

Working Paper for the Summer University on European Citizenship

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**PROPOSAL FOR A EUROPEAN CITIZENS' INITIATIVE
DEMANDING FULL POLITICAL RIGHTS FOR EU CITIZENS
RESIDENT IN ANOTHER MEMBER STATE**

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PART 1 - ECI POLITICAL RIGHTS OF EU CITIZENS RESIDING IN OTHER MEMBER STATES

- **TITLE:**

The Expansion of Political Rights for EU Citizens Residing in Other Member States.

- **SUBJECT MATTER:**

We invite the European Commission to propose legislation expanding the right to vote of EU citizens residing in other Member States to all legislative and non-legislative elections and referenda beyond municipal and European elections.

- **MAIN OBJECTIVES:**

EU legislation and the construct of EU citizenship should allow for the full participation of EU citizens residing in other Member States in the democratic life of the Union through national, presidential, regional and local elections and referenda in the Member State of residence. We urge the EU to recognise the salience of European issues at all political levels and that successful EU integration requires EU citizens to be able to influence the political decisions and policies at all political levels.

- **PROVISIONS OF THE TREATIES CONSIDERED RELEVANT BY THE ORGANISERS:**

- Article 10 of the Treaty on European Union;
- Articles 20, 22 and 25 of the Treaty on the Functioning of the European Union.

PART 2 - EXPLANATORY NOTE. The Political Rights of EU Citizens: Full Engagement and Influence in the Member State of Residence

Introduction

Article 10 (1) of the Treaty on European Union¹ (TEU) states that ‘the functioning of the Union shall be founded on representative democracy’. In conjunction with this, Article 10 (3) goes on to further state that ‘every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen’. It is both tacitly and explicitly acknowledged that the democratic life of the Union consists of more than solely the European Parliament representing the interests of EU citizens across the Union. It is the argument of this European Citizens Initiative (ECI) that the exclusion of EU citizens residing in other Member States from all levels of political elections and referenda in their state of residence is an unjustified denial or restriction on their ability to engage with the democratic life of the EU. In conjunction with this, this ECI rests on several further pillars of political and legal argument. First, that the structure of the EU in regards to separation of competences and institutional structure means EU citizens residing in other Member States are unable to exert any influence over many important areas of EU and national policy. Second, issues typically identified as being “European” are now salient at all political levels, rendering the distinction between European and national politics to be more blurred than the current political and legal discourse would suggest. This is demonstrated by the rise of Eurosceptic parties and movements in many Member States whose anti-EU message is repeated not only at the national level but also the presidential, regional and local. The final basis is that of the European Convention on Human Rights (ECHR)² and the jurisprudence of the European Court of Human Rights (ECtHR), particularly in matters concerning voting rights under Article 3 of Protocol No.1 to the Convention.

The underlying premise of this ECI is that the denial of full voting rights in elections and referenda in the state of residence is a denial not only of their ability to influence European policies at the EU level, but also to shape their local and regional political arena on many issues that would have a profound effect on their lives. Such individuals should not have to rely on giving up their citizenship in order to regain an element of control. The extension of political rights, we argue, would contribute significantly to democratic engagement in the EU and Member States at all levels and ensure that the process of further integration is shaped by as many stakeholders as possible. Only then will the gap between the EU, national governments and residents begin to be bridged.

¹ Consolidated Version of the Treaty on European Union [2012] OJ C 326/13 (TEU).

² European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

Current Status of EU Citizens Residing in Other Member States' Voting Rights

EU law guarantees the voting rights of EU citizens residing in other Member States at two political levels. The first, municipal elections³, is not precisely defined in the Treaties, and therefore leaves a greater degree of interpretation by the Member States. Second, all EU citizens have the right to vote in European Parliament elections when residing in another Member State under the same conditions as a national of that state⁴. However, beyond these two categories there are no legal obligations at the EU level upon Member States to open their electoral franchises to other EU citizens or third country nationals. Therefore, the Member States have a significant degree of autonomy in this area. We argue that such a degree of autonomy is acting to undermine the right to exercise freedom of movement within the Union and the concept of EU citizenship as it discourages political participation and introduces an element of uncertainty into the lives of EU citizens residing in other Member States. Being able to vote in presidential, national and regional elections and referenda may potentially lead to increased political participation at the European and municipal levels, as it would allow EU citizens residing in other Member States to influence the overall power structures within the political hierarchy.

