



Disenfranchisement of EU citizens resident abroad

Situation in national and European
elections in EU Member States



IN-DEPTH ANALYSIS

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This analysis aims to provide an overview of the issue of loss of voting rights due to residence abroad both in national parliamentary elections in EU Member States and in European elections. It also examines the arguments in favour of and against disenfranchisement and frames it as a possible violation of the right of EU citizens to freely move and reside within the EU. The solutions discussed in this context are also critically examined.

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EXECUTIVE SUMMARY

The right to vote in elections is a fundamental right common to the constitutional traditions of the Member States, and recognised in the EU Treaties as intrinsically related to the right of political participation which, for its part, provides democratic legitimacy to those exercising public power. This right is not absolute though and is subject to restrictions. The decision of who is conferred the right to vote in national and also in European elections lies with states.

Six EU Member States deprive their nationals, under varying conditions, of the right to vote in national parliamentary elections due to residence abroad, both in other Member States and in third countries. These same six Member States also disenfranchise their nationals in European elections, if they live permanently in a third country, and two of them even do so in respect of nationals resident within the EU.

'Disenfranchisement' due to residence abroad can be a result of minimum residence requirements in the country in which elections take place as well as of losing electoral rights due to time spent abroad. The lack of facilities to vote from abroad, while rendering the exercise of voting rights difficult, does not amount to their loss as such. Disenfranchisement is based on the assumption that expatriates are not affected by the political decisions taken in their country of nationality and that they are not able to cast a meaningful vote due to lack of knowledge of the political reality there. Globalisation and improved communication means have however induced a tendency towards enfranchising expatriates.

Citizens deprived of their right to vote in national elections in their country of nationality often face exclusion from political life at national level in both their state of residence and their state of origin since EU Member States (and more so third countries) do not generally provide any right to vote in national elections to non-nationals. Whilst the European Court of Human Rights saw no infringement of Convention rights from disenfranchisement rules, the loss of electoral rights for citizens who move to another EU Member State could be seen as an infringement upon the freedom of movement under EU law, since it could potentially stop EU citizens from exercising their free movement rights.

Different solutions have been discussed. Actions at EU level include a possible infringement procedure against those Member States who disenfranchise their nationals resident elsewhere in the EU, as well as a Treaty change to include a voting right for EU citizens in their host Member State or the right to choose to vote in national elections either in their Member State of nationality or in the host Member State. Another proposal, which is more realistic in the short term, is to convince Member States to enfranchise nationals living in another EU Member State or at least to enhance the conditions for them to preserve their right to vote.

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1. Framing the issue

1.1. Right to vote, nationality and residence

The right to vote is recognised as a fundamental right in the constitutional traditions of all EU Member States and the EU Treaties, which in Article 10(3) TEU state that 'Every citizen shall have the right to participate in the democratic life of the Union'. The right to vote in elections is intrinsically related to the right of political participation, which provides democratic input legitimacy to public power. Universal suffrage in democratic states is an integrative process, aimed at including as many people as possible in the formation of the political will, which led to enfranchising women, ethnic minorities, and others in the last century. The right to vote is therefore generally conferred on all citizens of a polity, with some justified restrictions including due to age, mental health conditions and certain criminal convictions.

The right to vote in most types of elections is, as a general rule, linked to the country's nationality. However, some countries place a further condition on the eligibility to vote: residence (habitual, ordinary) in the country of the election. The residence requirement responds to concerns over the ability of citizens permanently living abroad to cast a meaningful vote as they are presumed not to be sufficiently connected to the political reality in their country of origin. The fact that in most countries nationality is acquired based on *ius sanguinis* – according to parentage – leads to situations where second or third generation descendants of nationals of a country, who emigrated a long time ago, still have the nationality of their ancestors. Such people, although nationals of a given country, may not have any broader relationship to it, which many policy-makers take as a reason to introduce certain limits on their political participation. Residence requirements however affect by definition not only nationals who for generations have taken no interest in the politics of their country of origin, and may even also have the nationality of their host country, but also those citizens who while living permanently abroad are interested in and affected by the political decisions taken in their country of nationality because they for instance have family ties, property or pension rights there, or because they plan to return there at a later date.

1.2. When is a person disenfranchised due to residence abroad?

Disenfranchisement means the loss of electoral rights. Accordingly, the mere lack of legal provisions for voting from abroad is not 'disenfranchisement' as it only renders the exercise of the active electoral right more difficult while not eliminating it. Disenfranchisement due to residence abroad may take the form of a positive requirement, such as a minimum period of residence in the country, or a negative one: loss of electoral rights after a certain period of time spent abroad. Some national electoral laws include minimum periods of residence in the municipality in which electors can register, but these do not amount to minimum requirements for residence in the country.

Whilst minimum residence requirements tend to be understood as objective criteria for a citizen to qualify as a voter (like that of age and nationality),¹ the loss of electoral rights due to time spent abroad is seen as a restriction of the right to vote² that accordingly needs to be justified as a proportionate measure for the attainment of a legitimate objective.

¹ E.g. Cypriot Supreme Court, *Michaelides v. Republic*, Revisional Appeal 1237/2003, 14.5.2008, quoted by N. Charalambidou, [Access to electoral right in Cyprus](#), EUDO Citizenship Observatory, 2013. p. 3.

² For example, see the Canadian case of [Frank et al. v. AG Canada](#), 2014 ONSC 907 (CanLII).

In the past, many countries disenfranchised their nationals living abroad, with the exception of diplomats and armed forces personnel. In recent decades, increased mobility and easier communications have led to a tendency towards a more inclusive franchise. A study comparing the electoral rules of 60 countries across the world found that 19 of them disenfranchise non-resident citizens.³

1.3. Disenfranchisement of EU citizens on the EU agenda

EU citizens whose EU Member State of nationality deprives them of their voting rights in national parliamentary elections due to their residence abroad are often deprived of the possibility to vote at all in national parliamentary elections. Their host countries (EU Member States and third countries) usually do not confer electoral rights in national parliamentary elections to non-nationals.⁴ Moreover, where disenfranchisement takes place even if citizens reside in another EU Member State, the loss of their electoral rights could infringe upon their freedom of movement and residence within the EU.

