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PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
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1. INTRODUCTION

The possibility for citizens to express their political will by exercising their right to vote, one of the fundamental political rights of citizenship, is part of the very fabric of democracy. The European Union itself is founded on the value of respect for democracy¹. Every EU citizen has the right to participate in the democratic life of the Union². The Commission considers it a priority to encourage the participation of EU citizens in the Union's democratic life³. The political rights of EU citizens have featured prominently during the European Year of Citizens 2013, dedicated to promoting a debate and raising awareness about the rights and responsibilities that come with EU citizenship.

One of the obstacles EU citizens from certain Member States face as political actors, identified in the EU Citizenship Report 2010⁴, is that they lose the right to vote (they are "disenfranchised") in national elections of their home country once they reside abroad for a given period of time, including when they reside in another Member State. As a consequence, these citizens are not able to participate in any national elections, whether in the home Member State or in the Member State of residence.

In accordance with Article 4(2) TEU, the Union must respect the national identities of Member States, inherent in their fundamental structures, political and constitutional. Hence, it is a matter for each Member State, while respecting the value of respect for democracy, common to all Member States, to decide solely on the composition of the electorate for its national elections.

Nevertheless, it must be taken into account that national policies which lead to disenfranchising citizens may be considered as limiting the enjoyment of rights attached to EU citizenship, such as the right to move and reside freely within the EU, a fundamental right of every EU citizen. This is at odds with the founding premise of EU citizenship, namely that it is additional to national citizenship and is designed to give additional rights to EU citizens, whereas in this case the exercise of the right of free movement may lead to losing a right of political participation.

Such policies are further out of step with the current global trend to allow non-resident citizens to vote⁵. In addition, EU citizens residing in another Member State can maintain lifelong and close ties with their country of origin and continue to be directly affected by acts adopted by the legislature there (e.g. payment of taxes, pension rights). In particular, the

¹ Article 2 of the Treaty on European Union (TEU).

² Article 10(3) TEU.

³ Commission Communication 'Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct' of 12 March 2013 (COM(2013) 126) and Recommendation on 'Enhancing the democratic and efficient conduct of the elections to the European Parliament' of 12 March 2013 (C(2013) 1303).

⁴ COM(2010) 603.

⁵ Judgment of the European Court of Human Rights of 7 May 2013 in case *Shindler v. The United Kingdom*, paras 110 and 115.

widespread access to television broadcasts across borders⁶ and the availability of internet and other web-based and mobile communication technologies, including social media, makes it easier than ever to remain connected to one's home politics from abroad and take part in social and political developments there.

Recurrent petitions, questions from Members of the European Parliament and correspondence from the general public reveal that EU citizens are concerned at what they perceive as a gap in their political rights. Generally, Europeans believe that EU citizens should not lose the right to vote in national elections in their country of nationality just because they have moved to another EU country⁷.

For these reasons, the Commission announced — in the EU Citizenship Report 2010 — that it would launch a discussion to identify political options to prevent EU citizens from losing their political rights as a consequence of exercising their right to free movement (action 20).

As a follow-up, the Commission wrote to certain Member States, explaining its views on the negative impact on the EU rights arising from disenfranchisement and inviting their contribution to a common reflection on the subject. The replies provided clarifications on current laws and policies and on debates at national level.

On 19 February 2013, the European Parliament and the Commission held a joint hearing on EU citizenship. Participants, including EU citizens affected, civil society representatives, Members of the European Parliament and experts underlined the need to reassess existing policies that disenfranchise citizens — and the justifications underpinning them — in the light of current developments towards more inclusive democratic participation within the EU.

In the EU Citizenship Report 2013 *EU citizens: your rights, your future*⁸ the Commission underlined that full participation of EU citizens in the democratic life of the EU at all levels is the very essence of Union citizenship. Accordingly, it announced that it would propose constructive ways to enable EU citizens living in another Member State to fully participate in the democratic life of the EU by maintaining their right to vote in national elections in their country of origin (action 12).

The present Communication gives effect to this commitment. It draws on the outcome of ongoing debates at national and EU level, involving civil society, academics and EU citizens themselves. It aims at suggesting constructive ways to enhance the right of the EU citizens to participate in democratic life of the Union and their right to free movement, by limiting the consequences of national disenfranchisement policies, measures and administrative practices, to be explored in cooperation with the Member States. This Communication is accompanied by a Recommendation proposing inclusive and proportionate solutions to this end.