In 2013, the European Parliament recognised that 'equality of electoral rights is a core principle of democratic legitimacy of representative public institutions'⁵, with the European Commission acknowledging in January 2017 that the democratic life of the Union needs to be deepened⁶ in conjunction with an investigation into the possibility of EU citizens residing in other Member States voting in national elections in their state of residence⁷. Therefore, there has been recognition among the EU institutions of the current state of affairs and the potential need for reform in this area. However, recent events such as the 2015 referendum in Luxembourg, which asked whether the electoral franchise for the Chamber of Deputies should include individuals who voted in European or municipal elections⁸ (78.02 per cent voted no)⁹, demonstrate that there may not necessarily be the domestic political will for the expansion of voting rights for EU citizens residing in other Member States. Therefore, we argue that it is for the European Commission to continue its explorations in this area and allow for the strengthening of EU citizenship in this area.

³ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47 (TFEU) art.22 (1).

⁴ Ibid, art.22 (2).

⁵ European Parliament, 'Franchise and electoral participation of third country citizens residing in the European Union and of EU citizens residing in third countries' (2013) PE 474.441, 17.

⁶ European Commission, 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Strengthening Citizens' Rights in a Union of Democratic Change EU Citizenship Report 2017' (Brussels, 24 January 2017) COM (2017) 30 Final, 21.

⁷ Ibid, 11.

⁸ 'Everything is Ready for the Major Referendum on 7 June' *Grand Duchy of Luxembourg* (22 May 2015) < <http://www.luxembourg.public.lu/en/actualites/2015/05/22-referendum/index.html> > accessed 23 July 2017.

⁹ E. Maurice, 'Luxembourg Referendum Rejects Foreigner Voting Rights' *EU Observer* (8 June 2015) < <https://euobserver.com/beyond-brussels/129004> > accessed 23 July 2017.

The Democratic Life of the Union

Relying on primary EU law alongside EU policies, we can identify several further constituent elements of the democratic system other than the Parliament. First, the European Council, composed of the heads of state or government is a substantial element of the democratic process. Decisions and representations made by the Council are subject to the scrutiny of their national parliaments and citizens¹⁰. Furthermore, the Council of the European Union (the Council), composed of government/state ministers¹¹, is also under the same level and type of scrutiny as the European Council and therefore qualifies as a democratic element of the EU. We therefore have the main agenda-setting institution and one of the two main legislative institutions both currently open to scrutiny and influence from national parliaments and the citizens of that particular state.

In recent years, national parliaments have taken a more prominent role in the EU decision-making process. Article 12 TEU states they may undertake monitoring of Europol and Eurojust; evaluate the implementation of measures within the Area of Freedom, Justice and Security¹²; involvement in the accession¹³ and treaty reform¹⁴ processes and cooperating with the European Parliament¹⁵. Therefore, the democratic life of the Union is already extending beyond what we may ‘typically’ perceive to be the EU decision-makers. The importance of national, as well as regional, authorities may be observed in the recent parliamentary decisions on the Comprehensive Economic and Trade Agreement¹⁶ (CETA) with Canada. The Walloon Parliament in Belgium initially vetoed the agreement, preventing it from entering into force¹⁷. For citizens across the Union, the objections of the Walloon Parliament could have a significant impact on the trade deal, indeed, they were able to achieve a number of concessions totalling four pages out of the 1,600 in total¹⁸. The Court of Justice’s (CJEU) ruling on the EU-Singapore Trade Agreement¹⁹ further demonstrates the important role that regional parliaments or assemblies may have in future EU trade policy. Yet, it is not possible for EU citizens residing in other Member States to vote for their representatives on these regional bodies. Under the current state of EU law, it is not possible for such citizens to exert any leverage or influence over these bodies, despite the potentially substantial effect of any vote on a future trade agreement.

¹⁰ TEU (n 1), art.10 (2).

¹¹ Ibid, art.16 (2).

¹² Ibid, art.12 (c).

¹³ Ibid, art.12 (e).

¹⁴ Ibid, art.12 (d).

¹⁵ Ibid, art.12 (f).

¹⁶ Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union [2017] OJ L 11/23.

¹⁷ BBC News, ‘Belgium Walloons Block Key EU CETA Trade Deal with Canada’ (24 October 2016) <<http://www.bbc.com/news/world-europe-37749236>> accessed 28 June 2017.

¹⁸ J. Rankin, ‘Belgian politicians drop opposition to EU-Canada trade deal’ *The Guardian* (27 October 2016) <<https://www.theguardian.com/world/2016/oct/27/belgium-reaches-deal-with-wallonia-over-eu-canada-trade-agreement>> accessed 28 June 2017.

¹⁹ Opinion 2/15 of the Court (CJEU, 16 May 2017).