The European Parliament, and particularly its Committee on Petitions, has been addressed by citizens calling for a solution to this situation (see below). The European Commission highlighted the problems linked to disenfranchisement due to residence abroad in the EU Citizenship Report 2010⁵ and then again after a discussion with experts and stakeholders in the EU Citizenship Report 2013.⁶ In January 2014, the Commission published a communication addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement⁷ calling on Member States to improve the situation of nationals residing abroad and wishing to vote.

2. EU Member State's disenfranchisement rules in national parliamentary elections

Only six of the 28 EU Member States, under different conditions, deprive their nationals living abroad of voting rights in national parliamentary elections. The legal rank of the disenfranchisement rules differs among the six Member States – whilst in Denmark and Malta the loss of electoral rights due to residence abroad is established in their national constitutions, Cyprus, Germany, Ireland and the United Kingdom deprive residents abroad of their electoral rights by means of statutory law. This has to be born in mind for any possible changes to the disenfranchisement rules, given that constitutional provisions can be changed only under cumbersome procedures.

³ L. Massicotte, A. Blais, A. Yoshinaka, Establishing the rules of the game. Electoral laws in democracies, 2004, pp. 18-32.

⁴ The only exceptions are the possibility for Irish nationals as well as for Cypriots and Maltese (considered as 'Qualifying Commonwealth citizens') to vote in national parliamentary elections in the UK. Furthermore, based on the principle of reciprocity, British citizens residing in Ireland are entitled to participate in elections to the lower house of parliament (the Dáil). Moreover, the law allows for reciprocal rights to be granted to citizens of another EU MS to participate in Dáil elections, if that Member State correspondingly entitles Irish nationals to participate in national parliamentary elections.

⁵ [EU Citizenship report 2010](#) 'Dismantling the obstacles to EU citizens' rights', 27.10.2010, COM(2010) 603 final.

⁶ [EU Citizenship report 2013](#) 'EU citizens: your rights, your future', 08.05.2013, COM(2013) 269 final.

⁷ [Communication](#) from the Commission addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement, 29.01.2014, COM(2014) 33 final.

Table 1 – Disenfranchisement in national parliamentary elections

Member State	Residence requirement for the right to vote	Exceptions	Legal rank of the disenfranchisement provision	Procedural arrangements
Cyprus	Loss of the right to vote in case of permanent residence abroad for more than six months. Minimum period of habitual residence of six months.	Students, temporarily working abroad or living permanently abroad for health reasons Persons belonging to the diplomatic corps or holding another position in public service abroad, and their spouses	Election of Members of Parliament Act, and Voters Registration and Electoral Roll Act	Obligation to notify the Central Electoral Service of permanent residence abroad in order to be removed from the Electoral Roll
Denmark	Permanently domiciled in the realm, unless the citizen resident abroad intends to return to Denmark within two years	Employees of the Danish State on service abroad; Employees of a Danish public agency or any local private undertaking or association abroad; Employees of an international organisation of which Denmark is a member; Persons on service in foreign countries sent by a Danish relief organisation; Persons staying abroad for the purpose of education; or for health reasons; the co-habiting partners of the above-mentioned categories of persons	Danish Constitution, and Parliamentary Elections Act	Persons moving abroad are registered in the Civil Registration System as having left Denmark. Stays abroad lasting more than six months must always be notified as a move abroad.
Germany	Minimum residence of three months before an election Germans residing abroad can vote if they have permanently resided in Germany, after reaching the age of 14, for an uninterrupted period of three months within the past 25 years, or if they are familiar with the German	Diplomats, development aid workers	Federal Elections Act	Citizens leaving Germany need to deregister with the competent local authorities. German citizens permanently residing abroad need to submit a declaration that they fulfil the conditions to be eligible to vote to the competent municipality (of the last residence in Germany) in order to be included on the Electoral Roll.

	political situation and are affected by it.			
Ireland	Ordinarily resident, unless they intend to resume residence within 18 months after giving it up	Irish civil servants or diplomats who are serving abroad and the spouses or civil partners of such persons	Electoral Act	Written statement of the intention to resume residence within 18 months is sufficient in the absence of contrary evidence
Malta	Residence in Malta for a continuous period of six months or for periods amounting in the aggregate to six months during the 18 months immediately preceding their registration as voters	Temporarily absent persons because of work, study, illness or mission (Maltese Constitutional Court)	Constitution and General Elections Act	The Electoral Commission cancels the registration of citizens on the Electoral Roll who do not meet the residence requirements, after demanding the necessary information from the persons concerned.
United Kingdom	Loss of the right to vote after having lived abroad for more than 15 years. Persons, who have never been registered as an elector in the UK, are not eligible to register as an overseas voter unless they left the UK before they were 18 years old, and providing that they left the country within the preceding 15 years.	Members of the armed forces and their spouses and civil partners; Persons employed in the service of the Crown or by the British Council in a post outside the UK.	Representation of the People Act	Overseas electors need to submit a declaration to be registered on the Electoral Roll. Persons submitting overseas electors' declarations knowing that they are not entitled to and making false statements are committing an offence.

2.1. Cyprus

Pursuant to Article 11 of the Voters Registration and Electoral Roll Act,⁸ citizens may lose the right to vote if they reside permanently abroad for a period of time more than six months before the elections unless they are students, temporarily working abroad or living permanently abroad for health reasons. The notion 'temporarily working abroad' is not further defined in the Act.

⁸ Act No 40/80 as amended by Act 2(a) 210(I)/2002 ([Ο περί Εγγραφής Εκλογέων και Εκλογικού καταλόγου νόμος του 1980 No 40/80](#)).

Further exceptions are established for persons belonging to the Cypriot diplomatic corps or holding another position in a public service abroad, as well as their spouses, who are considered as resident in Cyprus (Article 5).

Citizens residing permanently abroad (for none of the aforementioned reasons) are obliged to notify the Central Electoral Service in order to be deleted from the Electoral Roll (Article 11(1)a) of the Voters Registration and Electoral Roll Act). Nevertheless, there are no criminal penalties set out if a citizen fails to notify the Central Electoral Service and there are no provisions enabling the authorities to act 'ex officio' in order to deprive a citizen of the right to vote on the basis of a period of time spent abroad.⁹

Besides the disenfranchisement rule for citizens resident abroad for more than six months, Cyprus's electoral legislation also contains a minimum residence period of six months before registration on the Electoral Roll for the elections in question.¹⁰

Interestingly, candidates in parliamentary elections do not need to be habitually resident in Cyprus in order to be eligible to stand for election.

