

Background discussion document for an ECI on full political rights for EU citizens on the move – “My Europe, my vote”

Summer University on European Citizenship 2019

INTRODUCTION

The right to vote in elections is a fundamental right which derives from the constitutional traditions of the Member States of the European Union (EU) and is now recognised in the EU Treaties as intrinsically related to the right of political participation. However, this right is not absolute and is subject to restrictions. The decision of who is conferred the right to vote in national and also in European elections is still pretty much related to what a Member State decides on the matter.

This paper puts forward an outline for a strategy with ideas and questions for the launch and promotion of an ECI on full political rights for EU citizens on the move. The aim of a new European Citizens' Initiative is to grant the right to vote to those citizens who decide to move and reside in another Member State of the European Union, so their right to free movement cannot be limited under any circumstances and integration can be easier, giving them the possibility for their opinions to count in political turnouts.

The document is divided into three parts:

1. Part 1 explains why this ECI is being put forward. The reasoning is that it is high time to challenge political forces which call for restrictions on freedom of movement and immigration and at the same time for better integration of migrant communities. Surely it is high time to move in the direction of EU citizens' full political rights and accept that in a democracy, European as much as those national, there should be no taxation without representation. Granting full political rights encourages integration. The part ends with some consideration of what happens next if we are successful in collecting one million signatures.
2. Part 2 gives a look on the current situation of electoral rights across Europe. Specifically, if European Union Law recognises the right to vote for EU migrant citizens¹ in municipal and European elections, little has been done on regional, national and referenda level: country reports show that some Member States adopted their own legislation on the matter and expanded the right to vote to some extent. The lack of granting full political rights to citizens “on the move” could be seen as discriminatory and against the build-up of an EU citizenship based on the principle of universal suffrage.
3. Part 3 explains what has already been done and how this ECI can be developed. Even though the case for achieving universal suffrage is strong, it does not mean that collecting signatures will be easy. This has been confirmed by a survey and expert advice received which suggests coalition-building, taking time to raise the funds needed and carrying out a lead-in and test drive phase. The actual launch is not planned until 2020, when a new regulation on ECIs comes into force and should make this instrument easier to use. A two-year campaign is the minimum.

¹ M. Seeleib-Kaiser, EU Citizenship, Duties and Social Rights, in EUI Working Papers, RSCAS 2017/60, edited by M. Ferrera and R. Bauböck, p. 21. EU migrant citizens are defined as EU citizens who are habitually resident in a Member State of which they do not hold nationality. This category differs from EU mobile citizens, for example citizens who cross borders for limited periods of time, although the latter has colloquially gained currency as the catch-all term.

PART I. WHY THIS ECI?

In the past few years, electoral campaigns and votes all over Europe have seen a strengthening of the most extremist wings and a rise of demagogic anti-EU political discourse. Little has been done to counteract the appeal to fascism, racism and xenophobia, which can become accepted as “normal” in the public debate. We believe that governments and mainstream parties are failing to rise to this challenge and are instead either burying their heads in the sand or giving way to nationalistic demands. How else can one explain the timidity of the European Parliament in failing to support transnational lists for the European elections in May 2019? Why are governments and EP groups alike reluctant to accept even the timid reform introduced at the 2014 European elections whereby the lead candidate with the most votes becomes President of the next Commission? Why is nothing being done to develop the first transnational citizenship of the modern era, as the answer to resurgent nationalism and a Europe of centrifugal forces? What else can keep Europe together? Why do attempts at reform of the EU end up either as a dead letter or as half measures? The alarm is sounding and that is why we need your support.

In the year of the first European elections that witnessed a rise in turn-out to cca 50% and, thus, an unprecedented boost to the legitimacy of the EU bestowed by its citizens, the EU ought to embrace and promote full political rights for its citizens on the move or at least start moving in that direction. Here is why:

INCOMPLETE CITIZENSHIP

In 1993, with the entry into force of the Maastricht Treaty, EU citizenship was created; defined by the Commission as “the most important of the new rights conferred by the Treaty”,² it derives from national citizenship and basically entitles its holders to be treated as equals when they enter the citizenship space of another Member State. It also included the right for European citizens to vote and stand as candidates in local and European elections in a country other than their own in which they are resident. The addition of European political rights to the economic and social rights associated with freedom of movement was only a partial step forward, since it did not include regional elections or the ones which really count - the national or presidential ones. Furthermore, European citizens do not generally have the right to vote in referenda in their country of residence, even though there have been several on European issues over the last generation. In addition, we can no longer ignore the fact that whatever the geographical level of the democratic contest, the same forces are involved, and elections, just like the transnational issues we face from climate change to organised crime, are interconnected.