Although not a formal, legislative body, the European Committee of the Regions may act as an example of how regional bodies, representatives and concerns are being further integrated into EU politics. As the Committee itself states, 70 per cent of EU legislation has a direct impact at the local and regional levels, alongside 50 per cent of EU citizens believing representatives at these two levels are best placed to represent their interests at the European level²⁰. With the Committee acting as an advisor to the European Parliament²¹, and with the requirements that it is consulted on matters of culture²², social policy²³, employment²⁴, trans-European networks²⁵ and the European Regional Development Fund²⁶ among other areas of policy, the Committee offers an avenue of representation and policy-influence which is not as open to EU citizens residing in other Member States as it is to citizens as they are currently unable to vote at the regional level. Such differences in access are further exacerbated by the differences in the selection procedures between Member States²⁷. Differences in composition between local (municipal) and regional representatives mean that it is possible for EU citizens residing in one Member State other than their Member State of origin to exercise a greater degree of input into the composition of the Committee than they could in another Member State

This preliminary examination of what we determine to be the wider democratic life of the Union as defined under Article 10 (3) TEU demonstrates how the current legal and political position has led to the creation of a form of two-tier EU citizenship. At the upper-tier, there are national EU citizens, who are able to elect, lobby or interact with their politicians or representatives at every political level. They may elect them on a particular platform or stance on European and related issues. The lower-tier is composed of EU citizens who reside outside their Member State of origin, regardless of the length of residence. They are able to elect representatives to the European Parliament, but have no influence over the European Council, the Council, the national/state government and potentially a limited influence over the Committee of the Regions. We argue that this is an unsustainable restriction on the ability of such citizens to engage in the full democratic life of the Union and leaves a democratic deficit in the EU.

²⁰ European Committee of the Regions, 'Key Facts' < <http://cor.europa.eu/en/about/Pages/key-facts.aspx> > accessed 28 June 2017.

²¹ TEU (n 1), art.13 (4).

²² TFEU (n 3), art.167 (5).

²³ Ibid, art.153 (2).

²⁴ Ibid, art.148 (2).

²⁵ Ibid, art.172.

²⁶ Ibid, art.178.

²⁷ European Committee of the Regions, 'The selection process for Committee of the Regions members: Procedures in the Member States' (2009) < <http://cor.europa.eu/en/Archived/Documents/840ed860-60ca-4af6-8be9-70b795f42207.pdf> > accessed 28 June 2017.

Democratic Oversight of EU Policy-Making

In conjunction with the overall democratic life of the Union, there are concerns as to the ability of EU citizens residing in other Member States to influence the Union's policy-making processes. In this regard, we must acknowledge the limited competences and role of the European Parliament in a number of different areas of policy. Although under the Ordinary Legislative Procedure the Parliament enjoys an equal policy-making role with the Council²⁸, as well as on general budgetary matters²⁹, it cannot submit its own legislative proposals, it may only request the Commission to make a submission³⁰. Thereby, its ability to directly respond and bring forward proposals from EU citizens themselves is restricted. Furthermore, the Parliament's role in the Common Foreign and Security Policy (CFSP) is severely limited, having only the ability to express an opinion to the Council or the EU's High Representative for Foreign Affairs and Security Policy³¹, not a power of veto or amendment.

The Parliament's function in the formulation of EU policy are not only exercised on a legislative basis, rather, through a system of consent the Parliament must give its approval: on the accession³² and withdrawal of Member States³³, the conclusion of international agreements on the EU's accession to the ECHR³⁴, association agreements³⁵, agreements containing specific cooperation procedures³⁶ or agreements with substantial budgetary implications³⁷ among others. Although these are significant areas of policy, it cannot be said that the Parliament plays a substantive role as it lacks the power to amend such international agreements. Not giving consent to the conclusion of such agreements may ultimately lead to a change in direction but this is not equivalent to practical input into the formulation process.

These examples serve to demonstrate how Parliament's ability to propose, create, amend or block legislative and non-legislative policies and agreements is limited in many respects, and therefore cannot be considered to be an ever-present democratic representative of EU citizens residing in other Member States at the institutional level. It is argued that the proposal contained in this ECI would allow such EU citizens residing in other Member States to participate to the same extent as national EU citizens and overcome the restrictions on the Parliament and exercise oversight via other EU institutions.

²⁸ TFEU (n 3), art.289.

²⁹ TEU (n 1), art.14 (1).

³⁰ TFEU (n 3), art.225.

³¹ TEU (n 1), art.36.

³² *Ibid*, art.49.

³³ *Ibid*, art.50 (2).

³⁴ TFEU (n 3), art.218 (6) (a) (ii).

³⁵ *Ibid*, art.218 (6) (a) (i).

³⁶ *Ibid*, art.218 (6) (a) (iii).

³⁷ *Ibid*, art.218 (6) (a) (iv).

