permanent highest electoral organ competent to organise and conduct elections and referenda (Art. 157 para 1 of the Electoral Code). Its composition is frequently referred to as a judicial one as the Electoral Commission is made up of three judges of the Constitutional Court (Art. 157 para 2, pt 1); three judges of the Supreme Court (Art. 157 para 2, pt 2); three judges of the Supreme Administrative Court (Art. 157 para 2, pt 3). Each of these members are nominated by Presidents of the respective Courts. The members of the National Electoral Commission are appointed by the decree of the President of the Republic of Poland (Art. 157 para 3). Thanks to such a composition of the National Electoral Commission, one could claim that the model of the electoral administration existing currently in Poland is independent from other branches of the public administration.

The 2018 Act altered the composition of the National Electoral Commission. As of 12 November 2019 and so

after the upcoming elections to the Polish Parliament, the Commission will be composed of

- 1) a judge of the Constitutional Court nominated by the President of this Court;
- 2) a judge of the Supreme Administrative Court, nominated by the President of this Court;
- 3) 7 individuals qualified to be a judge nominated by the Sejm. However, the qualification to become a judge can be substituted by a three year long employment as: a prosecutor, the president of the General Counsel to the Republic of Poland, its vice-president, or practicing in Poland the profession of the advocate („adwokat”), of a legal adviser („radcy prawnego”), or a notary; or being employed at the Polish university, in the Polish Academy of Sciences, research institute or any other institution charged with research activity, having the academic degree of a “professor” or a post-doctoral degree (“doktora habilitowanego”).

As of the entry in force of the amendment to the Electoral Code, the term of office of the members of the National Electoral Commission will be aligned with that of the Parliament’s (whereas currently it is 9 years guaranteeing the independence of the electoral process).

The candidates to the Polish National Electoral Commission will be identified by the parliamentary clubs, however, the composition should reflect proportionally the composition of the Parliament and one club may select at most three candidates.

This is the first element of the reform which relaxes the conditions of independence of the one of the two permanent electoral bodies in Poland.

**Electoral Commissioners**

Similar changes were introduced with reference to Electoral Commissioners who similarly to the National Electoral Commission are appointed for a fixed period and remain unchanged regardless of the number and type of elections that will take place in the meantime. Electoral Commissioners will remain agents of the Polish Electoral Commission representing it on the territory of one voievodship or its part. Both, the process of appointment and their competence have been altered.

According to Art. 166 para 3 of the amended Electoral Code, the minister for interior appoints 100

commissioners from amongst the persons with the higher legal education or having warranted such education. Before the reform only judges could have been appointed to the position of an Electoral Commissioner, and so this change yet again removes the indirect guarantee of independence.

Importantly, the Commissioners have new tasks, according to Art. 167 of the Electoral Code. Amongst them there is the possibility to appoint the district electoral commissions as well as the creation and alteration of the territory of wards and seats of the district electoral commissions and precinct electoral commissions, determination of the territory of constituencies and the number of councillors to be elected in the course of local elections. It is also up to the Electoral Commissioners to commission printing of the voting cards for local elections and ensuring that they are delivered to the respective Electoral Commissions.

### **Precinct Electoral Commissions**

The reform introduced two types of the precinct electoral commissions. There will be two types of these – an electoral commission for the organisation and conducting of elections within a ward and an electoral commission for determining the election result within a given ward.

The Commissions are appointed by Electoral Commissioners and are composed of 9 individuals nominated by election agents or persons empowered by these agents:

1) at least six person, each nominated by election agents representing electoral committees created by political parties or coalitions of political parties who, following the recent elections, are represented in a voivodship council. It must be noted that candidates can be nominated only on the territory of the voivodship where an election committee represented future councillors in the voivodship council, or the Members of the Parliament. Should the number of such committees be smaller than six, committees' agents are entitled to nominate additional candidate.

2) at least one person nominated by agents representing the remaining electoral committees.

Previously, each electoral committee created by political parties participating in elections could have nominated one person. The precinct electoral commission would be appointed by a head of a commune (in elections to the Sejm and the Senate, for a President of the Republic of Poland and in elections to the European Parliament taking place on the territory of Poland) and a competent territorial electoral commission in elections to the legislative

bodies of the local government and in elections of heads of communes.

### **1.2 Other changes**

With regard to the discussed areas, it will come into force on 1 January 2019. According to its provisions individuals who had been elected twice to the office of the head of the commune, mayor, or the president of the city will lose his passive suffrage rights (Art. 11 para. 1 pt. 4 of the Electoral Code). It is a significant change as many of the heads of communes, mayors or presidents of cities stay in the office for more than ten years. Even though such regulation may be subject to criticism, it must be emphasized that in the doctrine of constitutional law<sup>10</sup> the limitations on passive suffrage rights may be greater than those on the active suffrage rights.

Another change concerns the limitations to run as a candidate for an office of a head of commune, a mayor or a president of the city at the same time when running for elections to legislative bodies of the local government. It is not possible to simultaneously run for a position of head of a commune and in elections to a district "powiat" council or a voivodship council.

Furthermore, in elections of a head of the commune, a mayor or a president of the city, the active suffrage right has been enhanced, as the candidate does not need to reside permanently on the territory of the commune where he was a candidate (Art. 11 para. 1 pt 6 of the Electoral Code).

Other changes concern also the long distance vote. Until now, the absentee voter would receive the voting documents from the commune office. After the changes of the Electoral Code, in line with its Art. 53e para. 4, the voting documents will be delivered by the electoral officer through the Polish Postal Service (Poczta Polska). The reform removed the possibility to collect the documents directly from the commune's office.

### **2. The Act of 20 July 2018 on the amendment of the Electoral Code<sup>11</sup>**

In addition to the above described changes, a new reform is pending. On 20 July 2018 an Act on the amendment of the Electoral Code was adopted and subsequently forwarded to the President of the Republic of Poland for the final approval. However, the President resorted to his veto right and on 16 August 2018 refused to sign this act returned it to the Parliament.

According to this act in each of 13 (moderately big) constituencies at least three Members of the European Parliament should be elected. According to the research and elections simulations, should this reform



enter into force, the committees that obtained higher level of support will be disproportionally represented in the European Parliament at the expense of the committees with lower support. This is the result of the distribution of the seats in the constituencies and the chosen system of the conversion of the votes into seats. According to the opinion of the Legislative Bureau of the Senate's Chancellery Poland will be the only EU Member States with the electoral threshold amounting to more than a triple of the EU established maximal one. The effective electoral threshold will amount to 16,5% which represents the votes that any committee would need to attain in order to secure a seat.<sup>12</sup>

The proposed amendments will depend on gathering the support of 3/5 majority in the Polish Parliament necessary to reject the presidential veto.

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## 21.2. REGISTRATION AND VOTING CONDITIONS

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The registration for the election is partially automatic based on permanent electoral registers, which list of all the voters residing on the territory of a given commune (A). Prior to every single election, the commune bodies draw up an election-specific register featuring both individuals residing in a given commune included in a permanent electoral register and those who requested to be entered to the register for the purposes of voting in this specific elections (B). There exist specific rules on drawing up of election-specific registers drawn up prior to the elections to the European Parliament (C).

### A. Permanent electoral registers

The electoral register is made up of a list of all voters residing on the territory of a commune who enjoy the active suffrage rights (including the European Union citizens who are not Polish citizens residing permanently on the territory of a commune and who enjoy the full electoral rights in the Republic of Poland). A voter may be included only in one election specific electoral register drawn up in the commune of his residency. It confirms both the right to elect and be elected.

Individuals domiciled on the territory of the commune are included in the electoral register by default. The remaining ones residing on the territory of the commune temporarily are included in the register following a request. Should the request be denied, the elector may challenge such decision before a local district court.

Every individual has a right to complain before the commune head against irregularities relating to the electoral register.

### B. One time, election-specific electoral register

The election-specific electoral register is a one time updated list of individuals entitled to vote in a specific election. It is prepared before each election on the basis of the permanent electoral register.

The right to vote in all the types of elections is afforded to individuals included in the election-specific electoral register, which is created the latest on the 21st day before the day of the vote. The register features all the individuals enjoying electoral rights who have been included in the registry ex officio (persons domiciled on the territory of the commune) or on request (individuals residing on the territory of the commune temporarily). An individual not included in the register is not entitled to vote.

Following a written request filed to a commune office the latest on the fifth day before the day of the vote, a voter, is included in the register of electors in the ward of his choice: either (1) the one where he is domiciled, or (2) where he temporarily resides. The latter possibility does not apply to the local elections, as their local character requires that the vote is cast where citizens' centre of livelihood is.

### C. Particular provisions on Elections to the European Parliament

The Electoral Code in Art. 32(1) foresees for the purposes of participating in the elections to the European Parliament the possibility to vote on the basis of a polling card for any voter who will change their residence (even if temporarily for instance when travelling during the annual leave). The polling card is issued on a written, telefax or electronic request. Such polling card is issued on the basis of the permanent electoral register or the election-specific one depending on when the request is submitted to the commune office. Such polling card cannot be issued in local elections.

On a European Parliament election day, a district electoral voting commission<sup>13</sup> in a polling station adds to the electoral register also any Polish citizen who permanently resides outside of Poland who will vote on the basis of his/her valid passport provided that he will prove his permanent residency abroad. In such case the electoral commission takes note of the number of the passport as well as the place and the date of its issue in the column entitled "comments" and places its stamp and the election date on the last free page of the passport.

The rules on registration of voters for municipal elections and the European Parliament elections are in general identical. The voters are either registered ex officio or following a request filed to the commune office.

The main difference lies in the fact that the voters before the elections to the European Parliament may register outside of the commune where they are domiciled or obtain in advance a polling card.

Voters cannot vote over the Internet. Postal voting and voting through a proxy is possible in all types of elections. See the below section on a detailed overview of the conditions under which postal voting and voting through a proxy can be exercised.

### 21.3. MEASURES FACILITATING VOTING RIGHTS

#### A. Creation of wards

In order to ensure the universality of the election, the wards are created also in hospitals, on campuses and on Polish sea ships.

The selected categories of individuals were granted the right to be included in the extra-ordinary ward electoral registers, if they are stationed away from the place of their usual residency:

- soldiers performing basic or periodic military service as well as candidates for professional soldiers, or those undergoing military training;
- rescuers in the primary civil defence service;
- policemen in garrisons;
- officers of the State Security Service serving in military units;
- Border Guard officers serving in military units;
- officers of the State Fire Service serving in military units;
- officers of the Prison Service serving in military units.

#### B. Facilitation of access to the polls

The following means have been undertaken to facilitate access to polls:

- 1) the possibility to choose the poll adjusted to needs of the disabled;
- 2) voting on the basis of the polling card;
- 3) possible free transportation to a polling station;
- 4) Braille ballot covers for the visually impaired;
- 5) Individual assistance at the polling stations;
- 6) postal voting;
- 7) voting by a proxy.

To the best of authors' knowledge no measures have been taken by the government to ensure the enhanced participation of mobile EU citizens in elections. Certain NGOs undertake campaigns promoting participation in elections, however, none of these initiatives are directed exclusively at the EU citizens.

#### o Linguistic minorities

The Electoral Code does not foresee measures aimed at enhancing the participation of national and ethnic minorities in elections and, in fact such measures are not directly related to the electoral procedure.

The general rules on the position of minorities in Poland are provided for by the Act of 6 January 2005 on national and ethnic minorities and a regional language.<sup>14</sup> The Act distinguishes between national and ethnic minorities.

A national minority, according to its Art. 2(1) is 'a group of Polish citizens who jointly fulfil the following conditions: 1) is numerically smaller than the rest of the population of the Republic of Poland; 2) significantly differs from the remaining citizens in its language, culture or tradition; 3) strives to preserve its language, culture or tradition; 4) is aware of its own historical, national community, and is oriented towards its expression and protection; 5) its ancestors have been living on the present territory of the Republic of Poland for at least 100 years; 6) identifies itself with a nation organized in its own state'. Accordingly, there are nine national minorities in Poland: 1) Byelorussians; 2) Czechs; 3) Lithuanians; 4) Germans; 5) Armenians; 6) Russians; 7) Slovaks; 8) Ukrainians; and 9) Jews.<sup>15</sup>

An ethnic minority, according to Art. 2(3) of the Act on national and ethnic minorities and a regional language is 'a group of Polish citizens who jointly fulfil the following conditions: 1) is numerically smaller than the rest of the population of the Republic of Poland; 2) significantly differs from the remaining citizens in its language, culture or tradition; 3) strives to preserve its language, culture or tradition; 4) is aware of its own historical, national community, and is oriented towards its expression and protection; 5) its ancestors have been living on the present territory of the Republic of Poland for at least 100 years; 6) does not identify itself with a nation organized in its own state'. Accordingly, there are four ethnic minorities in Poland: 1) the Karaim; 2) the Lemko; 3) the Roma; and 4) the Tartar.

The Act on national and ethnic minorities and a regional language provides for the basic rules of the interaction between the state and the minorities. In particular, it provides for the use of the linguistic minority language as an auxiliary one. This is acceptable only before the commune offices including in matters relating to the electoral registers (both permanent and election-specific ones).

The auxiliary language may be used only in the communes where min. 20% of the inhabitants of the communes belongs to the minority whose language can be used as an auxiliary one. Such fact should be

included in the Official Registry of Communes Using an Auxiliary Language.

The possibility to use an auxiliary language indicates that individuals belonging to minorities are entitled to:

- 1) communicate with the commune bodies both in a written and oral form using an auxiliary language;
- 2) obtain (following the clear indication) a written or an oral answer in an auxiliary language;
- 3) file any request in an auxiliary language.

It must be noted that the appeal procedure is conducted solely in the official language.

As of 21 February 2014 the auxiliary language has been introduced in 33 communes.<sup>16</sup>

- Citizens with disabilities

#### **1) Polling stations adjusted to the needs of disabled persons**

According to Art. 186 para 1 of the Electoral Code such polls should be ensured by the head of the commune (or municipality). The voters should be informed about their location on the 30<sup>th</sup> day before the date of the vote (Art. 16 para 1 pt 3). The Electoral Code delegates to the executive regulation the power to specify the technical parameters such polling station should abide by to be considered as adjusted to the needs of persons with disabilities (Art. 186 para 2).

In every single commune at least half of the district electoral commissions should be adjusted to needs of persons with disabilities. An individual may cast his vote in a chosen, adjusted to the needs of disabled, polling station provided that it is situated on the territory of the electoral constituency. The exception from the rule is when there is no such adjusted polling station within a commune where a disabled resides. In order to trigger the exception, the voter needs to file a written request to be added to the electoral registry in the polling station meeting the technical standards the latest 5 days before the date of the vote.

#### **2) Free transportation to a polling station**

The legislator does not impose an obligation to organise the transportation to polling stations but many communes on their own authority organize free transportation to polling stations. In order to benefit from such an opportunity, a voter should contact the commune or municipal office at least a week before elections.

#### **3) Braille ballot covers for the visually impaired<sup>17</sup>**

The visually impaired voters have access to the Braille ballot covers. When claiming the polling card, the

voters should simply request such a cover from a member of the Electoral Commission.