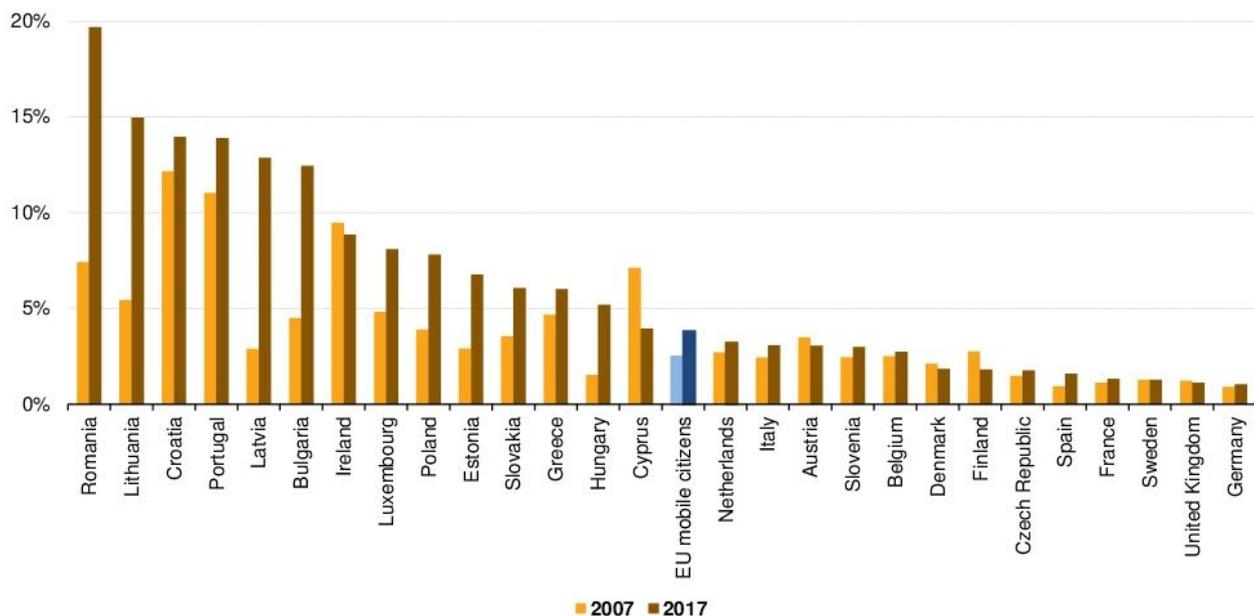
EU MIGRANT CITIZENS: AN INCREASING POPULATION

Numbers show that EU migrant citizens are not just a few people around Europe: data confirm that the people who decide to move to another Member State are becoming a large minority.

² European Commission, “Second Report on Citizenship of the Union”, COM (1997) 230, 25 July 1997.

The following graphic, elaborated by Eurostat,³ shows the percentage EU mobile citizens of working age (20-64), by country of citizenship. As of 2017, the 3.8% of European Union citizens of working age (20-64) resided in another Member State than that of their citizenship: ten years before, the percentage was lower (2.5%). The situation varies among Member States, ranging from the 1.0% of working age citizens of Germany to the 19.7% of citizens of Romania.

EU mobile citizens of working age (20-64), by country of citizenship, 2017
(as % of their home-country resident population in the corresponding age group)



As reported by another analysis of the age structure conducted by Eurostat,⁴ for the EU-28 as a whole, the foreign population was younger than the national population. The distribution by age of foreigners shows, compared with nationals, a greater proportion of relatively young working age adults. As of 1 January 2017, the median age of the national population in the EU-28 was 44 years, while the median age of non-nationals living in the EU was 36 years. Given that the young are, by and large, the strongest reservoir of EU support, the Union has an extra reason to argue in favour of the denied political rights of those whose political rights it should gradually expand. The youngest age group (15-24) has the highest scores in supporting EU membership of their country 68% of young citizens at EU level express a positive view, compared to only 60% of European respondents aged 55 or more ([Eurobarometer 2019](#), 16). Most young people are actively engaged and show interest in current social and political issues. Voting in local, national or European elections is the most common social, political or civic activity followed by volunteering.⁵

³ Eurostat, newsrelease of 28 May 2018, *4% of EU citizens of working age live in another EU Member State*.

⁴ Eurostat, *Migration and migrant population statistics*, March 2018.

⁵ How do we build a stronger, more united Europe? The views of young people, Flash Eurobarometer 478, link: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/86163> page 9

THE EUROPEAN CITIZENS' INITIATIVE: WHAT IS IT?

The European Citizens' Initiative (hereinafter ECI) is a European Union most significant transnational democratic innovation⁶ introduced by the Lisbon Treaty and set in motion in 2012, that allows citizens to be active part in the development of EU policies. Its legal basis is set out in Article 11, paragraph 4 of the Treaty on European Union (TEU) and Article 24, paragraph 1 of the Treaty on the Functioning of the European Union (TFEU). The ECI complements the existing right of petitioning the European Parliament and the right of appeal to the Ombudsman, but it differs from them in terms of function and conditions.

The practical arrangements, conditions and procedure of the ECI have been determined in the Regulation 211/2011 on the citizens' initiative. Still current provisions ask that, after an initiative is successfully registered, it needs at least one million signatures, to collect within a year, and to reach the threshold in least in seven member states. After the process of collecting signatures is concluded, "the competent authorities shall, within a period not exceeding three months from receipt of the request, verify the statements of support submitted on the basis of appropriate checks, in accordance with national law and practice, as appropriate, certifying the number of valid statements of support for the Member State concerned".⁷ Once the verification process is concluded, the ECI can be submitted to the Commission. Commission can look at the proposed policy or legislation, but it is not obliged to proceed with a legislative follow up. Registration and (the frequent lack of the EC's) follow up have been considered the key bottlenecks of the successful implementation of ECIs. At the same time, stakeholders agree that this instrument remains a potentially powerful weapon in EU citizens' hand and certainly one of the most resonant triggers of transnational political debates in the EU on issues that matter to its citizens.