Separation of EU-Member State Competences

This ECI is not only concerned with the relationship between the Union and its citizens, but also that between the EU and its Member States. We argue that the separation of competences agitates the issues identified regarding the democratic life of the Union. There are three forms of EU competence: exclusive³⁸, shared³⁹ and supporting⁴⁰. For the purpose of EU citizens residing in other Member States, we are most concerned with areas of shared competence, which are the most numerous and touch upon many policy areas which were previously considered to be solely the sovereign domains of Member States. For example, measures in the Area of Freedom, Justice and Security⁴¹. The expansion of political rights will prevent the situation where EU citizens residing in other Member States are only able to bring to bear limited influence on one half of the legislative power in instances of measures under shared competence. As Article 2 TFEU states, the EU and Member States can legislate in the same policy area but only where the EU has not exercised its competence or ceased to exercise it can a Member State then exercise its own competence. This leaves an EU citizen residing in another Member State in a vulnerable political position as it were. First, they are unable to influence the political direction of travel set by the European Council. They are then restricted in their ability to vote for their representatives on the Council. The exercise of competence by the EU and its institutions may limit or extend the policy space in which the Member States may operate. With limited accountability to EU citizens residing in other Member States at the EU level, there is even less accountability from national/state authorities towards such groups. They are able to decide whether legislation at the EU level is appropriate, they can be lobbied by their own citizens or companies to strengthen or weaken EU legislation in the formative process, and if the Union has not exercised its competence, the national governments are free to legislate in which ever manner that they wish, without being held politically accountable to EU citizens residing in other Member States.

Salience of EU Issues at the National Level

The current voting rights of EU citizens residing in other Member States under EU level is presupposed on the ability to vote in the elections closest to the individual as well as European elections. However, it can be argued that the distinction between the different political levels is no longer valid, with EU issues being salient at all political levels in the Member States. We may look to two bodies of evidence for this. First, the rise of Eurosceptic movements or parties in Member States who actively campaign within the domestic political landscape on European issues. Second, the increasing inability of citizens to correctly identify and distinguish between policy-makers at the national and European levels.

³⁸ TFEU (n 3), art.3.

³⁹ Ibid, art.4.

⁴⁰ Ibid, art.6.

⁴¹ Ibid, art.4 (2) (j).

Eurosceptic parties or movements are present in almost every Member State, but their success is often mixed. However, there are a number of instances where such parties have been able to gain power at domestic political levels on a manifesto with explicitly anti-EU policies. Such parties are able to influence or indeed set the political agenda at the national, regional or local levels. The first example where we may observe this is with the Party for Freedom (PVV) in the Netherlands, led by Geert Wilders. Since its creation in 2006, the party has held seats in the House of Representatives and the Senate, and finished second in the 2017 elections behind the People's Party for Freedom and Democracy (VVD), with 20 seats. The party's anti-EU agenda began with its opposition to the prospect of Turkish membership in 2006 and has gradually developed into complete Dutch withdrawal from the Union in 2017. Research by van Kessel in 2015 demonstrates how the issue of EU integration has grown in prominence for PVV voters, from 0 per cent of respondents in 2006, to 0.4 in 2010 to 16.8 per cent in 2012⁴². In Italy, we may look to the Lega Nord and the Five Star Movement (M5S) as advocating an anti-EU stance. The older Lega Nord's active political opposition began with Italy's introduction of the Euro⁴³ and now campaign for Italy's withdrawal from the common currency. In conjunction with the Lega Nord, M5S further advocates for withdrawal from all EU international agreements, the European Stability Mechanism⁴⁴ and the Euro⁴⁵. Both parties' recent electoral successes in national, regional and local elections demonstrates how the current divide between national EU citizens and EU citizens residing in other Member States is unsustainable. These two parties advocate for anti-EU policies which, if ever implemented, would have a substantial impact on the lives of all residents, and yet it is not possible for EU citizens residing in other Member States to have any influence over the policy direction of the state authorities. If either party became the largest national party, they may be in a position to implement withdrawal from the Euro, with EU citizens residing in other Member States having no electoral recourse or avenues of political opposition.

Two of the more prominent anti-EU political parties in recent years have been Front National in France and UKIP (United Kingdom Independence Party) in the United Kingdom. In the 2017 French elections, Front National campaigned for France to leave the Schengen Area⁴⁶ and renegotiate France's membership of the EU, to be followed by a referendum on membership. In addition, Le

⁴² S. van Kessel, *Populist Parties in Europe: Agents of Discontent?* (Palgrave 2015) 111.

⁴³ C.S. Liang, *Europe for the Europeans: The Foreign and Security Policy of the Populist Radical Right* (Taylor and Francis 2008) 192.

⁴⁴ M5S, 'Program M5S: Ideas and Proposals for Italy' < <http://www.movimento5stelle.it/programma/esteri.html> > accessed 29 June 2017.

⁴⁵ S.D. Vesterbye, 'Italian Five Star MP: EU is 'unsustainable' in its current form' *Euractiv* (1 March 2013) < <https://www.euractiv.com/section/elections/news/italian-five-star-mp-eu-is-unsustainable-in-its-current-form/> > accessed 29 June 2017.