#### **4) Individual assistance at polling stations**

Notwithstanding the possibility to vote with the use of the Braille ballot covers, a visually impaired voters may request that a member of the district electoral commission communicates to the former the content of election notices, the information on the electoral committees participating in the elections as well as on registered candidates and electoral lists.

#### **5) Postal voting**

Votes can be cast via postal services, if voters have a certificate confirming:

- the moderate or significant degree of disability;
- their total inability to work;
- their inability to function independently;
- the fact that they are included in the I disability category;
- the fact that they are included in the II disability category;
- that they have been unable to work on the agricultural farms for a long time and are, therefore, entitled to care allowance.

However, the postal voting is limited to the voters of maximum 75 years of age on the date of the vote. The individuals older than 75 may only vote by proxy.<sup>18</sup>

The following groups of voters are entitled to benefit from the postal voting:

- residents of healthcare institutions,
- residents of nursing homes;
- individuals detained in penitentiary institutions, detention centres and their external units;
- campuses, if wards were established on their territories;
- individuals voting by proxy.

The intention to vote via post should be notified to the competent commune or municipal office. Such notification can be made in the oral, written, electronic form or via telefax.

A voter is sent the following set of documents

- a ballot paper;
- an envelop where the ballot paper should be placed;
- a declaration according to which the vote was cast individually and in a secretive manner;
- postal voting instructions;
- if necessary, Braille ballot covers for the visually impaired;
- a stamped and addressed envelop.

## 6) Voting by proxy

Votes can be cast by a proxy, if voters have a certificate confirming:

- a moderate or a significant degree of disability;
- their total inability to work;
- their inability to function independently;
- the fact that they are included in the I disability category;
- the fact that they are included in the II disability category;
- that they have been unable to work on the agricultural farms for a long time and are, therefore, entitled to care allowance.

In addition, the vote can be cast by a proxy on behalf of individuals who on the date of vote will be 75 or older.

The following groups of voters are **not** entitled to benefit from the possibility to vote by proxy:

- residents of healthcare institutions,
- residents of nursing homes;
- individuals detained in penitentiary institutions, detention centres and their external units;
- campuses, if wards were established on their territories;
- individuals using postal voting.

Any individual included in electoral register in the same commune as a principal voter. A proxy may stand in for one or two voters, if at least one of them belongs to a proxy's immediate family (children, parents, siblings, individuals in a relationship with a proxy resulting from adoption, custody or guardianship).

The following may **not** take on the function of a proxy:

- a member of a district electoral commission where a principal voter grants a power of proxy;
- the Commission's shop steward;
- candidates in a given election.

The request to draw up a proxy on behalf of a voter should be submitted to the head of commune, mayor or the city president the latest on the 9<sup>th</sup> day before the day of the vote. The request may be sent via post, or submitted by any individual in the commune office. It must be, however, signed by the principal voter or his proxy should the former be unable or incapable of signing the request.

The proxy is granted before the head of a commune (before mayor or the city president) or any other employee of commune's office authorised to draw up election proxies. The proxy is made in the place of

residency of a voter or any other place indicated in the request.

A voter who granted a proxy may vote in person in a polling station provided that his proxy has not cast the vote. In such case an act of proxy will no longer be valid.

All activities relating to the drawing up of a proxy are free of charge. Similarly, a proxy cannot request remuneration from a voter granting him a proxy for voting on his behalf. It is also forbidden to grant proxy in exchange for any material or personal benefit.

It is not possible to vote by proxy when a disabled voter notifies of an intention to vote by post.

## 7) Right to be informed about elections

### Providing information on request

Following a request of a disabled voter a commune/municipal office should communicate to this voter by post or via email extensive information materials (incl. those about measures intended to facilitate participation in elections).

A disabled voter registered in a given commune has a right to obtain information about:

1. his appropriate constituency and ward,
2. polling stations adjusted to the needs of disabled voters situated closest to the place of their residency,
3. conditions under which the disabled voter can be registered on the territory of a commune where he permanently resides in the selected ward where the polling stations adjusted to the needs of persons with disabilities are situated;
4. a date and a time of a vote;
5. electoral committees participating in the elections, registered candidates and candidates' lists;
6. conditions and forms of voting.

### Electoral notices

Electoral notices both in the polling station and outside should be positioned in a manner allowing wheel-chair users to make him acquainted with their content.

- Ethnic minorities (e.g. Roma)

In line with Art. 462(4) of the Electoral Code, ethnic minorities are protected inasmuch as the drawing up of wards boundaries is concerned. According to this provision, the delimitation of wards cannot affect social bonds between the voters belonging to national or ethnic minorities inhabiting the territories of districts making up wards.

Aside from this provision the electoral committees of the national and ethnic minorities are privileged only on the occasion of the elections to Sejm.

In local elections wherever a commune is inhabited by more than 20000 individuals, in district and voievodship elections and in elections to the legislative local governments there are quotas relating to the gender of the candidates.

In elections to communal councils in communes of over 20000 inhabitants and in elections to the voievodship councils 1) the number of female candidates cannot be smaller than 35% of a total number of candidates on a the list; 2) the number of male candidates cannot be smaller than 35% of all candidates on a list.

In elections to district councils the total number of candidates cannot be smaller than 3 and bigger than a number of councillors elected in a given ward, plus two. If a list is made up of 3 candidates, it must include at least one representative of each of the sexes (so either two men and one women or two women and one man).

- **What seem to be the main obstacles to exercising the right to vote?**

It must be observed that it is necessary to perceive obstacles to exercising the right to vote in a broad manner. For, as observed by the Polish Ombudsman in his 2015 Report on polling stations adjusted to the needs of persons with disabilities, regardless of the normative guarantees, what really matters is the practice of authorities with regard to ensuring the possibility for various individuals to exercise their right to vote.<sup>19</sup> In this area the Polish elections (possibly the entire public administration) fall short of the European standards.

1. **Exclusion of groups of voters from the electoral process**

There are a number of groups of voters that are effectively excluded from the electoral process. These instances can be divided into two groups: those who do not enjoy electoral rights because of the shortcomings in the legislative (or even constitutional) standards, and those who, despite having their rights guaranteed on paper, cannot *de facto* exercise them.

The first group encompasses individuals who were incapacitated. According to Art. 62(2) of the Polish Constitution they, in fact, do not enjoy any electoral rights. In fact, they are clearly not compliant with international standards of human rights protection.<sup>20</sup> Similarly, no legal provision affords electoral rights or a right to participate in referenda to third countries' nationals.

The second group comprises a group of voters who on the basis of the currently binding provisions of the Electoral Code enjoy literally 'paper' electoral rights. This concerns the following categories of individuals:

1. the detained who had not been domiciled before being detained and cannot effectively request that they are added to the electoral register<sup>21</sup>;
2. the homeless who continue to be denied the possibility to register for elections. The public administration bodies base their decisions on the 2011 Decree of the Minister of Interior according to which any individual requesting registration must provide a current address.<sup>22</sup> Despite announcing in 2016 plans to alter the decree, the Minister has not altered the required provisions.<sup>23</sup>
2. **The change in the composition of the National Electoral Commission<sup>24</sup>**

This obstacle to exercising the right to vote may materialise itself only in the future.

One of the key revisions, which will be introduced on 12 November 2019, is the change in the composition and appointment of the Polish National Electoral Commission. As the result of these changes, the Polish National Electoral Commission will be composed of one judge of the Constitutional Court who will be indicated by the President of the Constitutional Court, one of the judges of the Supreme Administrative Court (appointed by the President of the Supreme Administrative Court), and 7 individuals qualified to take positions of a judge appointed by the Sejm. It is important that the term of office of the member of the National Electoral Commission should correspond to that of the Sejm and the candidates are to be identified by a parliamentary club. The number of these members must reflect proportionally the representation in the Sejm of parliamentary clubs.

This is an institutional change, which will deeply affect the highest electoral organ of the Republic of Poland. It departs from the established standards of constructing the highest electoral administration body potentially leading to making the electoral administration vulnerable to political pressures. So far, this body has been made up of judges representing three highest courts (the Constitutional Court, the Supreme Administrative Court and the Supreme Court). The inclusion of judges in the National Electoral Commission was due to their lack of political affiliation, and legal professionalism characterised by acting in an impartial manner regardless of the influence of the political factors, including those arising because of parties membership, and their internal independence.

Some of the above-described initiatives to facilitate voting of disabled persons were provided through the recent reform. This implies that the broad access to



election facilities is one of the interest points of the current government<sup>25</sup>.

#### 21.4. STATISTICS

Available statistics and data on:

- The number of mobile EU citizens registered in the electoral lists

In the 2014 local elections there were all together 20.047.574 registered voters. Only 518 of them were not Polish citizens, and 392 of them voted.<sup>26</sup>

According to the statistical information as of 30 June 2018 of the Polish Electoral Commission, 1010 EU citizens were included in the permanent electoral registry.

- Additional available statistical data

The below available statistical data was drawn from the resources of the Polish National Electoral Commission and the Polish National Statistical Office.

#### 1. In the elections to the European Parliament of 2014 the following numbers were registered:<sup>27</sup>

The number of individuals entitled to vote:

30 636 537

The number of issued ballot papers:

7 301 650

The number of valid ballot papers:

7 297 490

Electoral turn out:

23.83%

The number of valid votes cast:

7 069 485

The percentage of valid votes cast:

96.88%

#### 2. Councillors in local government bodies following 2014 local elections as of election day<sup>28</sup>

Total number of commune councillors:

37842

Total number of female commune councillors:

10357

Total number of city councillors in cities with the status of the “powiat” 2117

Total number of female councillors in cities

585

Total number of “powiat” councillors

6276

Total number of female “powiat” councillors

1204

Total number of voievodship regional councillors

555

Total number of female voievodship councillors

128

#### 3. Heads of communes, mayors and cities' presidents following 2014 local elections as of 31 December 2014<sup>29</sup>

Total number of executive local government posts

2497

Total number of women holding executive local government posts 271

Total number of elected heads of communes

1566

Total number of elected female heads of communes

174

Total number of elected presidents of cities with “powiat” status 66

Total number of female elected presidents of cities with “powiat” status 7

Total number of mayors and presidents of cities

865

Total number of female mayors and presidents of cities

90

#### Notes:

<sup>1</sup> Official Journal of the Republic of Poland 2011 No 21, item 112.

<sup>2</sup> Act of 11 January 2018 amending acts in order to enhance the participation of citizens in the process of election, functioning and control of public bodies, Official Journal of the Republic of Poland 2018, item 130.

<sup>3</sup> idem.

<sup>4</sup> According to the definition included in the Electoral Code (Art. 5 pt 9) permanence residency is understood as domicile in a particular place at a specific address with the

intention of permanent residence. In addition, whether an individual is indeed residing permanently on the territory of the Republic of Poland is evaluated by a head of the commune who will examine upon consideration of the request to be registered as a voter whether a given person indeed has a domicile in a given commune (Art. 20 of the Electoral Code). See also: the judgment of the Polish Supreme Administrative Court of 4 July 2017, II OSK 862/17. The Court stated that formal registration is not a decisive

## Notes (continued):

factor for the inclusion in the electoral register but a de facto permanence.

<sup>5</sup> idem.

<sup>6</sup> Official Journal of the Republic of Poland, 2007, No 63, item 425 as subsequently amended.

<sup>7</sup> European Commission, 'Press Release: Rule of Law: European Commission acts to defend judicial independence in Poland', 20 December 2017 <[http://europa.eu/rapid/press-release\\_IP-17-5367\\_en.pdf](http://europa.eu/rapid/press-release_IP-17-5367_en.pdf)> accessed on 16 October 2018.

<sup>8</sup> Act of 11 January 2018 amending acts in order to enhance the participation of citizens in the process of election, functioning and control of public bodies, op. cit.

<sup>9</sup> The reform affected deeply the personal composition of the Court and introduced of the new Chamber for Extraordinary Control and Public Matters.

<sup>10</sup> I. C. Kamiński, Prawo do wolnych wyborów w Europejskiej Konwencji Praw Człowieka 2015 XIII Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego, 30.

<sup>11</sup> Act of 20 July 2018 on the amendment of the Electoral Code, Proces legislacyjny, Sejm VIII kadencji, <<http://sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?id=F292852A30AF16D0C12582B4004CEBF8>> accessed on 16 October 2018.

<sup>12</sup> Opinia Biura Legislacyjnego Kancelarii Senatu RP z 23 lipca 2018 r. do ustawy o zmianie ustawy – Kodeks wyborczy (druk nr 909) <<https://www.senat.gov.pl/prace/senat/proces-legislacyjny-w-senacie/ustawy-uchwalone-przez-sejm/ustawy-uchwalone-przez-sejm/ustawa,609.html>> accessed on 16 October 2018.

<sup>13</sup> On the local level, following the recent reform, there are two types of district electoral commissions: the first one focuses on organisation of the vote, and the second one on determining the result of the vote. See: Art. 181a of the Electoral Code, op. cit.

<sup>14</sup> Art. 9 of the Act of 6 January 2005 on national and ethnic minorities and regional language, Official Journal of the Republic of Poland 2005, No 17, item 141.

<sup>15</sup> Art. 2(2), idem.

<sup>16</sup> The list of the communes included in the Official Communes Registry, as communes where an auxiliary language is used: Ministry of Interior, 'Urzędowy rejestr gmin, w których używany jest język pomocniczy' <<http://mniejosci.narodowe.mswia.gov.pl/download/86/15331/UrzedowyRejestrGmin-jezpom-17III14.pdf>> accessed on 14 October 2018.

<sup>17</sup> According to Art. 40a of the Electoral Code. This possibility was introduced in the first, 2011, reform of the Electoral Code. Act of 27 May 2011 on amendment of the Electoral Code and the Act introducing the Electoral Code, Official Journal of the Republic of Poland 2011 No 147 item 881.

<sup>18</sup> See: Arts. 53a and 54(3) of the Electoral Code.

<sup>19</sup> Rzecznik Praw Obywatelskich, 'Lokale wyborcze dostosowane do potrzeb osób niepełnosprawnych w wyborach samorządowych 2014 roku – Raport RPO' <[https://www.rpo.gov.pl/sites/default/files/Raport%20RPO](https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20Lokale%20wyborcze%202015.pdf)

[%20Lokale%20wyborcze%202015.pdf](https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20Lokale%20wyborcze%202015.pdf)> accessed on 16 October 2018, 15 and the following.

<sup>20</sup> See, for instance: EtCHR, Judgement of 20 May 2010 in Alajos Kiss v Hungary (Application no. 38832/06); Constitutional Court of the Republic of Macedonia, 'The Ban on Voting in Elections, Imposed on Persons With Mental Disabilities Unconstitutional' <<http://constcourt.mk/libview.php?l=en&idc=7&id=1302&t=/Media/News/The-Ban-on-Voting-in-Elections-Imposed-on-Persons-With-Mental-Disabilities-Unconstitutional>> accessed on 16 October 2017.

<sup>21</sup> Rzecznik Praw Obywatelskich, 'Wystąpienie RPO z 9 maja 2016 r. do Przewodniczącego Państwowej Komisji Wyborczej ws. realizacji praw wyborczych przez osoby pozbawione wolności, uprawnione do głosowania' <<https://www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Przewodniczacego%20Panstwowej%20Komisji%20Wyborczej%20ws%20realizacji%20praw%20wyborczych%20przez%20osoby%20pozbawione%20wolnosci%2009.05.2016.pdf>> accessed on 16 October 2018.