The current regulation also requires a review every three years. In the review process, the Commission presents a report on the implementation of the ECI regulation with a view to its possible revision, to which the European Parliament and the Council react with a report with further recommendations. Having first sat on the requirement to revise the ECI for several years, the Commission has finally launched the process and the new and significantly more user-friendly ECI regulation will come into effect at the beginning of 2020! The reformed European Citizens' Initiative will make it easier to:

- Set-up initiatives, as the organisers will be helped by contact points in each Member State and an online collaborative platform that it is supposed to give advice and allow like-minded citizens from across Europe to get in touch to prepare their initiatives;
- Register initiatives, with a more citizen-friendly procedure, which will give organisers a chance to revise their proposed initiative before the Commission's registration decision and to make them sure that to the initiative does fall within Treaty competences;
- Organise the collection of signatures, with a free service for the online collection of signatures provided by the Commission to organisers;
- Support initiatives, as EU citizens will need to provide less personal data when giving their support to an initiative, making the process less bureaucratic;
- Follow-up on successful initiatives: after the initiative has gathered the required support of 1 million citizens, the phase of examination will be extended from 3 to 6 months, leaving time for

⁶ It goes beyond the scope of this reflection paper to go into the character of the ECI as in fact an agenda-setting tool rather than a truly direct democracy mechanism on a transnational scale.

⁷ Article 8(2), Regulation no. 211/2011.

more meaningful awareness-raising, engagement and debate before the Commission sets out its legal and political conclusions.

LEGAL BASIS OF THE INITIATIVE

Anyone seeking to launch an ECI is acutely aware of this problem since about one third of some 80 ECIs attempted have been rejected by the Commission as being outside its competence and having no legal basis in the Treaties.

This proposed European citizens' initiative is based on Article 25 of the TFEU which gives a mandate to the European Commission to report every three years on the development of European citizenship and make proposals for new European rights⁸. The next citizenship report is due in 2019.

The norm also provides the possibility for the Council, in accordance with the European Parliament, to adopt provisions to strengthen or to add the rights listed in Article 20(2), which include not only the right to move and reside freely within the European Union, but also 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, under the same conditions of the nationals of that State.

The Commission already accepted an ECI called 'Let Me Vote' based on Article 25, which was limited to the right to vote in national elections; even if it did not reach the one million signatures, it received the support of some EU bodies, such as the Committee of the Regions and the European Economic and Social Committee. This initiative goes further in demanding full political rights: we are reasonably confident because of the precedent with the previous initiative that the Commission will accept this one and also because of the advice we have received from the ECI forum⁹, which states that: "it is, in fact, possible to give effect to your proposal, without any Treaty change, by using article 25 TFEU to extend Treaty provisions which allow EU to vote in municipal elections in their Member States of residence."

WHY SUPPORT THIS ECI?

- **To empower European citizenship.** Political rights are the defining feature of any citizenship. Having only partial political rights is a subtle reminder that you are still a foreigner and not equal to citizens in your host country. It is not surprising that the existing rights are insufficiently used and receive very little attention from political parties. However, EU citizenship has deeper historical roots, greater legal substance and is more widely practised than suggested by the official statistics of those living or working in another EU Member State. For these reasons, there is the need to finally *give* full political rights to all EU citizens. In fact, in a series of landmark judgements making

⁸ Article 25 – "The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this part. This report shall take account of the development of the Union. On this basis, and without prejudice to the other provisions of the Treaties, 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 to the rights listed in Article 20(2). These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements."

⁹ This is the first ECI in preparation to make use of the advice of the forum. Questions are submitted in writing and replies given within 8 days. We have found this free-of-charge service excellent and tailored to providing in depth advice, so can confidently recommend its use to other ECI organisers.

this a real citizenship, the Court of Justice of the EU has repeatedly declared: "Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law...". The court and the current legislation, such as the citizenship directive (no. 2004/38), have allowed EU citizenship to go beyond its purely economic origins in the free movement of labour in a single market to cover all categories of the population. It is time political rights caught up.