⁶ Facilitated by the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

⁷ Almost two thirds (65 %) of Europeans consider it unjustified that EU citizens residing in an EU country other than their country of origin lose their voting rights in national elections: 2012 Eurobarometer survey no. 364 on 'Electoral rights', http://ec.europa.eu/public_opinion/flash/fl_364_en.pdf. This view was held by a similarly high proportion of respondents (62 %) to an online public consultation on EU citizenship: 2012 Public Consultation 'EU citizens — your rights, your future', http://ec.europa.eu/justice/citizen/files/report_eucitizenship_consultation_en.pdf.

⁸ COM(2013) 269.

2. STATE OF PLAY IN MEMBER STATES

Most Member States have rules in place depriving citizens of their voting rights for reasons of criminal convictions for serious offences or on grounds of loss of legal capacity linked to mental health problems and intellectual disabilities.

According to the information available to the Commission, in five Member States the legal regimes currently applicable may lead to a situation where Union citizens residing in other Member States could lose their right to vote solely on the ground that they have been residing abroad for a certain period of time.⁹ The main characteristics of these regimes can be summarised as follows:

In Denmark, Danish citizens leaving the country are allowed to remain on the electoral roll if they register their intention to return within two years¹⁰ — a rule reflecting the requirement enshrined in the Constitution of permanent residence as a pre-condition for voting in national elections¹¹. Some voters¹² are deemed to have their permanent residence in Denmark irrespective of whether they live abroad.

Similarly, Irish citizens leaving Ireland are allowed to remain on the electoral roll only if they register their intention to return within 18 months¹³. Nevertheless, in the context of its plan for constitutional reform, Ireland's Constitutional Convention examined in 2013 the issue of removing this limitation and suggested, in its report submitted to the Irish government on 25 November 2013¹⁴, granting Irish citizens the right to vote at Irish embassies in presidential elections without this limitation. The Irish government is due to issue its response to the report in March 2014.

Cypriot citizens lose their right to vote in national elections if they have not resided in Cyprus during the six months immediately preceding such elections, unless they are residing abroad because they study or temporarily work there, or for health reasons¹⁵.

Under the Maltese Constitution, Maltese citizens lose their right to vote if they have not been residing there for a period of at least six months within the eighteen months period immediately preceding their registration to vote in national elections¹⁶.

British citizens lose the right to vote in UK Parliamentary elections if they have not been registered to vote at an address in the UK at any time in the previous 15 years¹⁷. Over the recent years, successive governments and parliaments have considered that, in principle, this restriction is necessary and justified. This restriction was challenged before the European Court of Human Rights, which, in line with previous case-law, did not find it contrary to Article 3 of Protocol No.1 to the European Convention on Human Rights Convention¹⁸. The

⁹ Cyprus, Denmark, Ireland, Malta and the United Kingdom.

¹⁰ Article 2(3) of Chapter I, Part I, of the Parliamentary Election Act No 271 of 13 May 1987, as last amended in 2009.

¹¹ § 29 of Part IV of the Constitutional Act of 5 June 1953.

¹² Mainly diplomats, employees of public agencies or private companies, or international organisations or Danish aid or relief organisations, students studying abroad, or people living abroad for health reasons.

¹³ Article 11(3) *lit a*) of Part II of the Electoral Act No 23 of 1992.

¹⁴ The Fifth Report submitted to Oireachtas is available at <https://www.constitution.ie/Default.aspx>

¹⁵ Article 5 of Act 72/1979 and Article 11 of Act 40/1980, as last amended by Act 4(i)/2003).

¹⁶ §57 of the Constitution, as amended by Act LVIII.1974.23.

¹⁷ Section 1(3) *lit. c*) of the Representation of the People Act 1985, as amended by the Political Parties and Referendum Act 2000.

¹⁸ Case *Shindler*, cited above.

compatibility of this rule with EU law has not yet been established by the Court of Justice of the European Union¹⁹.

A few Member States impose certain other conditions for maintaining the right to vote in national elections.

German citizens residing abroad are eligible to vote in national elections provided they fulfil one of the following conditions: either: i) that they had resided in Germany for an uninterrupted period of at least three months after reaching the age of fourteen years and this period dates back not more than 25 years; or ii) that they have become familiar, personally and directly, with the political situation in Germany and are affected by it²⁰.