Voting from abroad

The Election of Members of Parliament Act was amended in 2002 to enable citizens temporarily resident abroad, or for a specific reason, to vote in Cypriot elections. However, a decision to establish voting centres abroad is at the discretion of the Minister of Interior. For the Ministry to decide to establish an electoral centre abroad an application has to be made by at least 30 persons from the relevant electoral district. Such applications must be submitted to the Ministry of Interior three months before the relevant elections.

2.2. Denmark

According to the Danish Constitution, Danish citizens need to be 'permanently domiciled in the Realm' in order to be eligible to vote in national parliamentary elections (Article 29(1) of the Danish Constitution). It should be noted that the procedure for the amendment of the Danish Constitution is very cumbersome, including the dissolution of Parliament and new elections (Article 88 of the Constitution).¹¹

The permanent residence requirement is also contained in Article 1(1) of the Parliamentary Elections Act.¹² However, Article 2 establishes numerous cases in which persons residing

⁹ Instituto Europeo de Derecho, [Study on possible developments of EU legislation in the field of electoral matters including possible modification of Directive 93/109/EC](#), August 2010, Report on Cyprus, p. 16.

¹⁰ Article 5 Election of Members of Parliament Act of 1979 as amended by Act 3(I)/2003 (L. 72/1979, *Ο περί Εκλογής Μελών της Βουλής των Αντιπροσώπων Νόμος*, No 72/1979, last amended in 2011). Depending on the case, the right to vote is legally acquired on 1 January, 1 April, 1 July or 1 October of the year immediately preceding the preparation of the Electoral Register (Article 9(7) of the Voters Registration and Electoral Roll Act 40/80).

¹¹ Article 88 of the [Danish Constitution](#): Should the Folketing pass a Bill for the purposes of a new constitutional provision, and the Government wish to proceed with the matter, writs shall be issued for the election of Members of a new Folketing. If the Bill is passed unamended by the Folketing assembling after the election, the Bill shall, within six months after its final passing, be submitted to the electors for approval or rejection by direct voting. Rules on this voting shall be laid down by statute. If a majority of the persons taking part in the voting, and at least 40% of the electorate, have voted in favour of the Bill as passed by the Folketing, and if the Bill receives Royal Assent, it shall form an integral part of the Constitutional Act.

¹² [Lov om valg til Folketinget](#), consolidated version of April 2014.

abroad are regarded as permanently resident in Denmark (see table 1). The list is not exhaustive but persons in a similar situation can also be regarded as permanently resident (Article 2(2)(vi)).

Notably, according to Article 2(3), 'Persons taking up residence in foreign countries shall also be considered to be permanently resident in the realm if they intend to return to the realm within two years of their departure.' This provision has been in force since 2003. Besides, any person co-habiting at the same address with a person comprised by subsections (1), (2) or (3) shall be considered to be permanently resident in the realm if the co-habiting partners concerned have married or entered into a registered partnership with each other, or fulfil the conditions of marrying or entering into a registered partnership with each other and had set up joint residence before departure (Article 2(4)).

Voters falling under the exceptions established in Article 2 are registered in the national civil registration system (CRS) as emigrated, and shall be included, upon request, in the electoral register in the municipality where they most recently had permanent residence. If voters falling under Article 2 have stayed abroad for more than four years, they can only be included in the electoral register provided the Election Board considers the conditions of section 2 fulfilled in each individual case (Article 16(1) and (2)).

The electoral registers are prepared on the basis of information in the national civil registration system (CRS) (Article 19(1) of the Parliamentary Elections Act). According to the Executive Order on the Civil Registration System Act,¹³ 'residence' means 'the place (dwelling) where a person regularly sleeps when not temporarily absent owing to holiday, business travel, illness or suchlike, and where the person has his or her property and belongings' (Article 6(1)).

According to Article 24(1) of the Executive Order on the Civil Registration System Act, 'Anyone moving abroad shall be registered in the Civil Registration System as having left Denmark' unless an exception applies, such as for persons employed by the Danish Government or persons who for work reasons or similar for a period of more than six months, stay overnight abroad most of the time, but who during this period spend most of their weekends, days off, holidays, etc. at their residence in Denmark (Article 24). Stays abroad lasting more than six months must always be notified as a move abroad. If the stay abroad lasts for six months or less and the former place of accommodation is fully available, on request, the person concerned shall be entitled to remain registered as resident in the former place of accommodation. If the former place of accommodation is not fully available during a stay abroad for six months or less, the local authority shall make a specific assessment as to whether or not a move abroad is involved (Article 24(1)). Brief visits to Denmark shall not be considered an interruption of the stay abroad provided that the person concerned mostly sleeps abroad during the relevant period (Article 24(2)).

Voting from abroad

Voters permanently resident in Denmark who are temporarily staying abroad may cast their vote in advance with a Danish diplomatic or consular representation or with a vote receiver appointed by the Minister for Economic Affairs and the Interior (Article 57(2) Constitution).

¹³ [Executive Order on the Civil Registration System Act.](#)

2.3. Germany

In Germany, the Federal Constitutional Court, in July 2012, found¹⁴ the provision enabling expatriates to vote in elections to the Bundestag only if they have lived in Germany for at least three months to be unconstitutional, because it violated the principle of universal suffrage. As a consequence, the Federal Elections Act¹⁵ was amended in 2013. It now establishes that Germans resident abroad are entitled to vote if they have been permanently resident in Germany, after reaching the age of 14, for an uninterrupted period of at least three months within the past 25 years, or if they are personally and directly familiar with the political situation in Germany and are affected by it (Article 12(2) Federal Elections Act). The passive consumption of German media abroad is not sufficient to justify familiarity with the German political situation.¹⁶

Voting from abroad

Citizens resident abroad and wishing to vote need to submit a declaration¹⁷ and, when necessary, provide documentation proving that they meet the requirements for the right to vote.

2.4. Ireland

Under the Irish Electoral Act,¹⁸ a person shall be entitled to be registered as a Dáil (Irish Parliament) elector in a constituency if they are, on the qualifying date, ordinarily resident in that constituency. Citizens are deemed not to have given up ordinary residence and are thus registered on the Electoral Roll if they intend to resume residence within 18 months after giving it up. A written statement by such persons that they intend to resume residence within 18 months after giving it up will, in the absence of evidence to the contrary, be accepted as a correct statement (Article 11(3) of the Electoral Act).