- **To enfranchise European democracy.** Ensuring that people who use their rights to move freely or to migrate do not lose their voting rights is the last hurdle to guarantee universal suffrage and apply in full the principles of no taxation without representation and of one person, one vote. The courts are showing the way forward: "The right to vote is not a privilege. In the twenty-first century, the presumption in a democratic state must be in favour of its inclusion".¹⁰ The argument that people who move abroad lose touch with the society and politics back home and should therefore be disenfranchised was never strong. In a true democracy, the right to vote is no longer conditional on such factors as land ownership or the degree of connection to the body politic. Cheaper transport and digital technologies have allowed migrants to keep in touch more easily with politics back home, where they should be considered as an asset and source of soft power. Similarly, in host country societies, granting full political rights to European citizens will on balance encourage their integration. Europe must recognise that individual rights, especially political rights, are paramount.
- **To "europeanize" electoral participation in democratic contests.** Giving European citizens full political rights will help ensure too that the EU is given more prominence in electoral and democratic contests. Nevertheless, in the current situation, Europeans are excluded from most electoral contests where the issues of "more or less Europe" are played out. National elections – look at recent ones in Greece, Austria, the Netherlands, France or Italy – are no longer purely national affairs and even regional contests whether in Catalonia or Scotland can have profound implications Europe-wide and indeed are being used to raise European issues. Turning European citizens from passive by-standers to actors in the struggle for political power obliges political parties and public opinion to pay attention to their wishes. In some cases, such as the 2016 referendum in the UK on membership of the EU, that could also have changed the result, since 3 million EU citizens resident in the UK were not allowed to vote and UK citizens resident in the EU for more than 15 years were disenfranchised. Support for this citizens' initiative is to put up a barrier against the nationalising of the political process to undermine Europe and to act in favour of citizenship and democracy beyond the nation-state. It makes little sense that European citizens resident in other member states can vote in European elections to decide on the composition and priorities of the European Parliament but may be disenfranchised from national elections which can influence how the European Council representing national governments ultimately determines European policy. Yet, if the national elections are to remain the jealously guarded purview of national politics, why are regional elections still held hostage to that logic? The example of the Brussels region breaking that spell ought to serve as a guiding example in that regard.
- **To capitalize on the favourable climate after the 2019 European elections.** The elections in May were a mixed success for EU citizens and their political rights. On the one hand, as stated

¹⁰ European Court of Human Rights (ECHR), Judgment of 7 May 2013, *Schindler v. the UK*, application no. 19840/09, ECHR-IV, para. 103.

above, the rise in turnout was a very positive development. On the other, the key political leaders that emerged out of them did not reflect the campaigns and the Spitzenkandidaten system. Nevertheless, and perhaps thanks to the fear that such a step back from the legitimacy of behind-the-closed-doors negotiations might jeopardize the added legitimacy gained with the turnout, the new EC President, Ursula von der Leyen, has drawn up a political programme that is very favourable to new ECIs and their potential impact on the EU decision-making.¹¹ Namely, first the EP had committed to vote on resolutions of any ECI that gain a significant number of citizens' signatures. Second, now the EC president commits to strengthen the right of initiative of the EP by a legislative follow-up by the Commission.¹² If we read the implications from these two positive developments together, we reach the very encouraging conclusion that the holy grail of most ECI enthusiasts - namely the need for the EC legislative follow-up which would render the ECI into a truly democratic tool for EU citizens, is within reach.

IF WE ARE SUCCESSFUL IN COLLECTING 1 MILLION SIGNATURES, WHAT HAPPENS NEXT?

This ECI makes the case for full political rights and argues that disenfranchisement is unacceptable just because people use the right to live and work anywhere in Europe: if an EU citizen decides to relocate in another Member State, the scope of the freedom of movement should be to grant every single right regardless the State of nationality, so it means that electoral rights cannot just be simply excluded. If this ECI succeeds, there will be a full debate in plenary session and a public hearing in the European Parliament. As laid down in Article 11 of the Regulation no. 211/2011, the organisers shall be given the opportunity to present the citizens' initiative at a public hearing, organised in the European Parliament, with all the other institutions that want to participate and where the Commission is represented at an appropriate level. The Commission will take up a position and publish its response. Our objective is to assert the principle by claiming European citizenship, removing a stain on European democracy and convincing the EU that citizens' rights are paramount. We want to win the argument on all three points. How these aims should be implemented is another issue. Could the Commission put forward a European law to extend electoral rights from local elections to other elections and referenda, combined with recommendations to Member States? Reforms will take time and results may vary depending on the country concerned and the type of election or vote. Article 25 TFEU requires that the Council gives unanimous agreement after obtaining the consent of the European Parliament and that the provisions are approved by each Member State's constitutional procedure, thus leaving space for national decision-making.

In theory, reform to secure full political rights for European citizens can follow any of the four following options:

- a. European citizens retain full voting rights in their country of origin;
- b. They acquire such rights in their country of residence after a certain number of years;
- c. All European citizens of voting age have a choice between a. and b.;
- d. European citizens should have a fair opportunity of acquiring the nationality of the Member State of their residence if they wish to vote there.

¹¹ "A Union that strives for more My agenda for Europe", https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

¹² "When Parliament, acting by a majority of its members, adopts resolutions requesting that the Commission submit legislative proposals, I commit to responding with a legislative act", Ibid., p. 20.

Which option is better will depend not only on the nature of the electoral contest but also on whether politicians see Europe as more or less federal or intergovernmental. For citizens, having democratic rights is more important than the question of where and under what conditions they are practised provided these are fair and non-discriminatory.

The best option is the third one, giving citizens a choice on where they can vote, provided there are rules against double voting, which are properly enforced. **The message is: for Europe's sake, at least let us vote!**

PART 2. THE CURRENT SITUATION OF ELECTORAL RIGHTS.