<sup>22</sup> Rzecznik Praw Obywatelskich, 'Wystąpienie RPO z 11 kwietnia 2017 r. do Ministra Spraw Wewnętrznych i Administracji w sprawie praw wyborczych osób nigdzie niezamieszkałych' <<https://www.rpo.gov.pl/pl/content/wystapienie-do-mswia-w-sprawie-praw-wyborczych-osob-nigdzie-niezamieszkalych.pdf>> accessed on 16 October 2018.

<sup>23</sup> Załącznik nr 2 do rozporządzenia Ministra Spraw Wewnętrznych i Administracji z dnia 27 lipca 2011 r. w sprawie rejestru wyborców oraz trybu przekazywania przez Rzeczpospolitą Polską innym państwom członkowskim Unii Europejskiej danych zawartych w tym rejestrze określający wzór wniosku o wpisanie do rejestru wyborców (Annex No 2 to the Decree of the Minister of Interior of 27 July 2011 on the electoral register and the means and modes of transfer by the Republic of Poland to other EU Member States of data included in this register and determining the template of the request to register a voter, Official Journal of the Republic of Poland 2017 item 1316.

<sup>24</sup> As amended on the basis of Art. 1 pt 59 of the Act of 11 January 2018 amending acts in order to enhance the participation of citizens in the process of election, functioning and control of public bodies, op. cit.

<sup>25</sup> J. Zbieranek, 'Polling stations adapted to the needs of people with disabilities in local-governmental elections in 2014' [2015] 3 Polityka i Społeczeństwo 13, DOI: 10.15584/polispol.2015.3.5.

<sup>26</sup> Polish National Electoral Commission, 'Wybory Samorządowe 2014 r. Statystyki Wyników Głosowania' <[https://pkw.gov.pl/434\\_Wyniki\\_wyborow/1/16270\\_WYBORY\\_SAMORZADOWE\\_2014\\_R\\_STATYSTYKI\\_WYNIKOW\\_GLOSOWANIA](https://pkw.gov.pl/434_Wyniki_wyborow/1/16270_WYBORY_SAMORZADOWE_2014_R_STATYSTYKI_WYNIKOW_GLOSOWANIA)> accessed 12 October 2018.

<sup>27</sup> Polish National Electoral Commission, Wybory do Parlamentu Europejskiego 2014 r. Wyniki głosowania. <<http://pe2014.pkw.gov.pl/pl/>> accessed 12 October 2018.

<sup>28</sup> Central Statistical Office, Statistical Yearbook of the Republic of Poland, 2014, 127-128, table 15 (57).

<sup>29</sup> Central Statistical Office, Statistical Yearbook of the Republic of Poland, 2014, 128, table 14(55).

## 22. Portugal

### 22.1. LEGAL FRAMEWORK

In Portugal, electoral participation is a fundamental right enshrined in the 1976 Constitution. All citizens are entitled to take part in the political life and public matters of the country (Article 48) and to have access to public office under conditions of equality and freedom [Article 50 (1)]. Entitled to vote are all citizens over the age of 18, but for the incapacities prescribed by law [Article 49 (1)]. The exercise of the right to vote is personal and constitutes a civic duty [Article 49 (2)]. Political rights and access to public office are, in principle, denied to third-country nationals (TCNs) and stateless individuals, per Article 15 (2), but exceptions are allowed, under conditions of reciprocity, to nationals of Portuguese speaking countries who are permanent residents in Portugal, to mobile EU citizens residing in Portugal, and to other TCNs from certain nationalities. Article 15 (3) opens a wide number of possibilities for nationals of Portuguese speaking countries to enjoy rights not granted to TCNs, by only barring them from holding the offices of President of the Republic, President of the National Parliament, Prime Minister, President of a Supreme Court, and from rendering military and diplomatic service. Pursuant to this provision, Brazilians and Cape Verdeans are currently entitled to vote and be elected in municipal elections, whereas Brazilians who enjoy the status of equality of political rights (under the 2000 Friendship, Cooperation and Consultation Treaty between Portugal and Brazil) are also entitled to vote and be elected in national and regional legislative elections and to vote in Presidential elections. Article 15 (4) allows the legislator to grant the right to vote and to be elected in municipal elections to foreign residents. Currently, these comprise nationals of all EU MS, Brazil and Cape Verde (right to vote and to be elected), as well as Argentina, Chile, Colombia, Iceland, Norway, New Zealand, Peru, Uruguay and Venezuela (right to vote only). Article 15 (5) allows the legislator to grant the right to vote and to be elected in European Parliament (EP) elections to nationals of EU MS.

Electoral participation in municipal elections is governed by Organic Law no. 1/2001, of 14 August 2001 (latest reform in 2017). Per Article 2, entitled to vote in municipal elections are individuals over 18 years of age who are: a) Portuguese citizens; b) Citizens of a EU member state, provided that a similar right is enjoyed in that state by Portuguese citizens; c) Citizens of a Portuguese speaking country who are legally resident in Portugal for more than two years, provided that a similar right is enjoyed in that country by Portuguese citizens; or d) Other foreigners who are

legally resident in Portugal for more than three years, provided that a similar right is enjoyed in their state of nationality by Portuguese citizens. Article 3 excludes those who have been ruled unfit (*interdito*) by a court of law in last instance, those who are generally acknowledged as demented, and those who have been deprived of political rights by a court of law in last instance. To exercise the right to vote, voters must be registered on the electoral list of the municipality where they reside (Article 4), which means that only residents can vote in municipal elections. Per Article 5, those entitled to vote are also entitled to be elected, provided that, for TCNs, there is reciprocity and that residence requirements (higher than for voting) are met in the case of nationals of a Portuguese speaking country (who must have resided in Portugal for more than four years) and of TCNs other than EU citizens (who must have resided in Portugal for more than five years). Residence requirements do not apply to EU citizens. Articles 6 (1) and 7 set a list of public office holders (e.g. President of the Republic, Constitutional Court justices) and private companies' owners/directors who are not eligible in municipal elections. Article 6 (2) also excludes from eligibility those who are bankrupt or insolvent and TCNs who, as a result of a decision made in accordance with the law of their state of origin, have been deprived of the right to vote or to be elected. No new reform of Organic Law no. 1/2001 is foreseen in the short term.

Electoral participation in EP elections is governed by Law no. 14/87, of 29 April 1987 (latest reform in 2014). In Portugal, the election of Members of the European Parliament (MEPs) is done with a single constituency covering the entire state (Article 2). Per Article 3, entitled to vote are: a) Portuguese citizens registered on the electoral list in Portugal; b) Portuguese citizens registered on the electoral list in Portugal but residing abroad who do not opt for voting in another EU member state; c) EU citizens who are not Portuguese nationals and who are registered on the electoral list in Portugal. All those who are entitled to vote are also entitled to be elected, irrespective of their place of residence, provided that no ineligibility exceptions apply (Article 4). Grounds for ineligibility are, per Article 5, holding the office of President of the Republic or Prime Minister, falling under any of the general ineligibility clauses set for National Parliament elections, exercising diplomatic functions at the time of the candidacy, exercising functions as a judge, being a member of the National Electoral Commission, and falling under any ineligibility clauses set in applicable EU law. Article 6 adds that the quality of MEP is incompatible with a series of public offices, such as that

of Cabinet Member, Minister, General Public Prosecutor, Member of the National Parliament, diplomat, etc. No reform is foreseen in the short term other than that which might result from the reform of the electoral law of the European Union called for by the European Parliament in its Resolution of 11 November 2015.

Furthermore, electoral participation in national legislative elections is governed by Law no. 14/79, of 16 May 1979 (latest reform in 2015), in regional legislative elections for the Autonomous Region of Azores by Decree-Law no. 267/80, of 8 August 1980 (latest reform in 2015), in regional legislative elections for the Autonomous Region of Madeira by Organic Law no. 1/2006, of 13 February 2006 (latest reform in 2009), and in Presidential elections by Decree-Law no. 319-A/76, of 3 May 1976 (latest reform in 2015).

## 22.2. REGISTRATION AND VOTING CONDITIONS

Registration on the electoral list is governed by Law no. 13/99, of 22 March 1999 (latest reform in 2008). There is a single registration for all elections by direct and universal suffrage and referenda (Articles 1 and 6). Registration districts are the parishes (*freguesias*), and, abroad, the consular district, the country of residence (in case there is only a Portuguese Embassy in said country) or the electoral jurisdiction of the consular post (Article 8). The registration on the electoral list has permanent effects and can only be cancelled under conditions prescribed by law [Article 5 (1)]. Updates to the registration take place at any time (both in Portugal and abroad), but are, as a general rule, suspended from the 60<sup>th</sup> day before each election until the day of the election [Articles 5 (3) and 32]. Registration conditions are the same for all elections, including municipal and European elections. However, Portuguese citizens who register abroad before a registration commission based in an EU Member State must, upon registration, make a formal statement on whether they opt to vote for the MEPs of their country of residence or for the Portuguese MEPs in the EP elections [Article 44 (1)].

The age requirement to register as a voter is 17 years of age [Articles 3 (2), 27 (1) (2) and (3)]. Portuguese citizens residing in national territory are automatically registered in the electoral list, in the parish corresponding to the address indicated in the citizen's card (*cartão do cidadão*) registry [Articles 3 (2) and 27 (1)]. The same applies to Brazilian citizens residing in Portugal who enjoy the status of equality of political rights and have voluntarily obtained a citizen's card [Articles 9 (5) and 27 (1)]. Registration on the electoral list is voluntary for Portuguese citizens residing abroad, mobile EU citizens, nationals of Portuguese speaking

countries residing in Portugal, and other TCNs residing in Portugal (Article 4).

Portuguese citizens residing abroad have to request their registration before the registration commission (*comissão recenseadora*) of the consular district, country or consular post's electoral jurisdiction of their area of residence and are registered in the registration district corresponding to the address indicated in the residence permit issued by the authorities of the country of residence [Article 9 (3) and 27 (2)]. Foreign voters in Portugal may register before the parishes' registration commissions or before the Foreigners and Borders Service (*Serviço de Estrangeiros e Fronteiras*), and are registered in the registration district corresponding to the address indicated on their residence permit [Article 9 (4) and 27 (3)].

The right to vote is to be exercised in person at the polls, but Portuguese legislation allows for two exceptions: early voting (*voto antecipado*), in all elections, and vote via post, in national legislative elections, for voters living abroad. Early voting is allowed to voters who are unable to go to the polls on the day of the election due to professional obligations, hospital internment, imprisonment or enrolment in an educational establishment based in a district, autonomous region or island different from that where the voter is registered. Early voting is always exercised before a public official. It is regulated in mostly similar terms for municipal elections (Articles 117 to 120 of Organic Law no. 1/2001), regional legislative elections in Azores and Madeira (Articles 77 to 81 of Decree-Law no. 267/80 and Articles 84 to 87-A of Organic Law no. 1/2006, respectively), national legislative elections (Articles 79-A to 79-E of Law no. 14/79), presidential elections (Articles 70-A to 70-E of Decree-Law no. 319-A/76), and EP elections (per reference to the national legislative elections' regime in Articles 1 and 3 of Law no. 14/87). The possibility of early voting is open also to Portuguese citizens temporarily posted/traveling abroad for peace or humanitarian missions, work, studies or medical treatment (in legislative, presidential, European, and, with some exceptions, regional elections) and to mobile EU citizens (in municipal and European elections). Vote via post is ruled by Decree-Law no. 95-C/76, of 30 January 1976 (latest reform in 1995). The Ministry of Internal Affairs is responsible for sending the ballots by post to the citizens registered abroad and to forward the ballots received from the voters to the polling station (Article 8 of Decree-Law no. 95-C/76).

In municipal elections, voters unable to go to the polls due to professional obligations may exercise the early vote before the Mayor of the municipality where they are registered, between the 10<sup>th</sup> and the 5<sup>th</sup> day prior



to the election; the Mayor then sends the vote by post to the poll station where the voter would have voted, via the respective parish authorities (Article 118 of Organic Law no. 1/2001). Voters in hospital internment or serving a prison sentence must request the documents necessary for early voting to the Mayor of the municipality where they are registered, by post or electronically, until the 20<sup>th</sup> day prior to the election; between the 13<sup>th</sup> and the 10<sup>th</sup> day prior to the election, the Mayor of the municipality where the hospital or the prison is located goes to the hospital or prison to collect the envelope with the vote, following which he/she sends the vote by post to the poll station where the voter would have voted, via the respective parish authorities (Article 119 of Organic Law no. 1/2001). Voters enrolled in an educational establishment outside their registration district must request the documents necessary for early voting to the Mayor of the municipality where they are registered, by post or electronically, until the 20<sup>th</sup> day prior to the election; between the 13<sup>th</sup> and the 10<sup>th</sup> day prior to the election, they exercise their right to vote before the Mayor of the municipality where the educational establishment is based, who will then send the vote by post to the poll station where the voter would have voted, via the respective parish authorities (Article 120 of Organic Law no. 1/2001).

In EP elections, similar rules apply, with the difference that the right to early voting is also recognised to voters who are registered on the electoral list in Portugal but who are posted abroad for work between the 12<sup>th</sup> day prior to the election and the day of the election or as members of peace or humanitarian missions, or who are abroad as researchers, exchange students or patients receiving medical treatment, and to their cohabiting family members. These voters may exercise their right to vote between the 12<sup>th</sup> and the 10<sup>th</sup> day prior to the election before diplomatic or consular representations or external delegations of Portuguese Ministries or public institutions designated by the Ministry of Foreign Affairs. Voters posted in peace or humanitarian missions may be exempted from going to the Portuguese representations or delegations to vote if the Ministry of Foreign Affairs finds that it is impossible for them to make the journey, in which case a diplomatic official will be appointed to go retrieve the electoral envelopes. In the procedure for early voting by voters abroad, the diplomatic official performs a role similar to that of the Mayor for early voting in national territory [Articles 79-A (2), (4) and (5), and 79-D of Law no. 14/79, referred to by Articles 1 and 3 of Law no. 14/87].

According to news reports from May 2018, the Portuguese Parliament is expected to pass a Bill this Friday, May the 4th 2018, changing the rules on

registration of Portuguese citizens living abroad, who are to be automatically registered on the electoral list based on information available from the citizen's card registry. According to the new rules, registration on the electoral list is not mandatory for Portuguese citizens living abroad, who may oppose the registration or ask for its cancellation at a later date. Following the entry into force of the new law, Portuguese citizens living abroad will receive a letter informing them that they will be registered on the electoral list and that they can oppose the registration within a given deadline. It is estimated that the new rules will allow for an increase of up to one million in the number of Portuguese citizens registered abroad and to lower the numbers of voter abstention in Portugal. According to a study commissioned by the Government in preparation for the Bill, in November 2017, there were 318.263 voters registered abroad – a number which is predicted to rise to 1.381.498 voters in 176 countries with the introduction of automatic registration.

The new rules also prescribe that, after a year with an expired citizen's card or passport, the Portuguese living abroad will be automatically registered on the electoral list as inactive, a solution which is designed to account for the fact that deaths abroad are not immediately registered in Portugal.