The only other categories of citizens who can vote in any election or referendum, notwithstanding that they are not ordinarily resident in the State, are Irish civil servants or diplomats who, because of the requirements of their duties, are serving outside the State, and the spouses or civil partners of such persons. Such persons can cast their ballot by post (Article 12).

In the context of its plan for constitutional reform, Ireland's Constitutional Convention examined the issue of removing the limitation on voting for Irish citizens resident abroad. The Convention recommended¹⁹ to the Irish government in March 2014 granting Irish citizens the right to vote at Irish embassies in presidential elections, but not in parliamentary elections. It is up to the Irish government now to issue its response to the recommendation of the Convention. However, the Committee for European Affairs in the Irish Parliament has debated this issue and will be laying a report before both Houses in the near future on their recommendations regarding

¹⁴ [Ruling](#) of the German Federal Constitutional Court of 04.07.2012, - 2 BvC 1/11 -/ - 2 BvC 2/11 -.

¹⁵ [Bundeswahlgesetz](#), as last amended by Article 2 of the Act of 03.05.2013.

¹⁶ See the [Preamble](#) to the amendment of the Federal Elections Act.

¹⁷ Form available on the [website](#) of the German Federal Electoral Officer (*Bundeswahlleiter*).

¹⁸ Article 8 (1) b) [1992 Electoral Act](#).

¹⁹ [Ninth Report of the Convention on the Constitution Conclusions and final recommendations](#), March 2014.

voting rights for non-resident citizens in response to the recommendation by the European Commission.²⁰

2.5. Malta

In order for Maltese citizens to be eligible to vote in national parliamentary elections, they need to reside in Malta, and to have resided there for a continuous period of six months or for periods amounting in the aggregate to six months during the 18 months immediately preceding their registration as voters (Article 57(c)) of the Maltese Constitution). This shall not apply to a person who has not been resident in Malta by reason of service abroad in the public service or by reason of service abroad in, or as a member of the armed forces (Article 57(c)).²¹ Accordingly, the disenfranchisement of Maltese citizens resident abroad has a constitutional rank. In this context, it should be noticed that according to Article 66(2)(b) of the Constitution, amendment of the conditions for the eligibility of voters (Article 57 Constitution) would need a two-thirds majority in Parliament.

The constitutional franchise conditions have been further specified in the General Elections Act²². Its Article 15 establishes that a person will not be registered as a voter for the elections of the Members of the House of Representatives inter alia if the person does not comply with the residence requirements established by Article 57 of the Constitution. The Electoral Commission is in charge of examining the correctness of the Electoral Register. It must obtain the necessary information from the persons concerned so as to determine if they are (still) eligible as voters (Article 19(1)). The Electoral Commission cancels the registration of citizens who do not meet the residence requirements (Article 24). Prior to proceeding to the cancellation of the registration of any voter, the Electoral Commission shall require the person concerned to provide, within 10 days, evidence to establish his/her right to remain registered as a voter (Article 26). It is worth noting that the Electoral Register is public, giving voters the possibility to object to the inclusion of other voters in the Electoral Register (Article 30(3)).

The definition of 'residence' in Article 57 of the Constitution was further clarified by the Maltese Constitutional Court in 2003 in relation to the right to stand as a candidate for the national parliamentary elections (with the same residence requirements as for the active voting right). The Constitutional Court held that the notion 'residence' in Article 27 of the Constitution does not mean physical presence in the country, but includes and allows periodic absence from the country. A person, who is temporarily absent from Malta because of work, study, illness or mission, cannot be considered as not resident in Malta. A person who goes abroad to study or for work purposes is still 'directly and continuously concerned' with Malta's political life and therefore there is no reason for depriving them of the right to vote.²³ Residence therefore does not require a continuous presence in the country, but a habitual one, according to the circumstances of the case.²⁴

²⁰ Information provided by the Irish Parliament.

²¹ Article 57, [Maltese Constitution](#).

²² [General Election Act](#) of 1991 (*Att Dwar L-Elezzjonijiet Generali*), lastly amended in 2014.

²³ Judgement of the Civil First Hall (Constitutional Jurisdiction), *Vassallo Dr. Harry Noe Vs Kummissjonarju Elettorali Principali Noe Et Noe*, 21 March 2003.

²⁴ D. DeBono, [Access to electoral rights in Malta](#), EUDO Citizenship Observatory, June 2013, p. 5.

Voting from abroad

Voting takes place exclusively in Malta. Maltese citizens who are 'ordinarily resident' in Malta, but temporarily abroad, cannot cast their votes from abroad. The General Elections Act stipulates that Maltese citizens who are eligible to vote, but are not able to be in Malta on Election Day, are allowed to vote seven days before polling day, subject to taking an oath before the Electoral Commission, that they will not be in Malta on Election Day (Article 77). Maltese citizens who are abroad for state representation or work purposes are offered the possibility of flying in to vote (not provided for in the law). Eligible voters living abroad can purchase return Air Malta flight tickets at a heavily subsidised rate. This also covers persons married to foreigners, studying, working or undergoing medical treatment abroad, and their dependants.²⁵

2.6. United Kingdom

In the UK, in order for voters to be entitled to vote at a parliamentary election, they need to be registered in the register of parliamentary electors for the constituency in question (Section 1(1) of the Representation of the People Act 2000).²⁶ According to Section 4(1)b), in order to register in the register of parliamentary electors, citizens need to be resident in the constituency. British citizens living overseas are entitled to be registered to vote in national parliamentary elections for up to 15 years subsequent to their departure from the UK (Section 1(3) and (4) of the Representation of the People Act 1985).²⁷ They regain their voting rights upon return to the UK. Persons who have never been registered as an elector in the UK are not eligible to register as an overseas voter unless they left the UK before they were 18 years old, and within the preceding 15 years (Section 1(4)b) of the Representation of the People Act 1985).