EXISTING RIGHTS

As briefly anticipated, the new European citizenship introduced with the Maastricht Treaty includes electoral rights, which have been crystallized in two Directives¹³ and now are also granted by Article 20(2) of the Treaty of the Functioning of the European Union. The provision covers both active and passive voting, as European citizens have the right not only to vote, but also to stand as candidates in European and municipal elections, regardless of their nationality, but considering the country of residence. This allows EU migrant citizens to be integrated and be part of the political and social framework in which they are established, as municipal or local government is the level of governance to be the closest to European citizens, the one that affects people directly. Electoral rights are part of the broader right to free movement, which includes the possibility to those who decide to live in another Member State to be treated as equals of the nationals. However, the new legislation which became effective under the new provisions of the Maastricht Treaty, caused some issues in the application at national level: for instance, in a judgment brought up by the Commission, Belgium was condemned by the European Union Court of Justice,¹⁴ because it did not respect the time given to national legislation to fulfil the application of the Directive 329/94. Belgium complained that such provisions need time to be fully applied, since it was necessary to revise the national Constitution first. This judgement proves that giving the right to vote to EU migrant citizens can be very complicated, as European legislation must face the barrier of national legislation. In Germany, before the entry into force of the Maastricht Treaty, the constitutional court judgments of 1990 opened up to the possibility of implementing European integration by expanding these rights, but, in order to do so, it was necessary to change the Basic Law of the country: a new sentence was

¹³ 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 329/34 of 30 December 1993; 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 368/38 of 31 December 1994.

¹⁴ ECJ, Judgement of 6 July 1998, case C-323/97 *Commission v. Belgium (Right to Vote and to Stand as a Candidate in Municipal Elections)*, ECLI:EU:C:1998:347.

added in Article 28(1), allowing the EU migrant citizens to be eligible to vote and to be elected in county and municipal elections.¹⁵

Moreover, as it is laid down in the last report from the Commission,¹⁶ two restrictions exist. First, a Member State may decide that only its own nationals are eligible to run for head of the executive body of a basic local government unit: this is the case with Italy, where EU citizens can run for and be appointed to any elected office of the municipality, such as the City Council or the District Council, but they are excluded from running for the positions of Mayor and deputy Mayor, which are reserved exclusively to Italian nationals.¹⁷ Secondly, if more than 20 % of the eligible voting population are non-nationals, a Member State may require an additional period of residence to take part in municipal elections: e.g., in Sweden, for the County Council and the municipal elections (but also for the regional ones), the right to vote is given to EU citizens only if residing in the country for at least three years.¹⁸

Furthermore, it must be taken into account the strong ignorance about EU electoral rights on the part of their beneficiaries, besides a passive resistance on the part of public authorities which tend to impede effective exercise of these rights and the difficulty to register on the electoral roll: the involvement of EU migrants in the electoral process remains marginal in almost all regions of EU Member States.¹⁹ For instance, in Germany,²⁰ EU nationals must decide if they want to vote in their district in their country of nationality or in the district where they reside in Germany. If they want to vote in Germany, the registration process for voting is not automatic: their application, personally signed and delivered, must be received by the municipality at their place of residence no later than 21 days before the election.

European citizens living in another Member State often feel like foreigners, as political rights are not complete. If the Treaties provide a legal basis for voting in European and municipal elections, nothing is said about regional and national ones and referenda. Being denied the main right to participate politically may explain also why European citizens have been reluctant to make use of their existing rights in second-order elections up to 2019.²¹

Even the European Court of Human Rights has refused to fill this gap: although in *Shindler v. The United Kingdom* the Court has pointed out that "any general, automatic and indiscriminate departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and

¹⁵ J. Shaw, *The transformation of Citizenship in the European Union*, Cambridge University Press, New York, 2007, p. 295.

¹⁶ COM (2018) 44 final, 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, of 25 January 2018.

¹⁷ Tintori G., Country Report 2018/18, *Report on political participation of EU mobile citizens: Italy*, Globalcit, November 2018, p. 11.

¹⁸ D. S. Hutcheson and P. Bevelander, RSCAC Country Report 2018/15, *Fairey Key Country Report: electoral participation in Sweden*, Globalcit, October 2018.

¹⁹ J. Shaw, *Id.*, p. 125.

²⁰ L. Pedroza, RSCAC Country Report 2018/11, *Report on political participation of mobile EU citizens: Germany*, Globalcit, October 2018.

²¹ T. Venables, *Piecing together Europe's Citizenship*, Nomos, Baden-Baden, Germany, 2016, p. 111. Among European citizens, only 5.9 % voted in 1994 elections and increased up to 11.6 % in those of 2009, then falling back to just over 10 % in 2014.

the laws it promulgates”, the Court itself, “having regard to the margin of appreciation available to the domestic legislature in regulating parliamentary elections”, agrees that the restrictions imposed on the right to vote may be legitimate if they are proportionate to the legitimate aim pursued²² and in some appeals proposed by expatriates it has ruled that “new technologies and cheaper transport has enabled migrants to maintain a high degree of contact with their state of nationality”, suggesting that the right to vote should stay linked to the nationality.

RIGHTS WHICH DO NOT EXIST YET

- **Regional elections**

The regional contest of elections do not figure in European legislation whatsoever. Due to this omission, the Member States have issued their own rules. The general trend is for leaving EU migrant citizens outside the active and passive electorate; however, as country reports by Globalcit show, there are some examples of national legislation which allow mobile EU citizens to vote and stand as candidates, without any difference from municipal and European elections.