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### 22.3. MEASURES FACILITATING VOTING RIGHTS

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Through its designated website<sup>1</sup> and campaigns in the media, the National Electoral Commission (*Comissão Nacional de Eleições*) offers information on voting rights and on the practical aspects of exercising those rights, including location and working hours of the polling stations. The polling stations are usually set in high school buildings, which are bound to meet accessibility requirements, but there have been complaints by NGOs that the setting of the polling stations does not take fully into account the needs of voters with disabilities. In 2015, Lisbon's City Council launched a guide with good practices in setting up accessible polling stations. For the 2017 municipal elections, the National Electoral Commission prepared a leaflet for citizens with disabilities and an information video with audio and sign language.

There is one linguistic minority with official status in Portugal – the Mirandês – but there have been no initiatives designed to facilitate the right to vote and the political representation of the Mirandês' speakers. All information available from the National Electoral Commission's website is in Portuguese and so are the guidelines for the polls' officials and the ballots. Similar comments can be made regarding the promotion of political participation by ethnic minorities in Portugal. While the Portuguese Government adopted a National



Strategy for the Integration of Roma Communities, in 2013, political participation was not included. There have been (slow) advances in this field, mostly through the ROMED Programme, for training of Roma municipal mediators, with the involvement of the Portuguese High Commissioner for Migration and of civil society organisations, such as Letras Nómadas (which launched a ‘Political Academy’, now in its second edition, to stimulate the political participation of Roma citizens).

Regarding the promotion of the political representation of women, Organic Law no. 3/2006, of 21 August 2006 (latest reform in 2017), set requirements to be met by lists of candidates in legislative, European and municipal elections in order to secure a minimum representation of 33% of candidates. According to information available from the National Electoral Commission’s website for the 2017 municipal elections, several lists of candidates did not meet the legal requirements (from all political parties and also from groups of citizens), which may be explained by the fact that, in case of infringement, the only sanctions for the authors of the list are the public announcement that the list is not in conformity with the law and a reduction of the amount of public funding for electoral campaigns. As for the facilitation of the exercise of women’s right to vote, there are no specific initiatives. The latest National Plan for Gender Equality, Citizenship and Non-Discrimination (2014-2017) did not include measures in the field of political participation.

Mobile EU citizens may find information on their voting rights from the National Electoral Commission’s website, but there has been no initiative aiming specifically at promoting their right to vote in municipal elections. Furthermore, reports outline misinformation practices by public officials at the parishes’ registration commissions, informing mobile EU citizens that they are only entitled to vote in EP elections.

There are also reports in the press about obstacles faced by Portuguese citizens living abroad in registering on the electoral lists, in particular due to misinformation on the part of the consular and diplomatic agents, and also in exercising the right to vote once registered, due to the distance at which the polling stations are often located and the fact that electronic voting is not allowed and voting via post is only allowed for national legislative elections. The National Electoral Commission has acknowledged that there are obstacles still to overcome.

In general, it does not seem that facilitating the right to vote for specific categories of citizens is a priority in Portugal. The main efforts made in recent years were

focused on increasing accessibility for voters with disabilities.

## 22.4. STATISTICS

Statistical data on the universe of voters and election turnout is scattered over different sources and often does not differentiate among categories of voters, which makes it impossible, for instance, to estimate the turnout of mobile EU citizens in municipal elections or the participation of linguistic and ethnic minorities in any type of elections.

From the electoral map published by the Internal Administration ahead of the 2017 municipal election<sup>2</sup>, it is possible to gather that the number of mobile EU citizens registered on the electoral list on 15 June 2017 was 13.462 (out of a total of 9.396.680 registered voters). The official map with the results of the municipal election does not include the total number of registered voters against the turnout. Information available from the website of the State’s TV Broadcast Company (RTP) indicates that the number of registered voters was 9.411.540 and that 5.173.186 casted their vote (54,97% turnout).

According to the electoral map published by the National Electoral Commission (NEC) ahead of the 2015 national legislative election<sup>3</sup>, the number of Portuguese nationals registered in the electoral lists for voting from abroad on 3 August 2015 was 78.253 (Europe) and 164.273 (Outside Europe), out of a total of 9.682.823 registered voters. A second map published by the NEC after the legislative election<sup>4</sup> shows slightly different numbers, together with information on the turnout: 78.342 registered in Europe, of whom 13.791 casted their vote (17,60% turnout); 164.507 registered outside Europe, of whom 14.759 casted their vote (8,97% turnout), out of a total of 9.684.922 registered voters, of whom 5.408.092 casted their vote (55,84% turnout).

Finally, according to the map published by the NEC about the results of the 2014 EP election<sup>5</sup>, there were 9.753.568 registered voters and 3.284.453 voters casted their vote (33,67% turnout).

Two new legal acts, published in August 2018, have brought important changes to the Portuguese legal framework on the registration of Portuguese citizens living abroad and on the electoral participation in legislative and presidential elections.

Law no. 47/2018, of 13 August 2018, amended the law on electoral registration to establish that Portuguese citizens over 17 years of age, irrespective of whether they reside in Portugal or abroad, shall be automatically registered on the electoral list, based on information available from the citizen’s card registry.

Registration on the electoral list is not mandatory for Portuguese citizens residing abroad, who may request the cancellation of the registration at any time (new Article 3 of Law no. 13/99, of 22 March 1999). Portuguese citizens residing in EU Member States continue to have to make a formal statement on whether they opt to vote for the MEPs of their country of residence or for the Portuguese MEPs in the European Parliament elections. In the absence of such a statement, they are treated as voters for the Portuguese MEPs (Article 44 of Law no. 13/99). Another novelty brought by Law no. 47/2008 is the provision that the registration on the electoral list shall become inactive 12 months after the expiration without renewal of the last valid national identity card or passport; upon renewal of the citizen's card or voluntary registration, the electoral registration becomes active ex officio [Article 27 (7) and (9) of Law no. 13/99].

Organic Law no. 3/2018, of 17 August 2018, changed the electoral laws for the President of the Republic and for the National Parliament in two main ways: by introducing 'early voting in mobility' (i.e. anywhere in the country, irrespective of where the voter is registered) and by introducing a braille matrix to allow sight impaired voters to vote autonomously. Previously, early voting could only be exercised before a public official at the district where the voter was registered. Under the new rules, special 'mobility polling stations' are set up at the town hall of each district capital, in continental Portugal, or island, in the Autonomous Regions of Madeira and Azores. Early voting in mobility is open to all voters registered in Portugal who want to exercise their right to vote in Portugal. Voters have to express their intention, by post or electronically, between the 14th and the 10th days prior to the election, indicating at which mobility polling station they want to exercise their right to vote. Early voting at mobility polling stations takes place on the 7th day prior to the date of the election. Early votes in mobility are subsequently forwarded by the Mayors to the parish authorities where the voters are registered. Voters registered to early voting in mobility who do not exercise their right to early voting may still vote on the day of the election at the polling station of the parish where they are registered.

Voters who are unable to go to the polls on the day of the election due to hospital internment or imprisonment may request, by post or electronically, until the 20th day prior to the election, the exercise of the right to early voting. Between the 13th and the 10th day prior to the election, the Mayor of the municipality where the hospital or the prison is located

goes to the hospital or prison to collect the envelopes with the votes, following which he/she forwards the votes to the parish authorities where the voters are registered. Voters who are unable to go to the polls on the day of the election because they are travelling abroad in the exercise of public or private functions, in representation of the national team, as students, researchers, professors or fellows at a university or research institution recognised by the competent Ministry, as patients being treated abroad, or as company to voters in one of the previous circumstances, may exercise their right to early voting between the 12th and the 10th days prior to the election, before diplomatic or consular representations or external delegations of Portuguese Ministries or public institutions designated by the Ministry of Foreign Affairs (new Articles 35-A, 70-A to E and 77-A of Decree-Law no. 319-A/76, of 3 May 1976, and new Articles 40-B, 79-A to E and 87 of Law no. 14/79, of 16 May 1979).

Voters with a sight impairment may, if they want, request from the polling station the braille matrix that allows them to vote autonomously. When handed to the voter, the braille matrix is placed over the ballot so that the voter can mark the ballot with an X on the open square corresponding to his/her vote. Each polling station will be provided with at least two braille matrixes [new Articles 74 (5), 86 (7) and 87 (4) of Decree-Law no. 319-A/76 and new Articles 95 (7), 96 (4) and 97 (5) of Law no. 14/79].

It is worth mentioning that Organic Law no. 3/2018 repealed Decree-Law no. 95-C/76, of 30 January 1976, which governed the organisation of the electoral process abroad, and added the corresponding provisions on this subject (including vote by post) to the electoral law for the National Parliament (Articles 40-A, 42-A, 79-F, 79-G, 101-A and 106-A to J of Law no. 14/79).

Furthermore, Organic Law no. 3/2018 prescribed that, for the next European Parliament election, the electoral administration may promote the implementation, on an experimental basis, of electronic voting in person, in at least 10 municipalities, with the votes being counted in the determination of the results [Article 8 (1)]. Also, it is established that, within a period of 12 months, the Government shall develop the necessary studies and actions to provide the Parliament with means to legislate on the introduction, in the cases of vote by post, of distance electronic voting with identity checks through mobile digital key or equivalent electronic identification mechanism [Article 8 (2)].



**Notes:**

<sup>1</sup> [www.cne.pt](http://www.cne.pt)

<sup>2</sup> Map no. 2-A/2017, Official Journal of 17 July 2017

<sup>3</sup> Official Map no. 2-A/2015, Official Journal of 10 August  
2015

<sup>4</sup> Official Map no. 2-B/2015, Official Journal of 20 October  
2015

<sup>5</sup> Official Map no. 1/2014, Official Journal of 24 June 2014

## 23. Romania

### 23.1. LEGAL FRAMEWORK

The main laws that govern electoral participation in Romania with respect to municipal elections and European Parliament elections are divided into three categories: legislation issued by the parliament; legislation issued by the government; and administrative acts of different agencies, most importantly the Permanent Electoral Authority, but also entities such as the National Audio-video Council. The main relevant laws can be found in the following statutes and decisions:

- Law 115/2015 for the election of local public administration authorities, for the modification of the Law of public administration 215/2001, as well as for the modification and completion of Law 393/2004 regarding the status of locally elected authorities;
- Law 208/2015 regarding Senate and Deputy Chamber elections, as well as the organisation and functioning of the Permanent Electoral Authority;
- Law 33/2007 regarding the organization and management of elections for the European Parliament;
- Government Emergency Ordinance 4/2014 for the operationalisation of the electoral registry and the modification of Law 33/2007 regarding the organization and management of elections for the European Parliament, as well as some measures for the good organisation and management of the 2014 elections for the European Parliament.

For **municipal elections**, Law 115/2015, applies the same regime to both Romanian and European Union citizens who have their residence in Romania: they can vote if they have the legal voting age (at least 18 on election day), if they are not mentally impaired and under legal protection, and if they have not been disqualified from voting through a final court decision. Voting in municipal elections is not compulsory for everybody on the electoral roll, and it can only be exercised in the administrative division where they reside. European Union citizens registered with the General Immigration Inspectorate are automatically included in complementary electoral lists, which have permanent character. These lists are created and updated by the mayor, together with the local immigration authorities. The complementary electoral lists must include the following information: voter name and surname, date and place of birth, Member State origin, Romanian address, and the number of the electoral administrative unit. European Union citizens who have a right to vote and their residence is located

in the electoral administrative unit for which the role is drawn, but who are not registered with the General Immigration Inspectorate may be registered upon request by the mayor on the complementary electoral lists, on the basis of a document attesting their identity, as well as a document attesting their place of residence.

For European parliament elections, the conditions imposed by Law 33/2007 similar, with the only difference that requirements connected to the electoral administrative unit do not apply. Both Romanian and European Union citizens who have their residence on Romanian territory and are not excluded from the voting process in the same manner as identified above, have a right to vote and be voted in the same conditions. The law offers the same rights to Romanian citizens who have their residence abroad.

For **municipal elections**, any Romanian citizen can be elected if the following conditions are met: the citizen must be at least 23 on election day; must resides on the territory of the electoral administrative unit where they are running for office; must not be formally restricted from the right of assembly in political parties. The same conditions apply to European Union citizens running for office. The only persons who may not be elected are: judges of the Constitutional Court, ombudsmen, magistrates, active army personnel, as well as other categories established by law to have a conflict of interests; and mentally impaired individuals who are place under legal protection, as well as persons who have been restricted in their right to be elected through a final court decision. The same requirements apply to **European parliament elections**, with the mention that Law 33/2007 adds two explicitly prohibited categories of individuals who may not be elected, namely police officers and other categories of public servants.

#### Is there any reform foreseen in the short or mid-term?

No reform plans can be identified at the moment.

### 23.2. REGISTRATION AND VOTING CONDITIONS

For municipal elections, the mayor puts together the electoral lists, divided into permanent (Romanian citizens) and complementary (EU citizens), the latter also having permanent nature. Citizens who do not want to be on the list or have changed their residence and must be registered on a different list must undergo a special procedure for de/registration.

Law 33/2007 seems to imply that while permanent electoral lists are compiled by public administration

officials automatically on the basis of data from the National Person Registry, whereas special lists are compiled on the basis of the registrations received from EU citizens at least 60 days before the reference date.

Law 288/2015 regarding voting via correspondence only governs Romanian parliamentary elections.

### 23.3. MEASURES FACILITATING VOTING RIGHTS

Law 288/2015 regarding voting via correspondence, but only with respect to Romanian parliamentary elections, as its initial form, which also covered European parliamentary elections and Romanian presidential elections, did not pass.

No particular measures taken by the MS. However, in 2016 a lot of media coverage was given to the only non-Romanian candidate in the municipal elections (running for mayor in one of the sector municipalities of Bucharest), a French national. This has raised a lot of public debate with respect to the political participation of non-Romanian nationals, although it does not seem to have prompted any measures by the MS to further educate the electorate in this respect.

No particular measures taken by the MS. One particularity of the Romanian electorate is that it includes a large Hungarian minority (1.2 mil out of the total 20 mil population). The electoral behaviour of this minority is stable, and the minority is represented politically at all levels of governance (albeit at municipal level only in specific geographical areas).

No particular measures taken by the MS. Various measures taken by civil society, such as the [PolFem](#) initiative which was funded through the EU 'Fundamental Rights and Citizenship' programme and focused on the 2014 EU parliament elections. Different political parties might have included in their governance programmes an emphasis on the need to promote more female politicians (e.g. Romania's first social-democrat prime minister took office in 2018).

The main obstacles seem to be:

- voting management and infrastructure;
- allegations of corruption leading to voter apathy;
- lack of awareness about voting rights.

The passing of Law 288/2015 regarding voting via correspondence seems to indicate that the Romanian legislator is aware of the need to facilitate voting, especially in the light of the changing demographics, and given the high number of Romanians who are currently living abroad. However, the *travaux préparatoires* of this legislative bill show that while the

Senate proposed this law to have a broader scope of application and facilitation, the version that finally passed was a considerable restriction of the initial proposal.