⁴⁶ K. Willsher, 'European far right calls for end to open borders after Berlin suspect shot' *The Guardian* (23 December 2016) < <https://www.theguardian.com/world/2016/dec/23/european-far-right-end-to-open-borders-schengen-berlin-le-pen> > accessed 29 June 2017.

Pen's party campaigned to leave the Euro and reintroduce the French Franc⁴⁷. Indeed, Le Pen made it through to the second round of the French presidential elections after receiving 21.3 per cent of the vote in the first round, behind Emmanuel Macron with 24.01 per cent⁴⁸. Although defeated in the second round, Le Pen still gained 33.9 per cent of the vote⁴⁹ on her anti-EU and anti-immigration platform. In the UK, UKIP, formed in 1993 as a single-issue party: to achieve the UK's withdrawal from the EU⁵⁰. It may be argued that the party's growing success at the local, national (12.6 per cent vote share in 2015)⁵¹ and European Parliament elections (27.49 per cent vote share in 2014)⁵² led to the Conservative government of 2015's decision to hold an in/out referendum on the UK's EU membership. In 2015, the party linked EU membership to energy policy, immigration, welfare, employment, business, animal welfare, farming, fishing, criminal justice, defence and trade⁵³. Following the EU referendum result, UKIP has been vociferous in its approach to the negotiations, setting six tests for the government which would result in a "hard Brexit"⁵⁴.

Although we must recognise that European issues and debates form only one part of the examined political party's manifestos, it can be argued that such issues are sufficiently important or even controversial enough to have an effect on the voting intentions of the respective electorates. In many of these instances, it is difficult to separate the party's anti-immigration stance from their anti-EU position. However, we can observe that it is possible, and is indeed employed as a political tactic, for Eurosceptic parties to link domestic issues with European ones. For example, the notions of "regaining national sovereignty" or "taking back control" are both focused on the EU-Member State relationship. Nevertheless, what is common in all of these instances is that, (a) Eurosceptic parties are active at all political levels and elections and, (b), EU citizens residing in other Member States are currently unable to influence the results of such elections, they are unable to vote in their own self-interest. Even if we disassociate the European element from the manifestos, this is about

⁴⁷ M. Stothard, 'What is Marine Le Pen's policy on pulling out of the Euro?' *Financial Times* (2 May 2017) < <https://www.ft.com/content/bc1358a4-2f39-11e7-9555-23ef563ecf9a?mhq5j=e2> > accessed 29 June 2017.

⁴⁸ The Guardian, 'French presidential election: first round results in charts and maps' (24 April 2017) < <https://www.theguardian.com/world/ng-interactive/2017/apr/23/french-presidential-election-results-2017-latest> > accessed 29 June 2017.

⁴⁹ The Guardian, 'French presidential election May 2017 - full second results and analysis' (26 May 2017) < <https://www.theguardian.com/world/ng-interactive/2017/may/07/french-presidential-election-results-latest> > accessed 29 June 2017.

⁵⁰ A. Hunt, 'UKIP: The story of the UK Independence Party's rise' *BBC News* (21 November 2014) < <http://www.bbc.co.uk/news/uk-politics-21614073> > accessed 03 July 2017.

⁵¹ BBC News, 'Election 2015 Results' < <http://www.bbc.co.uk/news/election/2015/results> > accessed 03 July 2017.

⁵² BBC News, 'UK European Election Results' < <http://www.bbc.co.uk/news/events/vote2014/eu-uk-results> > accessed 03 July 2017.

⁵³ UKIP, 'UKIP 2015 election manifesto launch, read a clear summary of the full document' < http://www.ukip.org/ukip_manifesto_summary > accessed 04 July 2017.

⁵⁴ UKIP, 'UKIP 2017 Manifesto' < https://d3n8a8pro7v7hmx.cloudfront.net/ukipdev/pages/3944/attachments/original/1495695469/UKIP_Manifesto_June2017opt.pdf?1495695469 > accessed 04 July 2017.

the ability of EU citizens residing in other Member States to shape the domestic and national political atmosphere, priorities and ultimately their own communities.

The evidence of EU-issue political salience is not only present in Euroscepticism, but also pro-EU political parties at the presidential, national, regional and local levels. The recent second-round of French presidential election offered two candidates in Emmanuel Macron and Marine Le Pen who offered vastly contrasting positions on the EU, from pro-integration to pro-withdrawal. The potential ramifications for EU citizens residing in France in the event of a Le Pen victory would potentially have been life-changing. We may also observe this contrast in the 2016 Austrian presidential election, contested between the pro-EU Alexander Van der Bellen and the anti-integration Norbert Hofer, in which the respective positions on the EU played a key role in Van der Bellen's victory⁵⁵.