Italy follows the general trend, as EU migrant citizens are allowed to vote only in municipal and European elections, but they are excluded from voting for the regional ones. In Sweden, the principle of integration of EU citizens living in the country is broader, as their electoral rights cover not only the European Parliament and municipal level, but also the regional elections: every four years, when the national Parliament and regional and municipal assemblies are renewed simultaneously, European citizens can vote both for the local and regional legislative level. They are entitled to have not only active electoral rights – meaning that they are entitled to vote, but they can also stand for elections as candidates.

Last but not least, in Germany,²³ only resident German citizens are enfranchised in elections at all levels. EU citizens have and can exercise electoral rights on roughly equivalent conditions to German citizens in municipal and EP elections. Furthermore, it must be highlighted that EU citizens have a general right to vote in local legislative elections: every of the 16 constitutive *Länder* of the German Federation has the power decide on important topics, such as education and mobility policies. However, some exceptions are made for the city-states of Hamburg and Berlin: non-national EU citizen residents are allowed to vote for the municipal organs of government, but not for the city-parliaments, which are considered to be legislative assemblies at the *Länder* level of the German federation. In the *Länder* of Bremen, which consists of the city of Bremen and the small exclave of Bremerhaven, electoral laws of 2009 were reformed in order to allow EU citizens to vote for the city-parliament, separating it from the Land parliament. Similar trend now exists in the Belgian capital of Brussels.

- **National elections**

Disenfranchisement in national elections is still the main obstacle to a full integration of EU migrant citizens in the country of destination. In a survey report conducted by the European Citizens Action Service,²⁴ it emerged that the majority of mobile EU citizens is politically and civically inactive; they also

²² European Court of Human Rights (ECHR), *Schindler v. the UK*, para. 118.

²³ Report on political participation of mobile EU citizens: [Germany](#), p. 8.

²⁴ European Citizens Action Service, *Obstacles to Political Rights of EU citizens*, Brussels, December 2017.

believe that the right to participate in legislative, parliamentary and presidential elections, as well as national referenda, under the same conditions as nationals of the host country, would greatly stimulate their involvement in political and civic life. So far, none of the countries belonging to the European Union has some sort of regulation for EU migrant citizens to be able to vote. The right to vote in national elections is still profoundly bound to nationality.

As it has been pointed out by the Commission,²⁵ the current situation may be perceived as out of keeping with the founding premise of Union citizenship: in this case, the exercise of the right of free movement may lead to losing a right of political participation. Moreover, the Commission states that the members of national governments, whose election process leaves out EU migrant citizens, dictates the composition of the Council, the other EU institution which shares the legislative power along with the Parliament. Inevitably, the lack of the right to vote in national elections in the country of destination because of the exercise of the right to move in another EU country is perceived by Union citizens as a gap in their political rights. Yet, people expressing in favour of extending the right to vote in national elections were: France 67%; Italy 65%, Germany, 58%.²⁶

In four Member States (Cyprus, Denmark, Ireland and Malta), the right of free movement is undermined by the fact that 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: not only they do not acquire the right to vote in national elections of the country of destination, but also they can't retain the right to vote in the country of nationality, unless they register their intention to return within a certain amount of time.²⁷

A previous ECI, called "Let me vote", tried to collect one million signatures in order to ask the European Commission to use its legislative initiative and give to EU migrant citizens the possibility to express their opinion and voice in national elections, but it did not reach the threshold. The organisers complained that the European Citizens' Initiative mechanism is far still to "unfriendly" to people who want to sign it, because they had difficulties with making the online system of collecting signatures functional and did not feel at ease disclosing their personal data, furthermore, some "expats" (i.e. people living in another EU Member State than their own) were not able to sign the ECI because of restrictions by the Member States they lived in.²⁸ Nevertheless, the initiative gained the support by the Committee of the Regions and the European Economic and Social Committee, and also national politicians committed to put the issue of full voting rights on the agenda in their country. Overall, the initiative raised the problem and the interest around it.

- **Referenda**

Giving European citizens full political rights will help to implement involvement also in participatory democracy contests. In general, European countries tend to exclude mobile EU citizens from voting in

²⁵ Commission Recommendation 2014/53/EU of 29 January 2014, addressing the consequences of disenfranchisement of Union citizens exercising their rights to free movement, in OJ L 32/34 of 1 February 2014.

²⁶ J. Shaw, *id.*, p. 286.

²⁷ COM (2014) 033 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, of 31 January 2014.

²⁸ See more on [Democracy International](#).

national referenda; however, it cannot be ignored the fact that the many of them are no longer solely national affairs and even regional contests can have profound implications Europe-wide.

A clear example of national referendum involving European matters is the one on the Association Agreement between the European Union and Ukraine, held in the Netherlands in April 2016. With a turnout of 32.28%, the threshold for a valid referendum was met and 61% of the votes cast were against the Approval Act. Expatriates in the Netherlands are not eligible to vote for either Parliamentary or Provincial elections or referenda: therefore, EU citizens were excluded from voting in the referendum on the Agreement with Ukraine, even though it was a matter the concern European citizens as a whole, regardless of their nationality.