### 23.4. STATISTICS

Available statistics:

- Total Romanian population (2011) - 20.121.641;

Largest ethnic minorities:

Hungarian - 1.227.623

Roma - 621.573

- Total number of citizens on electoral lists - 18.264.835;

- Public administration elections (5 June 2016):

Turnout (% out of total voters) - 48,27%;

Turnout (urban) - 39,80%;

Turnout (rural) - 59,71%.

- Community candidates for public administrations elections (5 June 2016): 58

- Total candidates for public administrations elections (5 June 2016) - 267.242 (overall):

Male - 210.093 (male);

Female - 57.149.



## 24. Slovakia

### 24.1. LEGAL FRAMEWORK

In Slovakia, municipal elections and European Parliament (EP) elections are currently governed by a single piece of legislation, namely *Act nr. 180/2014 of 29 May 2014 on the Conditions for the Exercise of the Right to Vote and on the Amendment of Certain Laws ('Elections Act')*, as subsequently amended by acts nrs. 356/2015, 125/2016, 69/2017, 73/2017 and 165/2017. The *Elections Act* of 2014 replaced previously existing different laws regulating various types of elections as well as referenda, including those to the EP and municipal organs.<sup>1</sup> By bringing all these laws under one umbrella, the *Elections Act* of 2014 provides for a common set of basic rules relating to all types of elections (and referenda), while retaining specific provisions for each of them. For EP elections, such specific provisions can be found in Part Three<sup>2</sup> and for municipal elections in Part Seven<sup>3</sup> of the *Elections Act*.

In principle, any person who reached the age of 18 years has the right to vote in any elections (and referenda) held in Slovakia, subject to requirements and conditions provided for each type of elections.<sup>4</sup> In case of EP elections, the right to vote only belongs to Slovak nationals<sup>5</sup> who have permanent residence in Slovakia or who, while having permanent residence neither in Slovakia nor in another EU Member State, are present in Slovakia on the polling day.<sup>6</sup> Mobile EU citizens have the right to vote in EP elections in Slovakia, subject to two conditions: first, having permanent residence in Slovakia and, second, not having been deprived of the right to vote by the Member State of their nationality.<sup>7</sup> The *Elections Act* explicitly stipulates that one may exercise his/her vote in EP elections only in one EU Member State.<sup>8</sup> In municipal elections, all residents of the municipality have the right to vote.<sup>9</sup> This clearly comprises both Slovak nationals as well as third-country nationals (TCNs), including mobile EU citizens. There are no further conditions stipulated in the *Elections Act* in this regard.

Concerning the right to be elected, in EP elections nationals of Slovakia and mobile EU citizens who have reached the age of 21 on the polling day may be elected. Nationals of other mobile EU citizens are however only eligible to run in EP elections in Slovakia if they have not been deprived of the right to be elected by the Member State of their nationality.<sup>10</sup> Moreover, the *Elections Act* also explicitly stipulates that it is only possible to run in the particular EP elections in one EU Member State.<sup>11</sup> In municipal elections, the right to be elected to the municipal

parliament belongs to all persons of age of at least 18 years resident in that municipality.<sup>12</sup> The right to be elected as mayor is limited to municipality residents of at least 25 years of age.<sup>13</sup> Both in case of EP and municipal elections, the right to be elected is restricted in cases of occurring imprisonment, previous conviction for a deliberate criminal offense unless erased, and deprivation of one's legal capacity.<sup>14</sup>

### 24.2. REGISTRATION AND VOTING CONDITIONS

Slovak nationals are registered in the Electoral Register automatically. This is done by the municipality of their permanent residence which maintains this register of the municipality that serves as a basis for Electoral Registers used in each specific elections.<sup>15</sup> Mobile EU citizens with permanent residence in Slovakia are included in the Permanent Electoral Register of their municipality as well.<sup>16</sup> There are no conditions for the enrollment other than those related to the right to vote and permanent residence, explained above.

The situation is different when it comes to EP elections. Unlike Slovak nationals, mobile EU citizens who wish to exercise their right to vote in EP elections must request enrollment in the Electoral Register in the place of their permanent residence no later than 40 days before the polling day. They must do so by submitting an application and accompanied by a declaration confirming, among others, that they have not been deprived of the right to vote in the state of their nationality and they will exercise the right to vote to the EP elections only in Slovakia.<sup>17</sup> Examples of the application form and the declaration are provided on the official website of the Ministry of Interior.<sup>18</sup> Information about the enrollment is communicated to the person concerned promptly by the municipality of his/her permanent residence in Slovakia.<sup>19</sup> Upon request, the municipality also removes a mobile EU citizen from the Electoral Register.<sup>20</sup>

The actual exercise of the voting rights must be done by each person him/herself; voting on behalf of another is not possible in Slovakia.<sup>21</sup> Persons with a disability or unable to read or write may however request another person, other than a member of the electoral committee, to assist them during voting at the polling station.<sup>22</sup> Furthermore, for duly justified (in particular medical) reasons, anyone may request taking the vote outside the polling station. The polling district committee will make this possible but only within the territory of the same electoral district.<sup>23</sup> This applies to all types of elections (and referenda) held in Slovakia.

There are two additional instances in which the right to vote may be exercised outside the polling stations and polls. First, any person included in the Electoral Register who wishes to exercise his/her right to vote to the national parliament, to the EP or for the President of Slovakia in a polling district other than that in which he/she is registered may do so by requesting a polling card. This card will enable such person to vote in any polling station in Slovakia.<sup>24</sup> There is no difference in the procedures or conditions that apply in this regard to Slovak nationals or mobile EU citizens. For obvious reasons, the possibility to vote in another district in Slovakia with a polling card is not available in municipal elections.

The last instance at which the right to vote may be exercised outside the polling stations and polls concerns voting by mail. Persons possessing the right to vote to the national parliament (i.e. Slovak nationals) living abroad or present abroad on the polling day may vote by mail. A request to that effect must be delivered to the relevant authority by regular mail or by e-mail no later than 50 days before the polling day.<sup>25</sup> No such possibility exists for EP elections or any other elections, either for Slovak nationals or for mobile EU citizens.

According to the Ministry of Interior, while the introduction of voting by electronic mail was subject to discussion in Slovakia some time ago, it is not likely that such method will be introduced in the foreseeable future. There are two main reasons for this: first, concerns about cyber security and, second, difficulty with the need to ensure anonymity of the voter and his/her vote which is prescribed by Slovak laws.<sup>26</sup>

### 24.3. MEASURES FACILITATING VOTING RIGHTS

In Slovakia, there have been no general measures or initiatives put in place to facilitate the access to the polls, apart from those mentioned above.<sup>27</sup> The same applies to the issue of promotion of the active or passive voting rights of any particular group of citizens, with one exception. According to the Elections Law, official announcements and information about elections are communicated to voters not only in the Slovak language but also in the language of the ethnic minority. This is mandatory in municipalities with a minimum of 20% registered voters with such ethnicity.<sup>28</sup>

The lack of formal initiatives promoting the exercise of the right to vote or be elected is due to the general perception that no such measures or initiatives are needed. In fact, all the initiative and responsibility for active or passive participation in Slovak elections are considered to – and do – rest with political parties and,

arguably to a lesser extent, with civil society organizations.

The ethnic minority that has traditionally been very active in seeking representation in elections held in Slovakia is the Hungarian ethnic minority. In each elections, including those to the EP and municipal elections, a number of political parties focused on Hungarian minority voters and interests participates in the elections, some with success.<sup>29</sup> In municipal elections also parties representing Roma minority take part.<sup>30</sup> Voters from these two minorities are generally known as belonging to those most disciplined, not missing any elections.

Concerning the facilitation of the active or passive voting right of women, there are no formal measures or initiatives in this regard either. According to the Slovak Ministry of Interior, some time ago a possibility to introduce a mandatory quota for women included on the list of candidates for each political party running for elections was considered but dismissed. The reason was that many political parties felt they would be unable to comply with such mandatory quotas.<sup>31</sup>

Lastly, with regard to the promotion or facilitation the voting rights of mobile EU citizens, apart from official information provided to these voters by municipalities, the Slovak Ministry of Interior noted that nationals or other EU Member States in Slovakia were informed about elections and all related issues through information billboards, flyers, television and radio programmes as well as a variety of internet sources.<sup>32</sup>

### 24.4. STATISTICS

The most recent elections to the EP took place on 24 May 2014 in Slovakia. Only 13,05% of registered voters participated.<sup>33</sup> Among 4.414.433 registered voters, 33 voters were mobile EU citizens who have requested registration in the Electoral Register related to these elections.<sup>34</sup> It is not known how many of them have actually exercised the right to vote in Slovakia. Similarly, no information is available on the number of Slovak nationals permanently residing in another EU Member State who have requested registration in the Electoral Register in Slovakia in order to vote to the EP in Slovakia and not in the EU Member State of their permanent residence. However, the Slovak Ministry of Interior stated that no such Slovak national had exercised the right to vote in 2014 elections to the European Parliament.<sup>35</sup> 5.288 Slovak nationals with permanent residence in another EU Member State have registered in the Electoral Registers in their state of residence, most of them registered in the United Kingdom (1.464), followed by Germany (1.083), Austria (770) and Italy (524).<sup>36</sup>

Regarding the right to be elected, in the 2014 elections to the EP only one out of the 333 candidates running in Slovakia was a mobile EU citizens (from Germany). This candidate was not elected.<sup>37</sup>

No data is available on the participation of mobile EU citizens in the latest municipal elections held in 2014.

This is due to the fact that all specific data are collected and kept by each municipality. The Ministry of Interior has no official access to such data. The only publicly available data is the overall turnout in the 2014 municipal elections, which was 48,34%.<sup>38</sup> The next municipal elections in Slovakia will take place in autumn 2018.

## Notes:

<sup>1</sup> Previously applicable laws of relevance to EP and municipal elections were Act No. 331/2003 Coll. on Elections to the European Parliament as amended and Act no. 346/1990 Coll. on Elections to Municipal Authorities, respectively.

Other repealed laws governed elections to the national parliament (called National Council of the Slovak Republic), elections and dismissal of the President (who is directly elected in Slovakia), elections to provincial authorities (in Slovakia both local (municipal) as well as provincial representative organs are directly elected) and the conduct of referendums.

<sup>2</sup> Elections Act, Articles 72 – 97.

<sup>3</sup> Elections Act, Articles 163 – 195.

<sup>4</sup> Elections Act, Article 3. Note that according to Article 4, a person whose personal liberty has been limited by law for reasons of public health protection (e.g. due to suffering from a contagious disease) may not exercise his right to vote. Until 31 May 2017, also persons carrying out a custodial sentence imposed for a particularly serious crime and persons deprived of their legal capacity were not permitted to vote. The Slovak Constitutional Court found these two legal impediments to the right to vote to be inconsistent with the Constitution of the Slovak Republic and a number of international and European human rights treaties. – Ruling of the Constitutional Court of the Slovak Republic nr. PL.ÚS2/2016 of 22 March 2017, Collection of Laws of the Slovak Republic (Coll.) 130/2017 of 31 May 2017.

<sup>5</sup> In Slovak laws, nationality is referred to as ‘citizenship’.

<sup>6</sup> Elections Act, Article 72(1) and (2).

<sup>7</sup> Elections Act, Article 72(1) and (3).

<sup>8</sup> Elections Act, Article 72(4).

<sup>9</sup> Elections Act, Article 163.

<sup>10</sup> Elections Act, Article 73(1).

<sup>11</sup> Elections Act, Article 73(2).

<sup>12</sup> Elections Act, Article 164.

<sup>13</sup> Elections Act, Article 165.

<sup>14</sup> Elections Act, Article 6.

<sup>15</sup> Elections Act, Articles 9 and 11

<sup>16</sup> Elections Act, Articles 9. Para. (1) refers to ‘voters who have permanent residence in the municipality’, which clearly means all residents, Slovak nationals as well as foreigners, including nationals of other EU Member States.

<sup>17</sup> Elections Act, Articles 73(1)-(3)

<sup>18</sup> Available at <http://www.minv.sk/?ep-infovotereuen>, visited on 15 April 2018.

<sup>19</sup> Elections Act, Articles 73(5). Note that the municipality reports the application to the Ministry of Interior Affairs which verifies the declaration by contacting relevant authorities of the Member State of the person’s nationality. – paras. (6)-(8).

<sup>20</sup> Elections Act, Articles 73(9)

<sup>21</sup> Elections Act, Article 24(1)

<sup>22</sup> Elections Act, Article 24(6). This must be announced to the electoral committee in advance.

<sup>23</sup> Elections Act, Article 24(7)

<sup>24</sup> Elections Act, Articles 46, 76 and 99. The same applies to referendums (in which only Slovak nationals have the right to vote). – Article 198.

<sup>25</sup> Elections Act, Articles 57(2) and (3), 59 and 60. Note that pursuant Article 45, Slovak nationals living abroad must request voting by mail and an enrolment in the Special Electoral Register maintained by the Ministry of Interior Affairs at least 35 days before the polling day. The same regime applies to referendums. – Articles 197, 205(2) and (3), 207 and 208.

<sup>26</sup> Information received on 18 April 2017 from the Ministry of Interior Affairs of the Slovak Republic, Department of Elections, Referendums and Political Parties.

<sup>27</sup> See pp. 3-4 on the possibility of disabled persons or persons unable to read or write to request assistance in the exercise of their right to vote by another person and the possibility of any person to request casting his/her vote outside the polling station for duly justified reasons. Note that disabled persons or persons unable to read or write must (have the ability to) identify the person who they wish will assist them in the exercise of the right to vote. If they are unable or incapable of doing so, the Polling District Committee will not be in a position to allow such assistance. This safeguard exists in order to prevent abuse.

<sup>28</sup> For example, Elections Law, Art. 21 on information to voters, Art. 22 on polling stations, but also Art. 46(7) on the polling card.

<sup>29</sup> For example, in the latest elections to the European Parliament, 3 such parties participated: Hungarian Christian Democratic Alliance, MOST – HÍD and the Party of the Hungarian Community. – Report of the Central Electoral Committee on the Results of the Elections to the European Parliament of 24 May 2014, available at <http://www.minv.sk/?ep-vysledky> visited on 19 April 2018.

For data about Hungarian parties in the most recent municipal elections see official data collected by the Slovak Statistic Office available at <http://volby.statistics.sk/oso/oso2014/oso2014/sk/tab07.html> visited on 19 April 2018.

<sup>30</sup> A number of political parties representing Roma minority participated in the 2014 municipal elections, including Slovak Roma Initiative, the Party of Roma Coalition, the Party of Roma Union in Slovakia. – See official data collected by the Slovak Statistic Office available at



Notes (continued):

<http://volby.statistics.sk/oso/oso2014/oso2014/sk/tab07.html> visited on 19 April 2018.

<sup>31</sup> Information received on 18 April 2017 from the Ministry of Interior Affairs of the Slovak Republic, Department of Elections, Referendums and Political Parties.

<sup>32</sup> Information received on 18 April 2017 from the Ministry of Interior Affairs of the Slovak Republic, Department of Elections, Referendums and Political Parties.

<sup>33</sup> Report of the Central Electoral Committee Concerning Results of the Elections to the European Parliament of 24 May 2014, available at the official website of the Ministry of Interior Affairs of the Slovak Republic, <http://www.minv.sk/?ep-vysledky>, visited on 15 April 2018.