The 15-year rule does not apply to members of the armed forces and their spouses and civil partners, and to persons employed in the service of the Crown or by the British Council in a post abroad.²⁸

Overseas electors need to submit a declaration in order to be registered as such on the Electoral Roll (section 2) and can vote by post or proxy. Any person submitting an overseas elector's declaration knowing that they are not entitled to, and making false statements, will be committing an offence liable on summary conviction to a fine of up to £5 000 (Section 12 of the Representation of the People Act 1985).

There is ongoing discussion²⁹ about extending voting rights for British citizens resident abroad, including cases brought before the courts (e.g. the Preston case).³⁰

²⁵ S. Grech, ['Air Malta Return Flights at €35 for those wanting to vote'](#), The Malta Independent, 12 May 2011.

²⁶ [Representation of the People Act 2000](#).

²⁷ [Section 1](#)(3) and (4) of the Representation of the People Act 1985 as amended by the Representation of the People Act 2000 and by Article 141 of the Political Parties and Referendums Act 2000 that reduced the period from 20 to 15 years.

²⁸ [Section 14 Representation of the People Act 1983](#) and [Section 1 Representation of the People Act 1985](#).

²⁹ Commons Library Standard Note, [Overseas Voters](#), 11.11.2014.

³⁰ See Votes for Expat Brits, [James Preston vs. the UK Government](#).

3. Disenfranchisement in elections to the European Parliament

3.1. Limits on national residence requirements according to EU law

EU citizens resident in a Member State different from their Member State of nationality are entitled to vote and stand as candidates in elections to the European Parliament (EP) as well as in municipal elections, 'under the same conditions as nationals of that state' (Article 22 TFEU, and Articles 39 and 40 EU Charter of Fundamental Rights). Residence requirements are thus applied equally to nationals and EU residents. In order for residence requirements not to hinder EU citizens permanently resident in a Member State of which they are not nationals to further exercise their freedom of movement and residence (Article 21 TFEU), Directive 93/109/EC³¹ establishes that minimum residence periods must be deemed to have been fulfilled when the EU citizen concerned has resided for an equivalent period in another Member State.³² An exception is made for Member States in which the proportion of non-national EU citizens of voting age exceeds 20% of the total number of EU citizens resident there (including nationals) (e.g. Luxembourg). Such Member States may require non-national EU citizens to have resided there (and not in another Member State) for a minimum period not exceeding five years.

These rules however apply only to resident non-national EU citizens and not to nationals of the Member State concerned. This means that whenever a Member State requires voters at the European Parliamentary elections to have resided there for a minimum period of time, nationals of that Member State living in another Member State may not be able to vote for the Members of the European Parliament elected in their Member State of origin, unless national legislation provides otherwise.

3.2. National residence rules leading to disenfranchisement

Table 2 – Loss of the right to vote in European Parliament elections due to residence abroad

Member State	Residence requirement for the right to vote	Disenfranchisement when resident in another EU Member State	Disenfranchisement when resident in third countries	Legal rank of the disenfranchisement provision
Cyprus	Six months minimum residence before registration on Electoral Roll	No	Yes	Election of Members of Parliament Act
Denmark	Permanently resident in Denmark or one of the EU Member States	No	Yes, unless intention to return to Denmark within two years of departure	Members of the European Parliament Elections Act

³¹ [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

³² Article 5 Directive 93/109/EC: If, in order to vote or to stand as candidates, nationals of the Member State or residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.

Germany	<p>Minimum residence of three months before the elections in Germany or another EU Member State</p> <p>Germans resident abroad can vote if they have resided in Germany, after the age of 14, for an uninterrupted period of three months within the past 25 years, or are familiar with the German political situation and affected by it.</p>	No	Yes, unless permanent residence in Germany, after reaching the age of 14, for an interrupted period of three months in the last 25 years, or familiar with the German political situation and affected by it.	European Election Act and Federal Election Act
Ireland	Ordinarily resident, unless they intend to resume residence within 18 months after giving it up	Yes	Yes	Electoral Act
Malta	Residence in Malta or another EU Member State for a continuous period of six months or for periods amounting in the aggregate to six months during the 18 months immediately preceding their registration as voters	No	Yes	Constitution and European Parliament Elections Act
United Kingdom	Loss of the right to vote after having lived abroad for more than 15 years. Persons, who have never been registered as an elector in the UK, are not eligible to register as an overseas voter unless they left the UK before they were 18 years old, and within the preceding 15 years	Yes	Yes	European Parliamentary Elections Act 2002 and Representation of the People Act 1985

3.2.1. Cyprus

In Cyprus, the Election of Members of Parliament Act³³ stipulates that persons are entitled to vote if they have **resided in Cyprus for a minimum period of six months before the reference date**. The same applies to European elections. The condition of six months habitual residence in Cyprus prior to the date of acquiring electoral registration is, in conformity with EU law, also fulfilled if the Cypriot citizen or the national of another Member State has **usually resided for an equivalent period in any other Member State**, if their usual residence was in Cyprus on the date on which they were entered on the specific electoral roll for national voters or for EU voters.³⁴ The 'equivalent period' rule however does not apply to residence in third countries.

Cypriot citizens living abroad (in another EU Member State) can vote at embassies and consulates provided they have, upon their request, registered on the electoral roll.³⁵

3.2.2. Denmark

The Danish Constitution establishes the requirement to be permanently domiciled in the Danish realm to be eligible to vote. This requirement however applies to national elections only and not to European Parliamentary elections.³⁶ The Members of the European Parliament Elections Act³⁷ establishes that Danish citizens permanently resident in another EU Member State would be entitled to vote in the European elections held in Denmark. It follows accordingly that Danish citizens permanently resident (without the intention to return within two years)³⁸ in a third country outside the EU are not eligible to vote in European Parliament elections in Denmark.

3.2.3. Germany

German citizens and non-national EU citizens are entitled to vote in elections to the European Parliament held in Germany if they have had an abode or have otherwise been permanently resident for at least three months either in Germany or in another EU Member State.³⁹ Furthermore, Germans resident in a third country outside the EU are deprived of their right to vote in European Parliamentary elections held in Germany, unless they have permanently resided in Germany, after reaching the age of 14, for an uninterrupted period of three months within the past 25 years, or if they are familiar with the German political situation and are affected by it.⁴⁰ In this context it is worth noting that the law refers to the Federal Elections Act and thus to the 'German' and not the 'European' political situation.