Austrian law²¹ requires citizens to apply before leaving the country to remain registered on the electoral roll and to renew this application every ten years — a renewal which can be done by electronic means. Authorities are obliged to make citizens living abroad aware of their removal from the electoral roll and they ensure publicity about the right of nationals abroad to register on the roll.

3. THE COUNCIL OF EUROPE PERSPECTIVE

States have the sovereign right to determine, in line with the international norms by which they are bound, the conditions for the exercise by their nationals of the right to vote in national elections, including conditions requiring residence in the country. The European Court of Human Rights has assessed such residence conditions in the light of Article 3 of Protocol No 1 to the European Convention on Human Rights²² and has accepted, in all the cases it has examined so far, that they are not, in principle, an arbitrary restriction of the right to vote²³. The Court has outlined the factors which may justify such conditions:²⁴

- the assumption that a non-resident citizen is less directly or continuously concerned with the country's day-to-day problems and has less knowledge of them;
- that it is impracticable for candidates to present the issues to citizens abroad and that the latter have no influence on the selection of candidates or on the formulation of their electoral programmes;
- the close connection between the right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected; and

¹⁹ This rule has been challenged by citizens before national courts; these challenges have been unsuccessful. However, to date, no preliminary question has been addressed to the Court of Justice of the European Union.

²⁰ Article 1, 21st Act amending the Federal Elections Act of 27 April 2013, Federal Law Gazette I p. 962. This law was adopted following a judgment of the German Constitutional Court which, assessing previously applicable national law, had ruled that the sole criterion of an earlier three-month stay at any time in Germany as a condition for non-resident citizens to maintain the right to vote was unsuitable, in itself, for demonstrating that the persons concerned are familiar with and affected by the national political situation. Instead, the Court had put emphasis, in particular, on whether the persons are familiar with the political system not only through information obtained via modern media but also first-hand, for instance through membership of associations or parties, and on whether the State can impose duties upon them; Judgment of 4 July 2012 (2 BvC 1/11 and 2 BvC 2/11), paras. 44, 45, 47, 50, 52, 56.

²¹ Articles 2(3) and 2a(1) of the Electoral Roll Act 1973.

²² Article 3 of Protocol No 1 grants the right to free elections by imposing upon the contracting parties an obligation to *'undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'*.

²³ Most recently in Case *Shindler*, cited above.

²⁴ See in particular judgment of 7 September 1999, *Hilbe v Liechtenstein*, and Case *Shindler*, cited above, para. 105

- the legitimate concern to limit the influence in elections of citizens living abroad on issues that, while fundamental, primarily affect persons living in the country.

However, such justifications should be weighed against the principles underpinning political participation. As highlighted by the European Court of Human Rights, "The right to vote is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion [...] Any general, automatic and indiscriminate departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates."²⁵

According to the European Commission for Democracy through Law (Venice Commission), where a time-limit is set for retention of the right to vote after a national has emigrated, it is preferable that the situation be 'reconsidered' at the expiry of the period rather than that the right to vote to be purely and simply lost. States could place certain formal restrictions on the voting rights of citizens residing abroad, such as a requirement to register on an electoral roll, which usually remains valid only for a limited period. This would allow excluding persons with no ties with the country of origin while respecting the principle of proportionality²⁶.

Moreover, the European Court of Human Rights highlighted the existence of a current trend towards allowing non-resident citizens to vote. Reviewing the laws of the States that are members of the Council of Europe, the Court found that 'the emergence of new technologies and cheaper transport has enabled migrants to maintain a higher degree of contact with their State of nationality than would have been possible for most migrants forty, even thirty, years ago. This has led a number of States [...] to amend their legislation to allow for the first time non-residents to vote in national elections.' It thus concluded that there is a clear trend in favour of allowing voting by non-resident citizens, even though no common European approach exists yet²⁷.

4. THE EU CONTEXT

As the Court of Justice has ruled, where a matter falls within the competence of the Member States – such as the definition of the composition of the electorate for national elections – the Member States must none the less exercise that competence in accordance with EU law, in particular the provisions of the Treaty concerning the right of every EU citizen to move and reside freely within the territory of the Member States, and therefore avoid any overt or covert discrimination on the basis of nationality²⁸.