<sup>34</sup> Among these 33 nationals of other EU Member States were 10 nationals of Poland, 8 nationals of Italy, 7 nationals of Germany, 4 nationals of the United Kingdom, 3 nationals of the Czech Republic and 1 national of Hungary. - Information received on 18 April 2017 from the Ministry of Interior Affairs of the Slovak Republic, Department of Elections, Referendums and Political Parties. It should be noted that no information was found on the overall number of nationals of other EU Member States with permanent residence in Slovakia. It is therefore not possible to provide a ratio between the number of nationals of other EU Member States permanently residing in Slovakia and those who have requested registration in the Electoral Register for the 2014 elections to the European Parliament.

<sup>35</sup> Information received on 18 April 2017 from the Ministry of Interior Affairs of the Slovak Republic, Department of Elections, Referendums and Political Parties.

<sup>36</sup> Information received on 18 April 2017 from the Ministry of Interior Affairs of the Slovak Republic, Department of Elections, Referendums and Political Parties. In the remaining Member States, the number of Slovak nationals registered for the 2014 elections to the European Parliament varied between 241 and 1, with no registration in Croatia and Romania. It should also be noted that out of these 5.288 Slovak nationals registered in the Electoral Register of another EU Member State, only 2.283 persons were identified by Slovak authorities and subsequently removed from the Electoral Register in Slovakia.

<sup>37</sup> Information received on 18 April 2017 from the Ministry of Interior Affairs of the Slovak Republic, Department of Elections, Referendums and Political Parties. It should be noted that no application for registration as a candidate was rejected.

<sup>38</sup> 2.164.029 out of 4.476.506 registered voters. Summary Voting Results by Electoral Districts and for the Slovak Republic, the official website of the Statistic Office of the Slovak Republic available at <http://volby.statistics.sk/oso/oso2014/oso2014/sk/tab01.html> visited on 15 April.

## 25. Slovenia

### 25.1. LEGAL FRAMEWORK

The municipal elections are governed by the *Local Elections Act*, while the European Parliament (EP) elections are governed by *Election of Slovenian Members to the European Parliament Act*.

According to Art. 5 of the Local Elections Act, every citizen of the Republic of Slovenia who is 18 years old has the right to vote and to be elected in the municipal elections. The citizens must have their residence registered in the municipality in which elections they wish to participate take place. Furthermore, mobile EU citizens with a registered permanent residence in that municipality or where the residence is not permanent, with temporary registered residence, are also entitled to vote and be elected. The suffrage is also granted to third-country nationals (TCNs), who have a permanent residence. Lastly, members of Italian and Hungarian minorities are also entitled to the suffrage and to be elected in these elections.

According to Art. 10 of the Election of Slovenian Members to the European Parliament Act, every citizen of Slovenia who is allowed to vote in elections for the National Assembly, is allowed to vote in the EP elections. Furthermore, mobile EU citizens are also entitled to such right, but are subject to conditions. The right to vote should not have been denied in the MS of nationality and they should have been registered in the Voting Right Register. They should be at least 18 years old and have their permanent residence registered in Slovenia or permit for temporary residence in Slovenia. They can only vote for EP elections in one MS.

The above stated conditions also apply for the candidates running for MEP, with some further restraints. According to Art. 2 of the Election of Slovenian Members to the European Parliament Act, candidates cannot at the same time be members of National Assembly or perform any administrative function of local nature. There is currently no further important reform foreseen, partially due to the fact that the Prime Minister recently resigned.

### 25.2. REGISTRATION AND VOTING CONDITIONS

For municipalities which have smaller number of members in the Municipal Council (from 7 to 11), a voting system by simple majority is prescribed. Members of the municipal council of Italian, Hungarian and Roma minorities have special status and are always elected by simple majority. Members of the Municipal Council (elected by simple majority), are appointed by the political parties and elected by the voters in one

voting unit, as stated in Art. 48 of the Local Elections Act. As shown in Art. 51 of the Local Elections Act, every political party anonymously elects the candidates according to its own rules, where only the members who have the voting right and permanent residence in the municipality are allowed to participate. Lastly, the voters elect the candidates by simple majority by signing the suffrages.

Municipalities with higher number of members of the Municipal Council are elected by proportional voting system. The lists of candidates are made by the political parties of the municipality (only one list per party). Again, the candidatures put forward can only be those in line with Art. 51 of the Local Elections Act. The electoral lists can also be made and signed by citizens with permanent residence in the electoral unit or in case they are from another MS and not permanently registered in Slovenia, with temporary residence in that county.

In order to become a candidate, the person has to permanently reside in the county where he/she is running for the municipal council, unless in case of mobile EU citizens without permanent residence in Slovenia. In that case, they should be registered as temporarily residents of that municipality (Art. 68a of the Local Elections Act). The possibility to run is limited by the fact that each candidate is allowed to run only in one municipality. To become a candidate, the person has to give written consent, which cannot be revoked. The consents of the candidates are attached next to the list of candidates (Art. 72 of the Local Elections Act). The deadline to put forward the candidature is at latest by 7pm, 30 days before the electoral lists are submitted to the electoral Commission, as stipulated in Art. 74 of the Local Elections Act.

Candidates can be nominated by the political parties or the voters themselves. If political parties decide to nominate their list of candidates (electoral list), they do so anonymously and according to their rules. The list can be submitted by the political party if it is signed by at least 4 members of the National Assembly or at least 1000 voters, as stated in Art. 15 of the Election of Slovenian Members to the European Parliament Act. On the other hand, if voters nominate candidates and conduct the list, they can do so by at least 3000 votes (Art. 16). Every voter and member can only vote for one electoral list.

The deadline for the submission of the electoral lists to the National Election commission is at latest on the 30<sup>th</sup> day before the election day (Art. 18). If the candidate is not a Slovenian national, but a mobile EU citizen, an



additional statement of the candidate has to be attached to the candidature, stating that their right to be elected in their MS was not revoked. If the candidate does not have permanent residence in Slovenia, a statement saying they are not running for MEP in any other MS has to be attached.

In both elections, voters are entitled to cast a preference vote, therefore giving preference to the particular candidate who would otherwise be lower on the electoral list. In the EP elections, the candidate who is a mobile EU citizen has to sign a statement that his/her right to be elected in EP in the MS of origin has not been revoked. In municipal elections, only a consent has to be signed and no statement concerning the voting right in another MS is needed.

The *Voting Rights Register Act* applies to municipal elections registration as it does for EP elections, since Art. 8 of the Local Elections Act states that for further issues about the register, the respecting law about Voting Rights register is to be reasonably applied. In Art. 10 of the Election of Slovenian Members to the European Parliament Act states that the Voting Rights Register is governed under the Voting Rights Register Act. Therefore, the registration for Slovenian nationals is automatic. Mobile EU citizens can be registered via application form under Art. 7, after the Ministry of Interior has notified all mobile EU citizens within 10 days after the publication of the elections of their possibility to register.

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### 25.3. MEASURES FACILITATING VOTING RIGHTS

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Besides the normal voting procedure at the polls, the right to vote is also facilitated in several situations. The voters who know they will not be present on the day of the elections, have the possibility to cast their vote before the actual elections take place. This kind of voting can be done no more than 5 days and no later than 2 days before the date of the elections. Voters in prisons or hospitals are also facilitated to vote via post, if they notify the respecting commission at latest 10 days before the voting takes place. For Slovenian citizens living abroad, the vote can be casted via post or in person at the consulate in the respective foreign country.

Slovenia has an important Italian and Hungarian minority. They have their own separate electoral registers with the names of the voters. They are specially conducted for the minorities and for a special voting unit where the election commission of the respecting minority is active. (Art. 27 of the Voting Rights Register Act). Every information sent to the voters in these territories shall be written in Slovenian and in the language of the minority (Italian or

Hungarian). All the measures taken by the administration concerning the elections, such as confirmation of the change in the electoral register are also issued in Slovenian and the language of the minority.

A special register with the names of the voters is conducted for the members of the Roma community. Based on the voting rights registered, special counties are formed where the Roma people are entitled to vote for their representatives in the local Council of the municipality. For the elections of representatives of the Municipal Council of the minorities, a special election commission is formed. In case of local elections of the municipal council, there has to be at least one member and one deputy from the Roma minority.

If persons with disabilities wish to vote from home, they should notify the municipal election commission via the internet portal "e-Uprava". A certificate showing that the person has a status of a disabled should be attached. If such procedure is followed, the voter will get the suffrage by post. If persons with disabilities wish to vote via post on a permanent basis, they should notify the State Election Commission. The notification can be sent at least 10 days before the election day, also accompanied by a certification. This permanent postal voting procedure concerns all elections and it is effective until it is revoked by the person.

It is worth mentioning that every person is allowed to be accompanied when going to the polls, in order to help them cast the vote because they are physically unable to do so. Blind people and people with bad sight are also facilitated with a special template, when going to vote.

Concerning the EP elections, Art. 15 and 16 of the Act concerning the election of the Members of the European Parliament stipulate for gender balance since it is stated that none of the sexes should be represented in the electoral list with less than 40%. Furthermore, every list of candidates has to be composed in a way that at least one candidate of both sexes is put in the first half of the list. Therefore, if the list is incompatible with the latter principle, the list is void. However, this is not applicable to the list where there are only one or three candidates.

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### 25.4. STATISTICS

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For the 2014 EP elections, 419.975 persons voted, representing 24,55% of all people who had the right to vote.

## 26. Spain

### 26.1. LEGAL FRAMEWORK

The 1978 Spanish Constitution enshrined electoral participation as a fundamental right. All citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage [Article 23 (1)] and they likewise have the right to access on equal terms to public office [Article 23 (1)]. Electoral participation in municipal and European Parliament elections is governed by Organic Law 5/1985, of 19 June (latest reform in 2016). Furthermore, each Autonomous Region regulates the procedure for the elections of their own regional parliaments (regional elections).

Organic Law 5/1985 establishes standard legal requirements for both municipal and European Parliament elections. All Spaniards over the age of 18 are entitled to vote, save for the exceptions prescribed in Article 3 (those who have been deprived of political rights or who have been ruled unfit by a court or tribunal in last instance). In order to exercise the right to vote or to be elected, registration in the electoral list is required. Those entitled to vote are also entitled to be elected. Article 6, however, establishes an extensive list of grounds for ineligibility that mainly affects to certain categories of public officers or State persons (inter alia, members of the Constitutional Court, State Attorney General, General Directors of Social Security Offices or members of the Royal family).

As regards specific legal requirements for municipal elections, Article 176 extends the right to vote to those foreigners who are legally resident in Spain, provided that a similar right is enjoyed in their States of nationality by Spanish nationals (reciprocity rule, currently applicable to nationals of Norway, Ecuador, New Zealand, Colombia, Chile, Peru, Paraguay, Iceland, Bolivia, Cape Verde, Republic of Korea and Trinidad and Tobago). EU citizens residing in Spain and foreigners that meet the requirements to vote for Spaniards and have expressed their willingness to exercise the right to vote are also entitled to vote. Registration in the Census of Residents in Spain is needed, meaning that, in principle, only those who are currently residing in a Spanish municipality can vote [Article 2 (3)]. The same categories of non-Spanish nationals are entitled to be elected in municipal elections, provided that they have not been deprived of the right to stand as a candidate in their countries of origin. Article 178 also regulates specific grounds for ineligibility in municipal elections which affects to particular categories of public office holders and private companies owners and directors at municipal level.

In European Parliament elections all foreigners residing in Spain who are EU citizens, meet the requirements to vote for Spaniards and are not deprived of the right to vote in their Member State of origin can vote (article 210). In order to be able to vote, EU citizens should expressly have chosen to vote in European Parliament elections in Spain. Requirements to stand as a candidate are the same as those for the exercise of the right to vote in European Parliament elections. Article 211 establishes specific grounds for ineligibility in European Parliament elections, inter alia, being a member of the Spanish Parliament or one of the regional parliaments.

No reform is foreseen in the short term affecting municipal or European Parliament elections. In some Autonomous Regions steps towards amending their own electoral system are under way. Mention may be made to the first reform of the 1978 Spanish Constitution, which took place in 1992 to regulate the right to be elected in municipal elections for foreigners as a consequence of the Treaty of Maastricht.

### 26.2. REGISTRATION AND VOTING CONDITIONS

Registration on the electoral list is necessary to be able to vote or to stand as a candidate in all elections in Spain [Article 2 (2) Organic Law 5/1985]. Local authorities carry out such registration ex-officio with respect to the residents (Spanish and non-Spanish nationals) in their municipality. For those Spaniards living abroad, Consular Offices and Consular Sections carry out such registration ex-officio. Voters receive the tarjeta censal (voter card) shortly after reaching the age of 18 and every time new elections are called.

Registration procedures for municipal and European Parliament elections are the same, with the only additional requirement for foreigners to express their willingness to exercise the right to vote. This declaration can be submitted at any time in the municipality where they are resident, keeping in mind that the electoral list closes on the first day of the second month prior to the elections call [Article 39 (1) Organic Law 5/1985]. Furthermore, the Electoral List Office (Oficina del Censo Electoral) sends before each election to foreigners a communication to inform about the declaration requirement.

The right to vote can only be exercised in person at the polls [Article 4 (1) Organic Law 5/1985]. However, the Organic Law 5/1985 provides for an exception: vote via post. Voters residing in Spain who expect not to be in the municipality where they should cast their vote on

the voting day or can not vote in person, may cast their vote via post, upon request to the Provincial Delegation of the Electoral List Office and following certain requirements (Article 72 Organic Law 5/1985). The Postal Service is in charge of keeping the votes addressed to the different poll stations until the voting day. There is also a special procedure regulated in the Royal Decree 605/1999, of 16 April, to cast the vote via post for those placed on board of ships of the Spanish Navy, merchant marine or fishing fleet and personnel on overseas missions of the Spanish Army and State bodies and security forces. These provisions apply for all elections. Furthermore, Spaniards residing abroad and those who are temporarily absent can also cast their vote via post, but only in national legislative elections, regional elections (including elections of the Assemblies of the Autonomous Cities of Ceuta and Melilla) and European Parliament elections (when Spanish nationals have opted to vote for the Spanish MEPs).

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### 26.3. MEASURES FACILITATING VOTING RIGHTS

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Royal Decree 422/2011, of 25 March, aims to enhance the participation of people with disabilities in political life and in electoral processes. Polling stations are bound to meet accessibility requirements, granting full access to people with disabilities. A free service of sign language interpreting shall be provided on the voting day when deaf and hard of hearing people are appointed as members of the poll station. Members of the poll stations shall also ensure that voters with disabilities can exercise their right to vote as autonomously as possible and adequate transportation service shall be provided for free when requested and in accordance with the availability of budget funds. In a similar spirit of facilitating voting rights, Royal Decree 1612/2007, of 7 December, regulates an accessible voting procedure for people with visual impairment. Complementary documentation (ballot papers and envelopes) in Braille is provided to people with visual impairment, allowing identification of voting options with autonomy and guaranteeing the secrecy of the ballot. Both Decrees have been developed at regional level by the Autonomous regions. The central government has to assess the application of these two decrees. The last accessibility report available, referring to the general elections in 2011, shows that there is still room for improvement (see [http://elecciones.mir.es/locales2015/documents/10729/18193/Informe\\_accesibilidad.pdf](http://elecciones.mir.es/locales2015/documents/10729/18193/Informe_accesibilidad.pdf)).