³³ Article 5 [Election of Members of Parliament Act](#) of 1979 as amended by Act 3(I)/2003 (L. 72/1979, *Ο περί Εκλογής Μελών της Βουλής των Αντιπροσώπων Νόμος*, Ν. 72/1979).

³⁴ Article 4 of the Election of Members of European Parliament Act of 2004, Act No 10(I)/2004.

³⁵ Article 8 of [Act No 98\(I\)/2004](#) (The right to vote and be elected in municipal and European elections for citizens of other Member States residing in the Republic, Act of 2004, No 98/(I)/2004).

³⁶ Article 29 (1) of the [Danish Constitution](#).

³⁷ Article 3(1)(i) [Members of the European Parliament Elections Act](#).

³⁸ Article 2(3) of the (national) Parliamentary Elections Act: 'Persons taking up residence in foreign countries shall also be considered to be permanently resident in the realm if they intend to return to the realm within two years of their departure.'

³⁹ Article 6(1)2 [European Elections Act](#) (*Europawahlgesetz*).

⁴⁰ Article 6(2) [European Elections Act](#) and Article 12(2) [Federal Elections Act](#).

3.2.4. Ireland

In order to be eligible as a voter in European Parliamentary elections, as in national and other elections, one has to be ordinarily resident in one of the Irish constituencies.⁴¹ Citizens are deemed not to have given up ordinary residence and are thus registered on the Electoral Roll if they intend to resume residence within 18 months after giving it up. A written statement of the intention to resume residence within 18 months after giving it up is accepted as a correct statement, in the absence of evidence to the contrary (Article 11(3) of the Electoral Act).

The exceptions for Irish civil servants or diplomats who, because of the requirements of their duties, are serving abroad, as well as their spouses or civil partners, also apply.

3.2.5. Malta

The European Parliament Elections Act stipulates,⁴² following the wording of the relevant constitutional provision (Article 57) that those qualify to be registered in the European Electoral Register who are resident in Malta and have during the 18 months immediately preceding their registration been a resident in a Member State for a continuous period of six months or for periods amounting in the aggregate to six months. The law clarifies, in accordance with Article 5 Directive 93/109/EC that residence in any Member State shall be deemed to be residence in Malta.

3.2.6. United Kingdom

As with national parliamentary elections in the UK, UK citizens living overseas are entitled to vote in elections to the European Parliament held there for up to 15 years after moving abroad, after which they lose their electoral rights until their return back to the UK to resume their permanent residence there. Overseas voters are required to register in the constituency of their last address in the UK. Citizens who have never been registered as electors in the UK are not eligible to register as overseas voters unless they left the UK before they were 18 and providing that they left the country no more than 15 years before.⁴³

4. Impact of disenfranchisement

4.1. The scale of the problem

There are no statistics on the number of citizens of EU Member States deprived of their right to vote in national parliamentary or European elections since most countries do not oblige their citizens abroad to register with national authorities. Moreover, not all Member States have procedures in place for nationals to give notice to the authorities of their move abroad.

According to estimates, there are between 5 and 10 million citizens of German nationality abroad.⁴⁴ These include also second and third-generation descendants of German emigrants. Estimates for the United Kingdom point to some 5.5 million UK citizens living permanently abroad.⁴⁵

⁴¹ Article 9(1)(b) [1992 Electoral Act](#).

⁴² Article 11 [European Parliament Elections Act](#) of 2004, last amended in 2014.

⁴³ [Section 8 European Parliamentary Elections Act 2002](#) and [Section 3 Representation of the People Act 1985](#).

⁴⁴ [Bundeszentrale für politische Bildung](#).

⁴⁵ UK Electoral Commission press release, '[Expats risk losing their say at general election](#)', 22.09.2009.

Registration on the electoral roll among German expatriates has increased following the relaxation of the disenfranchisement rules, both in national parliamentary (from ca 31 000 in 1987 to ca 67 000 in 2013)⁴⁶ and in European elections (from 7 000 in 1979 to 13 700 in 2014).⁴⁷ Conversely, voting registration among Britons resident abroad has decreased. Whilst the extension of the period for which overseas voters retain their right from 5 to 20 years led to an increase in registered electors from abroad to almost 35 000 in 1991, registrations fell in subsequent years, along with the reduction from 20 to 15 years, to just above 19 000 in 2012.⁴⁸

In both Germany and the United Kingdom, the share of those exercising their right to vote remains low and is much lower than the number of registered resident electors.

The small number of citizens resident abroad registering to vote in elections held in their country of nationality has been used to justify their disenfranchisement due to the far-ranging disinterest of citizens abroad in participating in political life at home. Conversely, others argue that the low numbers negate fears of residents abroad being able to unfairly influence political decisions taken in their country of origin, for instance, imposing political options on their fellow nationals who are more directly affected by such political decisions.

4.2. Pros and cons of disenfranchisement

Disenfranchisement of nationals living abroad is based on the assumption that they lack knowledge of the political reality in their country of nationality, thereby depriving them of the ability to cast a well-informed and thus a meaningful vote. It is argued that non-residents are not directly affected by acts of the legislature as they for instance do not pay income taxes in their country of origin. In addition, some point to the costs of voting from abroad and the possibility of fraud.

This weakened link between expatriates and their country of origin does not however lead to a loss of nationality. Rather, nationality is a quasi-permanent link between a state and its nationals. The nationality bond with a state is still the main connecting factor for rights and obligations of citizens. Citizens resident abroad still have obligations deriving from their nationality so that they should also be conferred the corresponding rights. The applicable inheritance law for instance depends in the majority of the countries on the nationality of the deceased. Moreover, even long-term residents abroad might and often do return to their country of origin, and will then be unrestrictedly affected by national legislation. In addition, the ability to remain informed on politics in the home Member State through digital communication means should be emphasised today.

In this context, the proof provided by the very act of registering to vote that citizens resident abroad do have interest in national politics was recently highlighted by the Superior Court of Justice of Ontario, which held that the disenfranchisement of Canadian citizens who have been resident abroad for more than five years is unconstitutional. The Court stated:

'If the very fact of being a citizen is not considered sufficient to create and sustain an individual's connection to Canada, then the act of voting itself is evidence of this connection. In order to vote, a Canadian citizen living outside the country must

⁴⁶ Bundeswahlleiter, [Germans abroad registration on the Electoral Roll for the federal elections](#).