In this vein, the Court has, for instance, acknowledged, with respect to the European elections, that a criterion linked to residence is not in principle inappropriate to determine who has the right to vote and stand as a candidate, whilst making clear that such a criterion should not result in violation of the general principles of EU law, in particular the principle of non-discrimination²⁹.

The national legislations on the composition of the electorate for national elections are disparate. As, currently, no Member State has a general policy granting other Member States' nationals residing on its territory the right to vote in national elections³⁰, disenfranchised EU

²⁵ Case *Shindler*, cited above, para. 103.

²⁶ Report on Out-of-Country Voting, 24 June 2011(CDL-AD (2011) 022) , paras. 72 and 76.

²⁷ Case *Shindler*, cited above, paras. 110, 115.

²⁸ Case C-403/03, *Schempp*, para 19.

²⁹ Case C-300/04, *Eman and Sevinger*, paras 55 and 61.

³⁰ The only exceptions are the possibility for Irish nationals and for nationals of Cyprus and Malta (considered as 'Qualifying Commonwealth citizens') to vote in national parliamentary elections in the UK and the possibility for UK nationals to vote in national parliamentary elections in Ireland.

citizens are usually left without the right to vote in national elections in any of the Member States. However, since the Union has not yet made use of the possibility under Article 25 TFEU to complement the list of rights enjoyed by the citizens of the Union, EU law cannot guarantee to an EU citizen that a transfer of his/her residence to another Member State will be completely neutral as regards his/her right to vote in national elections.³¹

This situation may nevertheless result in hindering the full enjoyment of the rights and benefits that EU citizenship brings to them in their daily lives.

Firstly, the current situation may be perceived as out of keeping with the founding premise of EU citizenship.

Under Article 20 TFEU, Union citizenship status is *additional to* and does not replace national citizenship. The core rights attached to EU citizenship are to be conferred on EU citizens *in addition* to those derived from their national citizenship. One would not expect that the exercise of the rights attached to Union citizenship results in the loss of the right to vote in national elections, which is generally linked to national citizenship.

Secondly, national disenfranchisement policies may influence the way in which EU citizens exercise their right to freely move and reside within the territory of the Member States.

For instance, such citizens might consider not to declare their move to the administrative authorities so as to make sure that they will not lose their political rights in their home country.

Thirdly, disenfranchising policies lead to a gap in the political rights of the EU citizens concerned that is inconsistent with the efforts to promote citizens' participation the democratic life of the Union.

Although disenfranchised EU citizens retain the right to elect members of the European Parliament, they do not have the right to participate in the national processes leading to the composition of national governments, the members of which compose the Council, the EU's other co-legislator, which is inconsistent with current efforts to enhance conditions for citizens' involvement in the national and European public sphere.

For these reasons, the Commission suggests some options which would contribute to reducing the risk of disenfranchising EU citizens who simply make use of their right to free movement.

Those options are without prejudice to the role of the Commission as guardian of the Treaties and to the Treaty rules on the right to free movement of EU citizens, as interpreted by the Court of Justice.

5. OPTIONS TO ADDRESS THE CONSEQUENCES OF DISENFRANCHISEMENT

5.1. Inappropriate options from an EU perspective

One of the options put forward in recent years to remedy the loss of political rights in the country of origin is naturalisation in the country of residence, leading to acquisition of political rights there. However, promoting naturalisation in the host country as a means of increasing political rights would be at odds with the role of EU citizenship as the primary

³¹ According to Article 25 (2) TFEU, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to strengthen or to add the rights that citizens of the Union shall enjoy under Article 20 (2) TFEU. These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements.

vehicle for promoting respect for national identity and diversity, and ensuring equality of treatment irrespective of nationality. Moreover, this option disregards the complexity of intra-EU mobility. Individuals may reside in several countries for longer or shorter periods—eventually even returning to their home country. They could not be expected to acquire multiple or successive nationalities solely to maintain political rights.

Another option, promoted notably by academics³², would be to set up a structured dialogue or an open method of coordination to encourage Member States to ensure mutual recognition — on a bilateral or multilateral basis — of voting rights for their nationals living in other Member States (especially close neighbours or with which they have strong ties). However, such an approach would result in fragmentation and asymmetrical voting rights for EU citizens across the EU³³.

5.2. Appropriate solutions within the EU framework

5.2.1. Short-term proportionate solutions

The rules currently applicable in certain Member States are based on the presumption that residence abroad of a given duration means that the connection with the political process in the home country is lost. This presumption is, however, not correct in every individual case. Therefore, it might be appropriate to give citizens who risk becoming disenfranchised the possibility to demonstrate their continuing interest in the political process in the Member State of which they are nationals.