As for voting rights of other minorities, information about electoral processes and official documents such as ballot papers and envelopes are available in any of the co-official languages of Spain. As regards the

Spanish Roma communities, no general measure or initiative has been taken to promote their participation in political life, despite the figures that show the low participation of the Roma in elections.

Organic Law 3/2007, of 22 March, introduced several changes on the Organic Law 5/1985 aiming at facilitating political representation of women. Party list for national legislative elections, regional elections, municipal elections and European Parliament elections shall contain a balanced representation of men and women, meaning that political parties are required to ensure that at least 40% of candidates on their electoral lists are of each gender [Article 44 bis (1) Organic Law 5/1985]. Since candidates are elected according to the position on the list, the same rate of 40% must be met in each tranche of five candidates within the electoral list.

There seem to be no specific initiatives aiming at promoting the mobile EU citizens' right to vote in municipal elections. Besides the general information (in Spanish and other co-official languages of Spain) provided through the webpages of the Ministry of Home Affairs, the Electoral List Office or the Central Electoral Commission and the communication from the Electoral List Office before the elections, no general measure has been put in place at least coming from the central government.

Obstacles to exercising the right to vote have been reported in relation to the procedure to vote via post, particularly for those Spaniards residing abroad or temporarily absent. During national legislative elections of 2015 and 2016, Spanish nationals residing abroad complained about this procedure, which entails for voters to submit a request to vote every time elections are called (*voto rogado*) and involves the participation of postal services in their respective countries of residence. Ballot papers did not arrive on time. Even the Spanish Ombudsman voiced concerns over this situation, issuing a recommendation to strengthen the coordination mechanisms between the different ministerial departments "in order to remove obstacles in the voting process" (see <https://www.defensordelpueblo.es/resoluciones/facilitar-el-voto-por-correo-desde-el-exterior-en-las-elecciones-generales/>).

Besides the legislative efforts to increase accessibility for voters with disabilities and visual impairment, it does not seem that facilitating the right to vote to certain categories of citizens is a priority in Spain.

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### 26.4. STATISTICS

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The National Statistical Institute (INE in its Spanish acronym) provides statistical data on election



processes. In the last municipal elections, held in 24 May 2015, there were 442,128 mobile EU citizens registered in the electoral list (out of a total of 36,017,936 registered voters). The Spanish provinces with the highest number of voters from other EU countries were Alicante (70,420), Madrid (55,677), Málaga (38,182), Barcelona (31,781) and Balearic Islands (21,052). General turnout in 2015 municipal elections was 64,91% (22,781,766 total voters). Figures related to total number of mobile EU citizens registered voters against the turnout to municipal elections are not provided.

In the 2014 European Parliament elections a total of 36,514,084 voters were registered. Spanish nationals registered for voting from abroad were 1,691,367 while there were 333,748 mobile EU citizens registered. General turnout in 2014 European Parliament elections was 43,81%. There are no specific numbers for total number of mobile EU citizens registered voters or Spaniards living abroad against the turnout to European Parliament elections.

## 27. Sweden

### 27.1. LEGAL FRAMEWORK

There are four general elections in Sweden: Parliamentary (Riksdagen); County (Landstingfullmäktige); Municipal (Kommunsfullmäktige) and European Parliament.

General information on the election system in Sweden, as well as ongoing and upcoming elections can be found on the website [www.val.se](http://www.val.se), which is maintained by the election supervisory body *Valmyndigheten*.<sup>1</sup> The underlying legal framework is set out in basic terms by the Swedish constitution for the parliamentary elections<sup>2</sup> and the *Kommunallag*<sup>3</sup> (Municipal law) where it concerns the decentralised elections. The operationalisation and procedural elements of the elections are dealt with in the *Vallag* SFS 2005:837 (Elections law). A further interesting element to note is that the parliamentary, county and municipal elections are, where it concerns regular elections, always held together on the same day.<sup>4</sup>

Participation in the **parliamentary elections** is limited to Swedish citizens who are or have been resident in Sweden, and have reached the age of 18.<sup>5</sup> Eligible to vote<sup>6</sup> and stand candidate<sup>7</sup> for the **municipal (and county<sup>8</sup>)** elections are those who are registered as resident (*folkbokförd*<sup>9</sup>) in that municipality, have reached the age of 18 on the election day and:

- Are Swedish nationals or EU citizens,
- Are citizens of Iceland or Norway, or
- Have been registered as resident in Sweden for at least three continuous years prior to the election day

For the **European Parliament** elections, the following categories have the right to vote:

- Those with the right to vote in Swedish parliamentary elections.<sup>10</sup>
- EU citizens who have the right to vote in municipal/county elections, and are not voting in another Member State of the EU.<sup>11</sup>

The right to stand candidate<sup>12</sup> for EP elections follows the same rules set out above, with the additional qualification that non-Swedish EU citizens can only stand candidate if they have not lost their right to stand candidate in their Member State of origin.<sup>13</sup>

There are no reform plans currently pending which will modify the rules at issue here.<sup>14</sup>

### 27.2. REGISTRATION AND VOTING CONDITIONS

Where it concerns **parliamentary elections**, inclusion on the electoral roll is automatic for Swedish citizens registered as resident in Sweden; the same goes for the European Parliament elections. The basis for enrolment is the data in the *folkbokföring* (population register) as it stands thirty days before the election day; the register maintained is by *Skatteverket* (the Swedish Tax Authority).<sup>15</sup> For expatriate Swedish citizens, the inclusion on the electoral roll remains active for a period of ten years after having deregistered as resident. This period is renewable each time the citizen in question requests to continue to be included. The request must be made in writing to *Skatteverket* and provide an up to date address.<sup>16</sup> Alternatively, active use of the right to vote also guarantees inclusion.<sup>17</sup>

For both Swedish and (other) EU citizens, inclusion in the electoral roll for **municipal and county elections** is automatic once they qualify for the right to vote. Here too, the relevant data is obtained from the population register.

Where it concerns elections for the **European Parliament** for Union citizens (non-Swedish) the procedure is somewhat different. This category must (in addition to fulfilling the conditions set out above under the legal framework):<sup>18</sup>

- Register with the county and indicate the desire to be included in the electoral roll at least thirty days in advance of the vote.<sup>19</sup>
- Provide their nationality and their Swedish address;<sup>20</sup>
- Provide the voting district in which they were last registered to vote in their Member State of origin;
- Guarantee that they will not vote in another EU Member State.

Once registered, the registration remains active until the EU citizens requests to be removed, or in case the conditions for the right to vote are no longer fulfilled.

Voting can take place in the following ways, all of which are open to those who have the right to vote and which apply to all elections:<sup>21</sup>

- In person at the **polling stations** or at (certain) Swedish embassies and consulates. Swedish law further specifies that the polling stations must take specific measures to provide support to the disabled and elderly who wish to vote.



- Through a ‘ambulatory vote collector’ (*ambulerande röstmottagare*): a government official who comes to a person’s home to collect the vote.
- By **messenger** where sickness, disability, age, distance<sup>22</sup> or incarceration prevents you to vote in person;

By **post**, but only if you are abroad (the letter cannot be posted from within Sweden<sup>23</sup>);

### 27.3. MEASURES FACILITATING VOTING RIGHTS

Measures to facilitate voting in Sweden include:

1. The above-described alternative voting mechanisms, which target those with the right to vote who are abroad or for whom attending the normal voting process in person is difficult or impossible.
2. The website ‘www.val.se’ which provides information about upcoming elections, voting outcomes and the electoral system more generally. It is available in Swedish as well as 25+ other languages. A special version exists written in uncomplicated Swedish to ensure accessibility.<sup>24</sup> In addition, the website provides instructional movies in Swedish, with English subtitles, and includes versions for persons with hearing problems.
3. The Swedish minority known as the Sami have their own parliamentary institution which exercises competences for certain Sami activities and is meant to provide the Sami with a voice in Swedish policy development.<sup>25</sup>

As will be seen below, whereas there is no gender divide in the Swedish electoral system, there is a significantly more limited turnout for county and municipal elections among EU citizens and third-country nationals when compared to Swedish citizens. One explanation for this may be that the Swedish citizen turnout in municipal/county elections is overrepresented because they at the same time vote for the parliamentary elections. This allows these elections to piggyback on the primacy and greater political salience of the parliamentary vote. In contrast, EU citizens and third-country nationals cannot vote in

the parliamentary elections and thus are not equally incentivised. However, despite this, the gap remains significant, and the literature suggests that a lack of proactive policies to promote the ‘migrant vote’ combined with entrenched discriminatory attitudes (of the political parties) may be to blame.<sup>26</sup> This is in part corroborated by research which shows that the degree of social inclusion and integration are very strong predictors of voting propensity among the migrant population.<sup>27</sup>

### 27.4. STATISTICS

Despite the lack of an obligation to vote, Sweden is generally characterised by a consistently high turnout. The recent September 2018 elections for the Swedish parliament attracted 87,18% (some 6,5 million people) of all those eligible to vote. The gender divide in the vote is an almost exactly half/half:<sup>28</sup> 49,4% of those who vote are men versus 50,6% women.<sup>29</sup> For those Swedish citizens living abroad participation is traditionally more limited: whereas statistics for 2018 are not yet available, in 2014 only some 32% of those eligible voted.<sup>30</sup>

For the municipality and county elections, which are held at the same time and in which EU citizens and third-country nationals can also vote, the numbers look different. The ‘migrant vote’ makes up 6,8% of those who voted.<sup>31</sup> The overall gender divide (including the ‘migrant vote’) as well as the turnout for Swedish citizens are the same. But the turnout for EU citizens and third-country nationals<sup>32</sup> who are eligible to vote is significantly less and decreasing.<sup>33</sup> More detailed statistics are only available from the 2014 vote, which indicate that turnout for EU citizens (outside of ‘Norden’, which includes EU Member State Finland) is only 29,1% (versus e.g. 42,5% for those from ‘Norden’) for the municipal elections.<sup>34</sup>

For the European Parliament elections, a different picture emerges. In 2014, 51,8% of resident Swedish citizens eligible to vote voted, compared with 60,9% Union citizens resident in Sweden. Women were slightly more likely to vote in both categories.<sup>35</sup>

#### Notes:

<sup>1</sup> Chapter 3 Vallag SFS 2005:837.

<sup>2</sup> Chapter 3 Kungörelse om beslutad ny regeringsform SFS 1974:152 (hereafter Regeringsform).

<sup>3</sup> SFS 2017:725.

<sup>4</sup> Chapter 1, section 3 SFS 2005:837.

<sup>5</sup> Chapter 3, section 4 Regeringsform.

<sup>6</sup> Chapter 1, section 7 Kommunallag SFS 2017:725.

<sup>7</sup> Chapter 4, section 4 Kommunallag SFS 2017:725.

<sup>8</sup> Those who are eligible to vote in municipal elections are also eligible to vote for the county election to which that municipality belongs: Chapter 1, section 7 second paragraph Kommunallag SFS 2017:725.

<sup>9</sup> See Folkbokföringslag 1991:481. An exception exists for those EU citizens who because of certain diplomatic statuses are not registered in the municipality; they can vote

### Notes (continued):

even if they are not so registered but still live within the municipality.

<sup>10</sup> Chapter 1, section 4 Vallag SFS 2005:837.

<sup>11</sup> Chapter 1, section 4 second paragraph Vallag SFS 2005:837.

<sup>12</sup> See for a list of incompatibilities however: Chapter 1 section 6 Vallag SFS 2005:837.

<sup>13</sup> Chapter 1, section 5 second paragraph Vallag SFS 2005:837.

<sup>14</sup> The constitutional committee of parliament considered some 25 changes proposed by members of parliament but saw no reason to submit a proposal for formal amendment to parliament: Konstitutionsutskottets betänkande 2017/18:KU35. See more generally also SOU 2016:5, Låt fler forma framtiden!.

<sup>15</sup> Chapter 5, section 1 Vallag SFS 2005:837. For those EU citizens who have a certain diplomatic status and are therefore not registered, the situation is different. These EU citizens wishing to vote in municipal and country elections must request to be enrolled in the electoral roll at least 30 days before the election. This requires providing the Valmyndigheten with nationality, (Swedish) address and date of birth. Once registered, the registration remains active until the EU citizen request to be removed or the conditions for the right to vote are no longer fulfilled. See Chapter 5, section 2a Vallag SFS 2005:837.

<sup>16</sup> See for the form: <https://www.skatteverket.se/privat/sjalvservice/blanketter/roschyrrer/blanketter/info/7842.4.19b9f599116a9e8ef36800024543.html> last visited 05 October 2018.

<sup>17</sup> Chapter 5, section 2 second paragraph Vallag SFS 2005:837.

<sup>18</sup> Chapter 5, section 3 Vallag SFS 2005:837.

<sup>19</sup> In practice this done through a form which is sent by Valmyndigheten to all EU citizens registered in the folkbokföring, see e.g. Valmyndigheten, Erfarenheter från valen 2014-2015, Rapport 2015:1, p. 6.

<sup>20</sup> EU citizens with certain diplomatic statuses must in addition provide their date of birth or their personal identity number.

<sup>21</sup> See Chapter 7 Vallag SFS 2005:837.

<sup>22</sup> This only applies to those districts who are not included in the regular mail delivery route but are instead only serviced

by the Postnord Group AB's 'lantbrevbärare'. In other words: thinly populated areas of Sweden.

<sup>23</sup> Chapter 7, section 14 Vallag SFS 2005:837.

<sup>24</sup> See also: <https://www.mtm.se/om-oss/> last visited 05 October 2018.

<sup>25</sup> See Sametingslag SFS 1992:1433.

<sup>26</sup> F. Seidle, 'Local Voting Rights for Non-Nationals: Experience in Sweden, the Netherlands and Belgium', 16 International Migration & Integration (2014) 27, p. 32-33.

<sup>27</sup> See P. Bevelander and R. Pendakur, 'Voting and Social Inclusion in Sweden', 49(4) International Migration (2011) 67.

<sup>28</sup> Which corresponds to the general population demographics, see <https://www.scb.se/be0101> last visited 05 October 2018.

<sup>29</sup> See <https://data.val.se/val/val2018/alkon/R/rike/alderkon.html> last visited 05 October 2018.

<sup>30</sup> See Valdeltagande i riksdagsvalet 2014 at <https://www.scb.se/hitta-statistik/statistik-efter-amne/demokrati/allmanna-val/allmanna-val-valdeltagandeundersokningen/> last visited 05 October 2018.

<sup>31</sup> See <https://data.val.se/val/val2018/alkon/K/rike/alderkon.html> last visited 05 October 2018.

<sup>32</sup> Measured with regards to the municipality elections.

<sup>33</sup> See <https://www.scb.se/hitta-statistik/statistik-efter-amne/demokrati/allmanna-val/allmanna-val-valdeltagandeundersokningen/pong/tabell-och-diagram/historisk-statistik/valdeltagande-i-kommunfullmaktigval-19762014-bland-utlandskamedborgare-efter-kon/> last visited 05 October 2018.

<sup>34</sup> See Valdeltagande i kommunfullmäktigvalen 2014 <https://www.scb.se/hitta-statistik/statistik-efter-amne/demokrati/allmanna-val/allmanna-val-valdeltagandeundersokningen/> last visited 05 October 2018.