⁴⁷ Bundeswahlleiter, [Germans abroad registration on the Electoral Roll for European elections](#).

⁴⁸ House of Commons Library Standard Note, [Overseas Voters](#), 11.11.2014, p. 8.

take a number of steps, including completing an application for special ballot, completing the special ballot, and ensuring that both documents arrive at Elections Canada on time. The voter needs to know the name of the relevant local candidate and, if he or she wishes to vote by party, must determine which candidate is connected with which party. Thus, the very act of being interested in and taking the steps to vote is evidence of the voter's connection to Canada. It is a self-testing mechanism [...].

[...]the vague assertions of unfairness to resident voters and the speculative nature of any negative impacts cannot outweigh the substantial, deleterious impact of stripping a Canadian citizen of his or her right to vote by virtue only of crossing the five-year non-resident threshold.⁴⁹

Australia's six-year rule can be perpetually extended through annual application by the non-resident. New Zealand's three-year rule re-sets the clock every time the non-resident visits the country.

4.3. Does disenfranchisement violate EU law?

Disenfranchisement of nationals of EU Member States who reside abroad, both in national and European Parliamentary elections, seems at first sight to have little to do with the EU legal framework as it concerns the loss of rights of nationals of Member States and not of non-national EU citizens who must not be discriminated against on the grounds of their nationality (Article 18 TFEU).

However, the Court of Justice of the EU has established in several cases that the rights deriving from EU citizenship (as well as the internal market freedoms) can also be invoked by nationals of a Member State vis-à-vis that same state.⁵⁰ This means that Member States must not adopt measures which could deter their own nationals from exercising their rights under EU law or disadvantage them because of having exercised these rights, unless where these measures are justified in order to defend a public interest and are proportional. Such measures would represent a breach of a Member State's duty of sincere cooperation with the Union according to Article 5 TEU, which obliges them to 'refrain from any measure which could jeopardise the attainment of the Union's objectives'.

The loss of electoral rights due to residence in another EU Member State (conversely not in the case of residence in a third country) could indeed discourage citizens to move to another Member State, and could therefore be seen as a violation of the freedom of movement and residence of EU citizens (Article 19 TFEU and Article 45 EU Charter). Indeed, the discouraging effect in each individual case would be difficult to prove, but the violation of EU citizenship rights does not require statistical or other evidence. Rather, the potential 'chilling effect' on the decision to exercise the freedom of residence is sufficient.⁵¹

This is also true for elections to the European Parliament. In contrast to disenfranchisement in national elections, where nationals living abroad are deprived of the possibility to vote in national-level legislative elections (both in their country of

⁴⁹ [Ruling](#) of Ontario Superior Court of Justice, Frank et al. v. AG Canada, 2014 ONSC 907, 02.05.2014.

⁵⁰ See e.g. [Case C-192/05](#), Tas-Hagen en Tas (2006), para. 28.

⁵¹ D. Kochenov, '[Free movement and participation in the parliamentary elections in the Member State of nationality: an ignored link?](#)', Maastricht Journal of European and Comparative Law, Vol. 16 (2009), No 2, p. 219.

origin and of residence), EU citizens resident in a Member State other than that of their nationality can vote for the MEPs to be elected in their host Member State (Article 22(2) TFEU). However, the right of EU citizens to vote and stand as candidates in their Member State of residence is a right deriving from their EU citizenship and is therefore additional to the rights flowing from their nationality, and does not replace them. Rather, the logic of the Treaty provisions on the electoral rights of EU citizens is that in European elections they can choose to vote either in their Member State of nationality or that of their residence. In this context, the European Commission has argued that disenfranchisement infringes directly upon the enjoyment of Union citizenship, which is additional to national citizenship and gives rise to additional rights to Union citizens, whereas in this case the exercise of the right of free movement, which derives from Union citizenship, may lead to loss of the right to political participation.⁵²

The European Commission has also stated on numerous occasions that it considers electoral rights at national level to be the sole competence of Member States. However, former Commission Vice-President Viviane Reding stated in her answer⁵³ to a parliamentary question⁵⁴ from former MEP Andrew Duff (ALDE, UK) that EU citizens who are not entitled to vote or stand as candidates in either their Member State of origin or in their Member State of residence, are not represented in the Council of the EU and are thus excluded from participation in the democratic life of the EU. Indeed, in a quasi-federal, bicameral view, EU citizens vote for their representatives in the lower chamber (Parliament) but would be excluded from being represented in the upper, territorial chamber, the Council, if disenfranchised in national elections. In this context, the legal ban cannot be seen as like the voluntary decision not to take part in elections.

4.4. And the European Convention on Human Rights?

The Parliamentary Assembly of the Council of Europe has also addressed the disenfranchisement issue several times. In its Resolution 1459/2005⁵⁵ it stated that, in order to avoid any conflict of loyalties, electoral rights in national elections should be attached to nationality. People with several nationalities should be allowed to choose in which country they wish to exercise their rights.

In 2009, Harry Shindler, a British citizen living in Italy since 1982, lodged an application against the UK Government with the European Court of Human Rights (ECtHR) in Strasbourg alleging the violation of the European Convention on Human Rights and Fundamental Freedoms by the British rules on voting by citizens resident abroad. He mainly relied on the right to free elections (Article 3, Protocol 1 to the Convention). On 7 May 2013 the ECtHR delivered its judgment⁵⁶ dismissing Shindler's application. Notably, the Court declared that electoral rights in national parliamentary elections do not fall within the scope of EU law (freedom of movement) so that Shindler was not required to first seek domestic judicial review relying on EU law. The Court concluded that the electoral rights enshrined in Protocol 1, Article 3 to the Convention are not a privilege but that they are not absolute either and can be limited. Limits to these rights have however to respect their very essence and need to be proportionate to the

⁵² Communication on disenfranchisement of January 2014, op. cit.

⁵³ [Answer](#) of Commissioner Reding on behalf of the Commission, 02.02.2011.

⁵⁴ [Parliamentary question](#) by Andrew Duff MEP, 14.10.2011.

⁵⁵ Council of Europe Parliamentary Assembly, Resolution 1459 (2005) ['Abolition of restrictions on the right to vote'](#).