Also the 3 million EU citizens living in UK were excluded from voting in the famous referendum in the UK on membership of the EU, while mobile EU citizens are considered part of the electoral in elections concerning devolved and local matters, in the same way of British nationals, they are not eligible to vote in parliamentary elections and referenda: in the case of the 2016 referendum, if institutions had given to them the possibility to vote, this could have changed the result. Now they are "forced" to handle the dangerous consequences of "Brexit", with a risk to not be able to live and work in UK anymore, as the possibility of no-deal and the end of the right to free movement is more and more concrete.

Looking at the regional elections, in Scotland, the eligibility to vote in the 18 September 2014 referendum on Scottish independence was based on the Edinburgh Agreement of 2012, which set up the consensus reached by the United Kingdom and the Scottish Government concerning the terms on which the referendum would take place.²⁹ The Edinburgh Agreement provided that all persons entitled to vote in devolved and local elections should also have a vote in the referendum: thus, the right to vote was extended to people residing in Scotland with British citizenship, qualifying Commonwealth citizens, Irish citizens; also EU migrant citizens were allowed to vote in the 2014 referendum on membership of UK, since it was a matter that involved their rights too, as the possibility to leave the UK and become an independent State would have meant the exit from European Union and the beginning of a new process of accession to the Union. The reason why the franchise was the same used in devolved and local matters was to make residence as central to the right to vote.³⁰ Using a residence-based approach that was "internationally accepted...for constitutional referendums" would have helped to avoid the "the perception that changes were being made to favour one or other outcome."³¹

In conclusion, regarding national and regional referenda, there seems to be a *case-by-case* approach: depending on the country and the subject treated, EU citizens can be allowed to be part of the electorate, but, so far, European countries have preferred to give the right to vote in referenda on the basis of national citizenship, not residence.

²⁹ See also B. Ryan, *The Scottish referendum franchise: Residence or citizenship?*, in RSCAS 2014/90, *Independence Referendums: Who Should Vote and Who Should be Offered Citizenship?*, edited by R. Ziegler, J. Shaw and R. Bauböck, Globalcit, September 2014.

³⁰ Scottish Government, *Your Scotland: Your Referendum* (January 2012), para 2.10.

³¹ Scottish Office, *Scotland's Constitutional Future* (January 2012), Cm 8023, pp 17.

PART 3. WHAT HAVE WE DONE SO FAR AND WHAT ARE OUR PLANS TO LAUNCH THIS ECI?

WHERE DID THE IDEA FOR THE ECI COME FROM AND WHAT HAS BEEN DONE SO FAR?

The idea for this citizens' initiative came from the summer university on European citizenship held on 30 August-1 September 2017 on the basis of an academic analysis by Ben Hulme from Warwick University. It grew out of discussions about ways to increase the popular appeal of EU citizenship: the consensus was that this is not an easy objective in the current climate. Demanding full political rights attached to EU citizenship was seen as the one measure which would raise the profile of this first transnational citizenship of the modern era. Plans moved forward with the organisation of an internal brainstorming session held in May 2018 at the "Maison des Associations Internationales" with potential partners, such as the ECI campaign, New Europeans, ACT4 Free Movement and European Movement, Italy. Other youth or student organisations were interested but unable to come to Brussels. A survey was launched to which a dozen more individuals replied from a range of different, mostly European, associations. This first exploratory phase shows that a majority of potential partners are fully supportive and willing to become involved by helping collect signatures. At the same time, a minority express doubts about being able to persuade enough people to sign given the poor record with ECIs and whether an ECI touching on difficult constitutional issues would be followed up by the Commission and national governments. The sense that this is a more than worthwhile initiative but no easy option is confirmed by the advice received on fundraising from the ECI forum, which is to establish a clear budget and to "take your time" to raise the funds needed they estimate at 500,000 euros. This would be made up of 60% from large donors and the rest from in-kind support from partners, smaller donations or crowd-funding. The totals are borne out by our own budget estimates, even if it may be possible to succeed with this ECI for less. The advice from the forum has proved to be a good reality check.

SWOT ANALYSIS

Against this background a SWOT analysis of this proposal could read as follows:

| <u>Strengths</u> | <u>Weaknesses</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Very strong arguments in favour of this initiative and its likely acceptance with a legal basis; strong potential support with the debate about the future of Europe very much on the agenda and in particular how to make politics more transnational; a significant but hard to reach groups directly affected by the loss of political rights from practicing freedom of movement; in general, a good level of political support. | The weakness of the legal basis; the difficulty of turning support into actual commitments since fighting for rights people do not have tends to be everyone's and no-one's responsibility; differences in attitudes towards extending political rights |
| <u>Opportunities</u> | <u>Threats</u> |
| The emergence of this and other campaigns leading up to the next European elections which | The greatest threat is that the ECI fails to get the necessary support to create momentum and that |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>could support each other; signs of a new start and interest in the ECI as an agenda setting instrument with the revision of the basic regulation near completion.</p> | <p>the European elections in May 2019 are followed by a backlash against such reforms; to counteract this threat a pre-launch testing period to build up momentum is proposed.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

WHAT ARE THE NEXT STEPS?