One of the more high-profile examples of a pro-EU party at the regional, national and European levels is the Scottish National Party (SNP) in Scotland, which campaigned to remain in the EU during the Brexit referendum held in the UK. In the 2016 referendum, 62 per cent in Scotland voted to remain in the EU⁵⁶ and since that time the SNP have campaigned for the UK to remain a member of EURATOM and the single market and could re-join the EU if Scotland votes for independence in the future⁵⁷. In many of the Member States, the rise in Eurosceptic parties has been counterbalanced by the rise in pro-EU parties, whether in the Netherlands (Democrats 66)⁵⁸, France (En Marche!)⁵⁹, UK (Liberal Democrats)⁶⁰ or Italy (Democratic Party)⁶¹. In light of Brexit, the EU has become more of a polarising issue at every political level in the Member States. Politicians such as Prime Minister Viktor Orban of Hungary now seek to use referenda on EU issues to gain domestic political capital, as demonstrated by the referendum on migrant quotas, which was ultimately invalid due to voter turnout being lower than the required threshold⁶².

This ECI seeks to emphasise that not only should EU citizens residing in other Member States be able to vote in all domestic elections, but also referenda in their state of residence, regardless of whether

⁵⁵ P. Oltermann, 'Austria rejects far-right candidate Norbert Hofer in presidential election' *The Guardian* (4 December 2016) < <https://www.theguardian.com/world/2016/dec/04/far-right-party-concedes-defeat-in-austrian-presidential-election> > accessed 23 July 2017.

⁵⁶ BBC News, 'EU Referendum Results' < http://www.bbc.co.uk/news/politics/eu_referendum/results > accessed 23 July 2017.

⁵⁷ SNP, 'Europe & International Affairs' < https://www.snp.org/pb_europe_and_international_affairs > accessed 24 July 2017.

⁵⁸ D66, 'What we stand for' < <https://international.d66.nl/vote-d66/> > accessed 24 July 2017.

⁵⁹ En Marche!, 'Programme' < <https://storage.googleapis.com/en-marche-fr/COMMUNICATION/Programme-Emmanuel-Macron.pdf> > accessed 24 July 2017.

⁶⁰ Liberal Democrats, 'Europe' < <https://www.libdems.org.uk/europe> > accessed 24 July 2017.

⁶¹ PD, 'Manifesto' < <https://www.partitodemocratico.it/manifesto-dei-valori/> > accessed 24 July 2017

⁶² BBC News, 'Hungary PM claims EU migrant quota referendum victory' (3 October 2016) < <http://www.bbc.co.uk/news/world-europe-37528325> > accessed 24 July 2017.

they are binding or non-binding. Within the last decade, Member States have held referenda on issues such as same-sex marriage (Slovenia)⁶³, abortion (Portugal)⁶⁴, debt bail-out conditions (Greece)⁶⁵ and electronic voting (Bulgaria)⁶⁶. Yet, despite the potential ramifications, EU citizens in these states were unable to vote in these referenda, which could have had a significant effect on their financial security or even bodily integrity and human dignity.

Rights under the European Convention on Human Rights

As a general principle of EU law⁶⁷, with the EU Charter of Fundamental Rights directly corresponding to it⁶⁸(with limitations)⁶⁹, and the Union's obligation to future accession⁷⁰, EU citizens residing in other Member States may seek to rely upon the rights within the ECHR for the expansion of their voting rights. It is argued that Article 3 of Protocol No.1 is of utmost relevance here, containing the right to hold free elections, stating that:

“The High Contracting Parties 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 legislature”.

It is the argument of this ECI that the principles elucidated by the Council of Europe (CoE), as well as the European Court of Human Rights (ECtHR) jurisprudence should apply to citizens and resident non-citizens in kind.

It is clear from the CoE's guidelines on Article 3 of Protocol No.1⁷¹ that the article only applies to 'legislative' elections⁷², thereby leaving the possibility that the voting rights of EU citizens residing in other Member States will be very much dependent on the constitutional structure of the particular Member State. The right under Article 3 may be divided into an 'active' and 'passive' element, with active being the right to vote and passive meaning the right to stand for election⁷³.

⁶³ BBC News, 'Slovenia rejects gay marriage in referendum' (20 December 2015) < <http://www.bbc.co.uk/news/world-europe-35147257> > accessed 24 July 2017.

⁶⁴ G. Tremlett, 'Catholic Portugal votes to allow abortion in early pregnancy' *The Guardian* (12 February 2007) < <https://www.theguardian.com/world/2007/feb/12/gilestremlett.international> > accessed 24 July 2017.