⁵⁶ [Judgment](#) of the ECtHR, Shindler v. United Kingdom, application no 19840/09, 07.05.2013.

legitimate aim pursued by the restrictions. The Contracting States have thereby a certain margin of appreciation, taking account of the particular socio-economic realities of each country. The Court held that the UK provisions on disenfranchisement of expatriates pursue the legitimate aim of ensuring that those citizens with close connections with the UK and directly affected by its laws are eligible to participate in parliamentary elections there. Moreover, the general 15-year period was considered to be proportionate because a case-by-case assessment of whether the individual had close links to the UK would place an unbearable burden on the electoral administration. The Court concluded that although there is a tendency in Europe to grant electoral rights to non-residents, there is no legal obligation upon states to grant non-resident nationals unrestricted access to these rights.

4.5. The European Parliament

The lack of possibility for EU citizens disenfranchised in their Member State of nationality to participate in national parliamentary elections has been highlighted by the EP on several occasions.⁵⁷ In 2012 it called⁵⁸ on Member States to implement the Venice Commission's Code of Good Practice in Electoral Matters (Council of Europe), including the abolition of disenfranchisement of expatriates in elections to national parliaments. Moreover, the Committee on Petitions has recently addressed this issue following several petitions from EU citizens.⁵⁹ The Committee will also seek dialogue on this question with the Commission's First Vice-President, Frans Timmermans.

5. Possible solutions and future prospective

In view of concerns over the declining trend in voter turnout both in national and European Parliamentary elections,⁶⁰ different solutions have been discussed to enable expatriates to take part in elections. With enfranchisement being a state competence, the European Union has limited powers in providing a solution to this problem. Indeed, if disenfranchisement due to residence in another EU Member State is considered to be a violation of the freedom of movement and residence, an infringement procedure (Article 258 TFEU) before the Court of Justice could be envisaged to give the Court the possibility to shed some light on this question.

Many favour a general right of long-term EU residents to vote in their host Member State, regardless of whether they are disenfranchised in their Member State of origin. This proposal is the subject of several petitions submitted to the EP Committee on Petitions (PETI) as well as of a European Citizens Initiative 'Let me vote!'.⁶¹ They claim such a new EU citizenship right could be included in the Treaties by means of the special legislative procedure foreseen in Article 25(2) TFEU, which requires a unanimous decision of the Council as well as the approval of all Member States

⁵⁷ European Parliament [resolution](#) of 29 March 2012 on the EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights (2011/2182(INI)).

⁵⁸ European Parliament [resolution](#) of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011) (2011/2069(INI)).

⁵⁹ See e.g. [petition](#) by Jacqueline Cotterill (British) on disenfranchisement of EU citizens exercising their right to free movement, and discrimination based on nationality under the Charter of Fundamental Rights.

⁶⁰ European Parliamentary Research Service, [Turnout in European elections](#), 2014.

⁶¹ [Let me vote! Citizens' initiative](#): however, the period for collecting signatures ended in January 2014 without the initiative reaching the 1 million threshold required for the Commission to have to respond.

according to their constitutional requirements. A 2010 Eurobarometer survey⁶² found approximately 50% of citizens are in favour of allowing EU citizens to participate in national elections in their Member State of residence, whereas some 43% are against.

A less ambitious solution, not involving a Treaty change, would be to leave the solution of the problem to the disenfranchising Member States. This was the strategy adopted by the previous Commission which called on Member States to abolish the disenfranchisement rules for their nationals living in another EU Member State, or at least loosen the requirements for them to preserve their voting right.⁶³ As seen above, such calls have so far not been accepted by the Member States concerned.

Some propose a combination of both options, with EU citizens choosing whether to vote in their Member State of nationality or of residence.⁶⁴ The Commission's 2012 public consultation on EU citizenship⁶⁵ shows that most citizens would in this case vote in their Member State of residence.

A fourth approach is to facilitate the naturalisation of EU citizens in other Member States. An argument made against this, however, is that since many Member States do not allow dual nationality (except where there is a bilateral agreement with another country), the loss of one's own nationality in order to gain electoral rights in another Member State would be a disproportionate cost and one at odds with the very substance of Union citizenship as a status providing additional rights.⁶⁶

In its January 2014 Recommendation, the European Commission suggested as a less restrictive measure than disenfranchisement due to residence abroad to enable nationals who make use of their right to free movement and residence in the EU to demonstrate a continuing interest in the political life in the Member State of which they are nationals, including through an application to remain registered on the electoral roll, and by doing so, to retain their right to vote.⁶⁷

The increasing constructive potential of Union citizenship in European integration will inevitably push a solution to these questions. The recent trend towards enfranchisement of expatriates in many democratic states places pressure both on EU Member States and on the EU institutions to translate commitments to greater citizens' participation in political life into concrete actions.

6. Main references

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⁶² Flash [Eurobarometer](#) No 292 – Electoral Rights, p. 8.

⁶³ European Commission Communication and Recommendation of January 2014, op. cit.

⁶⁴ R. Bauböck, Ph. Cayla, C. Seth, [Should EU citizens living in other Member States vote there in national elections?](#), EUI Working Papers RSCAS 2012/32, EUDO Citizenship Observatory, 2012.

⁶⁵ Analysis report - Public consultation 2012 '[EU citizens - your rights, your future](#)', pp. 40 et seq.

⁶⁶ D. Kochenov, op. cit.

⁶⁷ [Commission Recommendation](#) addressing the consequences of disenfranchisement of Union citizens exercising their rights to free movement, 29.01.2014, C(2014) 391 final.

The right to vote is a fundamental one and of utmost importance for the democratic legitimacy of any public power. Six EU Member States deprive their nationals permanently resident abroad of the right to vote in national parliamentary elections. They also deprive such citizens residing in a third country of the vote in European elections, and two of them even when their nationals live in another EU Member State.

Citizens disenfranchised in their country of origin often face exclusion from political life at national level in both their country of origin and of residence. In the case of citizens living in another EU Member State, the disenfranchisement rules could even amount to an infringement of their freedom of movement and residence under EU law.

Solutions discussed include a Treaty change to allow EU citizens to vote in national parliamentary elections in their host Member State or to be able to choose between voting there or in their Member State of nationality. A more realistic solution envisages the abolition of disenfranchisement rules in those six Member States concerned, although such calls from EU institutions have found very limited favour in the six concerned.

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