Initially we had considered launching this initiative in the run-up to the European elections in May 2019 but given the advice from the forum confirmed by the survey so far, we propose to allow at least a year for fundraising and the pre-launch phase. The advantage of this is that before the ECI is officially registered, a significant volume of statements of support will have been gathered which can be converted into signatures so that the operational and after 2020 extended signature collection period gets off to a flying start and has a good chance of gaining momentum. A successful ECI means collecting 114 signatures every hour of every day for one year. The preparatory period is particularly justified in the case of an ECI which requires real awareness raising and citizen participation before people are going to sign. The new regulation, after January 2020, will no longer curtail signature collection as we would be able to choose the starting date and collect support for a longer period of time.

1. Sowing the seeds for the ECI- dedicated website and collection of supporters

Before the end of 2019, donors to support a dedicated website should be found with a clear mission statement and supporting evidence for this ECI in order to attract potential partners and a wider public. This task is more difficult than it might appear at first sight requiring research into the background, collection of evidence from different elections, and news of campaigns on voting rights from across Europe, which is scattered and not available from easily accessible sources. The website should paint a picture of the various ways the issue of universal suffrage for EU citizens and other migrant populations comes up depending on the country and type of election. And, there should be evidence of the concerns of individuals about disenfranchisement and storytelling- i.e. quotes and short video. Sections/ pages might include:

- i) What are the existing political rights of EU citizens and why they should be used more effectively by political parties and voters, particularly in the run-up to the next European elections? What is being done and what more can be done to persuade more EU citizens to stand as candidates and vote in their country of residence?
- ii) A section each on regional elections, national elections and referenda where the narrative and reasons in favour of extending the franchise are different, even though having full political rights is the goal; This section ought to allow those involved to state their preference in favour of, for example, creating an ECI that would ask for the extension of voting rights to just regional elections at this stage rather than all levels of elections on the grounds of feasibility.
- iii) How this campaign fits with others in the run-up to the European elections to reform the EU and make it more democratic. A number of representatives of civil society and more political pro-European campaigning groups see this proposal for an ECI as part of a package of reforms.

A background paper on the lines of this paper should be available on the website for those who want to consider becoming more closely involved. It will take some time to build a website which should be launched in January 2020. The budget for this seeding operation is estimated to be about 20.000 euros.

2. Building the constituency

The website, combined with individual contacts and other action, will be the main tools for building the constituency and support network, which covers a variety of different types of organisation, reflecting the fact that the interests involved in strengthening European citizenship are scattered:

- organisers of previous ECIs on political rights for EU citizens or European citizenship more generally and specific current regional or national campaigns for voting rights for foreigners
- organisations reaching the target group of EU citizens living and working in other member states and promoting the participation of migrant communities in public life;
- European-level movements or organisations promoting transnational citizenship and democracy beyond the nation state – the ECI could accompany other proposals in the run-up to the May 2019 European elections;
- Key individuals among the decision-makers and in the academic community who can add political weight and intellectual credibility to the ECI.

The building process will involve maintaining a strong public presence for the initiative during the first months of the EU institutions' new term, developing a database of contacts and encouraging those particularly interested to respond to the survey. There should though also be opportunities for meetings about the initiative in the 7 or more EU member states targeted for signature collection. It will also be essential to have at least one major European event where everyone can come together before the launch of the ECI.

3. Summer university

The summer university in 2020 could be the venue for the launch of this ECI. There should be an offer of training in how to succeed with an ECI in one's country and handle on-line and face-to-face signature collection. Alternatively, the Summer University 2020 must be the place from which the coalition of actors in favour of such an ECI should send a clear message for electoral rights expansion to be a priority for the citizens' Conference on the Future of Europe, announced by the new EC President. The timing is right: by then we will have the new Commission report on the development of Union citizenship which is prepared every three years in terms of Article 25. The summer university could follow the format of previous editions with time and space for partner events, exhibitions and brainstorming. In order to develop a broad consensus for a successful ECI, the agenda should include:

- A look back at the European elections and the implementation of the existing right of European citizens to vote and stand in their country of residence. There will undoubtedly be a need for debate with the new members of the European Parliament about how to make the use of the existing European political right more effective;
- Examination of the case for extending the franchise with sessions each on regional elections, national elections and referenda and any priority that should be given to one of these.

The summer university should bring together multi-disciplinary expertise: research on patterns of free movement, studies of voting patterns among migrant communities, representatives of electoral commissions etc. Between September and the end of the year, the findings of the summer university should be taken to events to be organised in each of the minimum of 7 countries targeted for signature collection.

4. Pre-launch preparatory phase

After the summer university the contents of the website should be built up and a campaign launched to gather pledges to sign the ECI and to ask one's own circle and network to do the same. This pre-launch activity targeting individuals can be combined with a crowd-funding appeal for which targets should be set. This test drive of the ECI should help to ensure that when it is officially launched pledges will quickly be turned into statements of support and signatures (estimated budget: 30,000 euros).

Apart from the external promotion activity, this 3month final preparatory stage should also see the internal preparations and funds in place for the ECI launch in 2020 and the preparation of a campaign pack for partners and supporters.

HOW TO GET INVOLVED?

If there is support for this initiative, ECIT will put together the citizen's committee of 7 members and plan the next stages.

Please, let us know if you wish to become involved or have suggestions by contacting us at info@ecit-foundation.eu.