⁶⁵ I. Traynor, J. Hooper and H. Smith, 'Greek referendum no vote signals huge challenge to Eurozone leaders' *The Guardian* (5 July 2015) < <https://www.theguardian.com/business/2015/jul/05/greek-referendum-no-vote-signals-huge-challenge-to-eurozone-leaders> > accessed 24 July 2017.

⁶⁶ V. Zhelev, 'Bulgaria holds referendum on electronic voting' *EU Observer* (19 October 2015) < <https://euobserver.com/beyond-brussels/130738> > accessed 24 July 2017.

⁶⁷ TEU (n 1), art.6 (3).

⁶⁸ Explanations Relating to The Charter of Fundamental Rights [2007] OJ C 303/17.

⁶⁹ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art.39-40.

⁷⁰ TEU (n 1), art.6 (2).

⁷¹ Council of Europe, 'Guide on Article 3 of Protocol No.1 to the European Convention on Human Rights' (30 April 2017).

⁷² *Ibid*, para.2

⁷³ *Ibid*, para.7

An obstacle to the expansion of full political rights to EU citizens residing in other Member States is the margin of appreciation which is afforded to Contracting States⁷⁴, in conjunction with the concept of implied limitations. As the CoE highlights, the legitimate aims criteria for the restriction of ECHR rights does not apply to the right to free elections. As a result, only the criteria of congruence with the rule of law and the general objectives of the Convention⁷⁵ may limit state action in this regard. The guidance goes on to state that the Court must take into account the ‘political evolution’ of the state, and therefore allow for differences in democratic systems between contracting parties⁷⁶.

The case of *Mathieu-Mohin*⁷⁷ in 1987 was the first time that the ECtHR examined a complaint under Article 3 of Protocol No.1 to the Convention. As such, the Court set a number of basic principles for the right to free elections, first, the Court highlighted the importance of the Article as a ‘characteristic principle of democracy’ and ‘of prime importance in the Convention system’⁷⁸. However, the Court recognised the unique diction used in Article 3 of Protocol No.1 in comparison to other Convention rights, referring to the use of ‘The High Contracting Parties undertake’, rather than ‘Everyone has the right’⁷⁹. Yet, this is a positive right which applies at the level of the citizen, and is not intended to be interpreted as being solely between states⁸⁰. Although the right to vote and the right to stand for election are positive obligations upon the Contracting States, the lack of precise definition means that implied limitations are possible, as long as such rights are not limited in such a way that they are no longer effective⁸¹.

Following cases such as *Federación Nacionalista Canaria*⁸², *Vito Sante Santoro*⁸³, *Polacco*⁸⁴ and *Timke*⁸⁵ demonstrate how the Court approaches the definition of the legislature on a case-by-case basis, dependent on the constitutional traditions of the Member State. Although this case-law sets out the basis for what type of elections we may apply Article 3 of Protocol No.1 to, it is the argument of this ECI that EU citizens residing in other Member States constitute a body or group of persons who are excluded from the political life in the Member State. Indeed, in *Aziz*⁸⁶ the Court stated that ‘rules should not be such as to exclude some persons or groups of persons from participating in the political life of the country and, in particular, in the choice of the legislature’⁸⁷. In conjunction with this, the recent case of *Shindler*⁸⁸ requires the principle of proportionality to take into account

⁷⁴ Ibid, para.13

⁷⁵ Ibid, para.8

⁷⁶ Ibid, para.9

⁷⁷ *Mathieu-Mohin and Clerfayt v Belgium* (1988) 10 E.H.R.R. 1.

⁷⁸ Ibid, [47]

⁷⁹ Ibid, [48]

⁸⁰ Ibid, [48] – [50]

⁸¹ Ibid, [52]

⁸² *Federacion Nacionalista Canaria v Spain* App No. 56618/00 (ECtHR, 7 June 2001).

⁸³ *Vito Sante Santoro v Italy* App No.36681/97 (ECtHR, 1 July 2004).

⁸⁴ *Polacco and Garofalo v Italy* App No.23450/94 (ECtHR, 15 September 1997).

⁸⁵ *Timke v Germany* (1995) 20 E.H.R.R. CD133.

⁸⁶ *Aziz v Cyprus* (2005) 41 E.H.R.R. 11.

⁸⁷ Ibid, [28]

⁸⁸ *Shindler v The United Kingdom* (2014) 58 E.H.R.R. 5.

‘socio-political realities’ and ‘changing conditions’ in the Contracting State⁸⁹. The Court recognised that migration has increased ‘significantly’⁹⁰ and, furthermore, that ‘there is a growing awareness at European level of the problems posed by migration in terms of political participation in the countries of origin and residence’⁹¹.