<sup>35</sup> See [http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START\\_ME\\_ME0110/ME0110T04/table/tableViewLayout1/?rxid=231b2ae0-2229-4b67-8f3c-23e258f579f9](http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START_ME_ME0110/ME0110T04/table/tableViewLayout1/?rxid=231b2ae0-2229-4b67-8f3c-23e258f579f9) and [http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START\\_ME\\_ME0110/ME0110T02/?rxid=231b2ae0-2229-4b67-8f3c-23e258f579f9](http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START_ME_ME0110/ME0110T02/?rxid=231b2ae0-2229-4b67-8f3c-23e258f579f9) last visited 05 October 2018.

## 28. United Kingdom

### 28.1. LEGAL FRAMEWORK

*What laws govern electoral participation in the MS, particularly for municipal elections and European Parliament elections?*

There is a vast amount of legislation regulating every aspect of the election, including registration and voting process (there are two volumes on the subject in the classic text of Halsbury's laws of England). In the space available I will identify the main pieces of UK legislation:

- Local Government Act 1972
- House of Commons Disqualification Act 1975
- Representation of the People Act 1983, 1985, 2000
  - Representation of the People (England and Wales) Regulations 2001, SI 2001/341 as amended by SI 2013/3198
- European Parliamentary Elections Act 2002\*
  - European Parliamentary Elections Regulations 2004, SI 2004/293 as amended including by SI 2013/2876
- European Parliament (Representation) Act 2003\*
- Electoral Administration Act 2006
- European Parliamentary Elections Act 2002
- European Parliamentary Elections (Franchise of Relevant citizens of the Union) Regulations 2001, SI 2001/1184 (implementing Dir 93/109)
- Political Parties and Elections Act 2009

\*to be repealed by the EU (Withdrawal) Bill 2017-19

*Who can vote and under which conditions for municipal elections and European parliament elections?*

For **local government elections** the criteria are that the voters are:

- resident in that area
- not subject to any legal incapacity to vote (age apart)
- are a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the EU
- are of voting age

For **European parliament elections** the criteria are/were that the voters are:

- resident in that part of the region
- not subject to any legal incapacity to vote (age apart)
- a relevant citizen of the EU
- of voting age

The registration officer must also have received in respect of that person an application and declaration duly made.

*Who can be elected and under which conditions for municipal elections and European parliament elections?*

#### Local government elections

- A qualifying Commonwealth citizen or citizen of the Republic of Ireland or relevant citizen of the EU
- Aged 18 or over, and
- Satisfies the following conditions:
  - Is and continues to be a local government elector for the area of the authority, or
  - s/he has during the whole of the 12 months preceding that day occupied as an owner or tenant any land or other premises in that area; or
  - his/her principal or only place of work during the that 1 months has been in that area; or
  - s/he has during the whole of those 12 months resided in that area; or
  - in the case of a member of a parish or community council, he has during the whole of those 12 months resided either in the parish or the community or within 3 miles of it.

#### European Parliament elections

- a relevant citizen of the Union
- validly nominated as an individual candidate or as a candidate on a registered party's list which requires:
  - a declaration made by or on behalf of the candidate. This declaration must state:
    - The candidate's full name
    - The candidate's nationality

- The candidate's home address in the UK
- That s/he is not standing as a candidate for election to the European Parliament in any other Member State at elections held in the same period
- A certificate made by the competent administrative authorities in the Member State of which the candidate is a national

*Is there any reform foreseen in the short or mid-term?*

Yes, there is significant change proposed. The UK voted to the EU on 23 June 2018. As a result, at a minimum the right to stand as a candidate and to vote in European elections will be lost since the UK will no longer have any representation in the European Parliament. This is already envisaged by the UK government. The EU (Withdrawal) Bill (EU(W)B), which is currently making its way through parliament, is intended to ensure legal certainty and continuity on the day after Brexit day, including in the event of a no deal.<sup>1</sup> Its aim is to take a snapshot of EU law as it stands at the time of Brexit and carry it over into domestic law. The EU(W)B repeals the European Communities Act (ECA) 1972, which took the UK into the EU at a domestic level (Cl.1 EU(W)B). Clause 7 contains the so-called deficiencies power which allows Ministers to use secondary legislation to amend deficiencies. This provides:

A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate—

- (a) any failure of retained EU law to operate effectively, or
- (b) any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the EU.

Clause 17(1) also contains provisions to make 'consequential amendments'. It provides:

A Minister of the Crown may by regulations make such provision as the Minister considers appropriate in consequence of this Act.

- (2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.

....

The UK has already drafted an SI<sup>2</sup> to deal with the issue of the UK no longer being represented in the European parliament. There is an accompanying explanatory note which says:<sup>3</sup>

Note on the Draft Statutory Instrument: The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018

Once the UK leaves the EU, the obligation to return Members to the European Parliament will cease and the UK will not take part in future European Parliamentary elections.

The provisions in UK law relating to European Parliamentary elections will therefore no longer be necessary.

Schedule 9 to the European Union (Withdrawal) Bill ("the Bill") repeals the two main Acts governing the conduct of European Parliamentary elections: the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003 (the "two European Parliamentary elections Acts").

The Government intends to use the powers under clause 17 to make consequential provision to repeal and amend remaining provisions in primary legislation and, where appropriate, revoke and amend provisions in secondary legislation relating to European Parliamentary elections to ensure the existing law works effectively once the UK has left the EU, and the two European Parliamentary elections Acts have been repealed. The Government also intends to use the powers under clause 17 to make saving provision, where appropriate, in connection with the coming into force of the repeal of the European Parliamentary Elections Act 2002, and in particular the electoral regions defined within that Act.

...

Examples of the changes which could be made by the Regulations are set out below.

In electoral legislation:

- in the Representation of the People Act 1985, the repeal of provisions relating to the franchise for European Parliamentary elections for peers who are British citizens overseas, and to providing for the



poll at a European Parliamentary general election to be combined with the poll at a UK parliamentary or ordinary local government election;

- in the Political Parties, Elections and Referendums Act 2000, the repeal and amendment of provisions to remove European Parliamentary elections from the scope of that Act.

With regard to provisions in secondary legislation, examples which could be made include, so far as appropriate, provisions in respect of the combination of the poll at a European Parliamentary election with the poll at other elections, and the revocation of a number of Regulations that provide further for the franchise and conduct of European Parliamentary elections in the UK, such as:

- The European Parliamentary Elections (Changes to the Franchise and Qualification of Representatives) Regulations 1994;
- The European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001;
- The European Parliamentary Elections (Common Electoral Principles) Regulations 2004.

The Regulations also make changes to various other pieces of legislation that are appropriate as a consequence of the UK leaving the EU and the two European Parliamentary elections Acts being repealed, which relate only to the European Parliamentary elections, and have no wider policy impact.

For example, certain sections in the Equality Act 2010 make reference to the European Parliament, an institution that will no longer be relevant to the UK once the UK leaves the EU. The Regulations will therefore repeal the following subsections in the Equality Act 2010:

- Section 104(8)(b) (selection of candidates);
- Section 106(5)(b) (information about diversity in range of candidates).
- Section 104 of the Equality Act 2010 allows registered political parties to make arrangements in the

selection of candidates for election (such as women-only short lists) to address the under-representation of people with particular protected characteristics. Subsection 8 lists the elected bodies that this applies to: including, at paragraph (b), the European Parliament. The Regulations will therefore remove subsection (8)(b). The rest of the section will be unaffected by this deletion, and will therefore continue to operate as now.

Both of the repeals to the Equality Act 2010 relate only to the European Parliament; the provisions in the Equality Act will remain unaffected as regards elections within the UK so that, for example, the use of women-only short lists to select candidates for the House of Commons, the Scottish Parliament, the National Assembly for Wales and specified local government bodies will continue to be entirely legal.

## 28.2. REGISTRATION AND VOTING CONDITIONS

[3 – 4 paragraphs]

Is the registration on the electoral lists automatic? If not, how can voters register? Is the procedure different for mobile EU citizens (second-county citizens) for municipal elections? What are the deadlines for registering in the lists?

In order to vote in the UK, an individual must be registered. In England and Wales individuals can register to vote if they are 17 years old (and in some cases if they are 16). However, they can only vote when they become 18. In Scotland they can register to vote if they are 15 years old (and in some cases if they are 14). They can vote in local elections and elections to the Scottish Parliament when they are 16 and elections to the UK and European Parliaments when they are 18.

Registration can be done on line and it is a straight forward process (it takes about 5 mins). Once registered, an individual does not need to be registered again unless he or she changes their address, name or nationality.<sup>4</sup> There is a specific period before the election in which individuals can vote. So, for example, the latest date for registering to vote for the elections in England on Thursday 3 May 2018 was 17 April 2018.

The register of electors is public but it is possible to register anonymously if the individual's safety is at issue.<sup>5</sup> There are separate registration services for public servants who are likely to be posted overseas:



Crown servants (for example members of the diplomatic service or overseas civil service)

British Council employees

armed forces

Are registration conditions different for municipal elections and for European elections?

The registration conditions are the same.

Can citizens vote via post, internet or other means outside the polls? If yes, is this possibility opened to all (nationals living abroad, EU mobile citizens, people with disabilities...) and for all elections (European, national, regional, municipal)?

All citizens can vote by post but not by internet.

### 28.3. MEASURES FACILITATING VOTING RIGHTS

[4 – 5 paragraphs]

What general measures or initiatives have been put in place to facilitate the access to the polls?

There does not seem to be any general measures. Much seems to be left to the discretion of the Returning officer.

Is there any measure/initiative aiming at promoting the mobile EU citizens' right to vote in municipal elections?

No, apart from an accessible website.

Is there any measure/initiative aiming at facilitating the right to vote and political representation for the following minorities:

Linguistic minorities;

Citizens with disabilities;

Ethnic minorities (e.g. Roma);

Specific provision is made for those with physical disabilities. The local Electoral Registration Office can tell them about:

physical access, for example wheelchair ramps and disabled parking spaces

low-level polling booths

equipment for voters with a visual impairment

Every polling station must provide at least one large print display version of the ballot paper and a special device so that blind and visually impaired people can vote.

The system is, however, far from perfect.<sup>6</sup> The government is looking into this and issued a call for evidence at the end of 2017.<sup>7</sup>

Is there any measure/initiative aiming at facilitating the right to vote and political representation of women?

In response to a tribunal decision, that found all women shortlists (AWS) unlawful, the Labour government introduced the Sex Discrimination (Election Candidates) Act 2002, which allows parties to use positive discrimination in the selection of candidates until, originally 2015 but now 2020. The Conservative party prefers to encourage women to be selected in winnable seats.

What seem to be the main obstacles to exercising the right to vote?

Registration is a problem. For example, for homeless people they do not have an address.<sup>8</sup> For students universities used to register them en masse; they now have to register individually. Many do not bother. And they have to choose to register at home or in their university town. If they have not organised a postal vote, they may be in the wrong place when the ballot takes place and so they do not vote.

Is facilitating the right to vote to certain categories of citizens a priority in the MS?

No, apart from the measure taken to facilitate political representation of women.

### 28.4. STATISTICS

[1 – 2 paragraphs]

Available statistics and data on:

The number of mobile EU citizens registered in the electoral lists

The information is not collected. There has been an FOI request on this issue to the Office of National Statistics. This says:<sup>9</sup>

You asked

Please provide the total number of EU citizens registered to vote in each constituency in the UK.

We said

Thank you for your enquiry about electoral data.

Unfortunately, we do not hold the information you have requested.

By EU citizens, we have assumed that you mean non-UK EU citizens. Non-UK EU citizens can vote in local elections, but not parliamentary elections. You can find

[further information on who can vote in different UK elections on the gov.uk website.](#)

We published the most recent [electoral statistics](#) on 16 March 2017. These show the total number of people registered to vote in local elections by local authority (table 1) and parliamentary elections by constituency (table 2) as recorded in the electoral registers on 1 December 2015 and 1 December 2016. The data are not available by citizenship.

The number of nationals registered in the electoral lists for voting from abroad (where applicable);

This data does not appear to be kept – see the hyperlink to electoral statistics in answer to the previous question.

Election turnout compared to the number of citizens registered;

General election turnout 1945 – 2017

| Election Year | UK    | England |
|---------------|-------|---------|
| 2017          | 68.7% |         |
| 2015          | 66.1% | 65.8%   |
| 2010          | 65.1% | 65.5%   |
| 2005          | 61.4% | 61.3%   |

Source: [Voter turnout at UK general elections 1945 – 2017 | UK Political Info](#)

Election turnout of citizens living in another MS or outside of the EU;

Not known – see FOI request above

Election turnout to municipal/European elections of mobile citizens living in the MS;

Not known

Participation and representation of minorities (linguistic, ethnic...); and

Not known from official data but polling data suggests that young people turned out to vote in the 2017 UK general election in greater numbers than at any other point for 25 years, according to new analysis by Ipsos MORI. Some 64 per cent of registered voters aged 18-24 are now thought to have cast a vote on 9 June, the highest share since 67 per cent voted in 1992. This brings 18-24s into line with the 25-34 and 35-44 age groups, ending two decades of disproportionately low turnout among younger voters. 10

Other type of related statistics.

The most recent statistics report:11

The total number of UK Parliamentary electors increased by 380,000 (0.8%) between December 2016 and December 2017, a smaller increase than in the previous year.

The total number of UK local government electors increased by more than half a million (1.2%) between December 2016 and December 2017.

Of the 650 Parliamentary constituencies in the UK, 480 (74%) had an increase in Parliamentary electors between December 2016 and December 2017.

The number of Parliamentary and local government electors increased across all four countries of the UK.

Following a reduction of 3% in the number of electors between December 2015 and December 2016, the electorate in Northern Ireland increased by 3% in the year to December 2017.

## Notes:

<sup>1</sup> This note proceeds on the basis that the EU(W)B will pass, as seems highly likely; it made its way through the Commons largely unscathed and the Lords will not block a piece of legislation of this kind.

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/700716/Draft\\_EP\\_election\\_repeal\\_\\_EU\\_exit\\_\\_Regs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700716/Draft_EP_election_repeal__EU_exit__Regs.pdf)

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/700715/Covering\\_note\\_for\\_draft\\_EP\\_Elections\\_SI.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700715/Covering_note_for_draft_EP_Elections_SI.pdf)

<sup>4</sup> <https://www.gov.uk/register-to-vote>

<sup>5</sup> <https://www.yourvotematters.co.uk/register-to-vote/register-to-vote-anonymously>

<sup>6</sup> <https://www.theguardian.com/society/2015/mar/25/disabled-people-shut-out-lack-access-polling-stations>

<sup>7</sup> <https://www.gov.uk/government/consultations/access-to-elections-call-for-evidence>

<sup>8</sup> <https://news.streetsupport.net/2017/05/04/helping-the-homeless-exercise-their-right-to-vote/>

<sup>9</sup> <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/eucitizensregisteredtovote>

<sup>10</sup> <https://www.ft.com/content/6734cdde-550b-11e7-9fed-c19e2700005f>

<sup>11</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/elections/electoralregistration/bulletins/electoralstatisticsforuk/2017>