Possibilities exist today for EU citizens to stay connected with political life in their country of origin and current trends are towards more inclusive approaches for political participation. Along with the prime importance of the right to free movement in the EU, this would suggest that proportionate solutions should be put in place in the short-term. These should empower EU citizens to determine themselves the strength of the ties they maintain with the home country.

As regards suitable criteria to provide evidence of such ties, a positive action on the part of the individuals such as their application to remain registered on the electoral roll should be considered as sufficient for this purpose – and would appear to be the simplest and least cumbersome solution for the citizens themselves.

Member States that limit the rights of their nationals to vote in national elections based exclusively on a residence condition should enable their nationals who make use of their right to free movement and residence in the European Union to retain their right to vote if they demonstrate a continuing interest in the political life in the Member State of which they are nationals, including through an application to remain registered on the electoral roll.

The possibility of requesting from citizens an application to remain registered on the electoral roll should be without prejudice to the possibility that Member States request their citizens to renew such applications at appropriate intervals, so confirming the persistence of such an interest.³⁴

³² J. Shaw, *E.U. citizenship and political rights in an evolving European Union*, Fordham L. Rev., Vol. 75 2549, 2567 (2007).

³³ Citizens of Member States who disenfranchise might acquire the right to vote in some or all other Member States, but there would be no guarantee of such a right for citizens of the 23 Member States who do not disenfranchise.

³⁴ This is the system in Austria, where such a reapplication is required every ten years.

In cases where Member States allow their nationals residing in another Member State to retain their right to vote in national elections through an application to remain registered on the electoral roll, these Member States can put in place proportionate accompanying arrangements, such as reapplication at appropriate intervals.

To minimise the burden for citizens abroad, the lodging of their applications to register or remain registered on electoral rolls should be possible through electronic means.

Member States that allow their nationals residing in another Member State to retain their right to vote in national elections through an application or a reapplication to remain registered on the electoral roll should ensure that all relevant applications may be submitted electronically.

Finally, it is important to ensure adequate information of citizens moving to or residing in another Member State about the conditions under which they can retain their voting rights. This information could be made available in leaflets, broadcasts and targeted information by consulates, embassies and expatriates' organisations.

Member States providing for the loss of the right to vote in national elections by their nationals residing in another Member State should inform them by appropriate means and in a timely manner about the conditions and the practical arrangements for retaining their right to vote in national elections.

A longer-term vision

This reflection on enhancing political participation of EU citizens by addressing the consequences of disenfranchisement should not prevent a longer-term reflection on how to remedy the gap in participation for EU citizens living in another Member State as regards the national and, where relevant, regional level. Indeed, enfranchisement in the host country is put forward in current debates also as a contribution towards enhancing the political participation of disenfranchised EU citizens who are left without any right to vote in national elections anywhere in the EU.

Clearly, this is a much broader issue — one which would contribute to giving full effect to the right of every citizen to participate in the democratic life of the Union, enable mobile EU citizens to integrate better in their host country and strengthen EU citizenship.

As announced in the EU Citizenship Report 2013, it is appropriate to examine this issue in the context of the upcoming broader reflections on the future of the EU.

6. CONCLUSION

Taking into account the political dialogue on disenfranchisement with all relevant stakeholders, institutional actors and civil society and in response to the expectations of EU citizens themselves, as expressed in the public consultations and the Citizens' dialogues on the future of the EU, the Commission is suggesting appropriate solutions. The rationale of the current disenfranchisement policies should be re-assessed in light of socio-economic and technological realities, the present state of European integration and current trends towards inclusive political participation. Of relevance in this respect is the fundamental role of EU citizenship in enabling citizens to be treated as equal and valued members of the community, both in their country of origin and their country of residence.

The present Communication identifies possible constructive solutions which it suggests to the Member States concerned to explore. In the accompanying Recommendation, the Commission proposes inclusive and proportionate approaches towards the political rights of

citizens who exercise their free movement rights, based on the premise that these citizens should be empowered to determine themselves whether they maintain a strong interest in the political life of their home country.

The Commission will assess advancements towards addressing the consequences of the disenfranchisement of EU citizens exercising their right to free movement when reporting on progress towards effective EU citizenship.