This ECI argues that EU citizens residing in other Member States are indeed excluded from political life and the legislature, which, alongside the increasing number of EU citizens exercising their right to freedom of movement (2013: 1.179million, 2014: 1.317 million, 2015: 1.4 million)⁹², suggests that EU law as it currently stands has not taken into account ‘changing conditions’ and ‘socio-political realities’ in its Member States.

The final strand of the legal argument under Article 3 of Protocol No.1 is based on the parallels between the Court’s jurisprudence on non-resident citizen voting rights and EU citizens residing in other Member States. Focusing on *X v The United Kingdom*⁹³, the Court applied four criteria for the restriction of voting rights non-resident nationals: (1) a non-resident has less of a connection with their state of origin and less knowledge of everyday issues or concerns; (2) it is impractical or undesirable for parliamentary candidates to explain domestic issues to non-residents; (3) resident citizens’ ability to influence political agendas and candidates and (4), ‘the correlation between one’s right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected’⁹⁴. For EU citizens residing in other Member States, the fourth criterion is the most relevant. A national and a non-national may be in exactly the same domestic position, affected in the same way by government policy, yet only the national is able to exercise input into the political process. As the Court further explained:

‘The principal point remains that as she has chosen to take up residence abroad her situation still differs considerably from that of citizens permanently resident in the United Kingdom. In particular, as to the correlation between one’s right to vote in Parliamentary elections and being directly affected by acts of political bodies so elected, the applicant cannot claim to be affected by the acts of these political bodies to a similar extent as resident citizens’⁹⁵.

In summary, we argue that this legal principle should be applicable not only to resident citizens, but also EU citizens residing in other Member States and third country nationals. In conjunction with this, we argue that EU integration and the increasing exercise of freedom of movement of people

⁸⁹ Ibid, [101]

⁹⁰ Ibid, [110]

⁹¹ Ibid, [114]

⁹² Eurostat, ‘Migration and Migrant Population Statistics’ < http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics > accessed 6 July 2017.

⁹³ *X. v The United Kingdom* App No. 7730/76 (Commission Decision, 28 February 1979).

⁹⁴ Ibid, 139.

⁹⁵ Ibid.

has altered the socio-economic realities and represents a changing condition as defined under the European Court's jurisprudence, and as such the Union should legislate for the expansion voting rights for EU citizens residing in other Member States across the EU.

Moving Beyond European Issues

The arguments supporting this ECI have thus far been centred on European issues, whether at the EU institutional level or European-domestic political and legal levels. However, there is a broader, more fundamental, political issue at stake with the exclusion of EU citizens residing in other Member States from various levels of domestic and national governance: no taxation without representation. These are EU citizens who have exercised their rights under EU law to freedom of movement within the territory of the Union, they have started families, studied, worked and contributed to the societies and communities in which they have established themselves. They support such communities not only through cultural exchanges, the introduction of new ideas, languages and perspectives, but also through their tax contributions. In the majority of Member States, the allocation of such monetary resources are decided at the national level, where EU citizens residing in other Member States are unable to affect its allocation and usage, they are unable to influence the priorities of national administrations at the ballot box. Member States in which regional administrations have substantial legislative and policy-making powers represent another barrier to the political engagement of EU citizens residing in other Member States. They may be able to vote in municipal elections, the definition of which differs from Member State to Member State, but this is not sufficient. The ability of municipal authorities to exercise or implement policies is still dependent on the priorities of the political bodies higher in the domestic political governance system.

Such citizens should not face a choice between severing their citizenship ties with their Member State of origin, and obtaining citizenship in the current Member State of residence. Such individuals would face the same dilemma each time that they moved to another Member State. The continuation of the current situation is not congruent with the Union's founding values under Article 2 TEU. Ultimately, this is leading to the creation of a 'separate-class' of residents who are unable to vote in order to achieve some form of political stability and engage in the political system in the Member State they have chosen to call home.

Conclusions

As stated in the European Citizens Initiative, we urge the Commission, the EU and its Member States to strengthen the concept of EU citizenship by allowing EU citizens residing in other Member States the right to vote in all legislative and non-legislative elections and referenda in their chosen state of residence. We argue that, in light of EU integration and the increasing exercise of freedom of movement by EU citizens, alongside the rights of EU citizens under Article 10 (3) TEU, the Union and Member States should bring forward legislative proposals for the expansion of such voting rights. Only with these additional rights may all EU citizens fully engage and participate in the democratic life of the Union. We submit that such a legislative change should take place under the competence and procedures set out in Article 25 TFEU for the expansion of rights listed under Article 20 (2) TFEU. In conjunction with this, in light of the status of the ECHR and ECtHR jurisprudence as general principles of EU law and incorporation under the EU Charter of Fundamental Rights, we submit that the continuing exclusion of EU citizens residing in other Member States brings into question their rights under Article 3 of Protocol No.1 to the Convention.