

# 7

## Participation of EU citizens in the Union's democratic functioning



*In 2012, the European Parliament and the Council of the European Union prepared for the 2014 European Parliament elections. They adopted a European Commission proposal to amend European Union (EU) law governing the participation of non-national Union citizens in European Parliament elections. The European Commission assessed the implementation of EU citizens' electoral rights at municipal level. Enhanced participation and the identification of difficulties in effectively participating in civic and political life were issues discussed ahead of the European Year of Citizens 2013. Several citizens' groups embraced the European Citizens' Initiative, a new tool of participatory democracy at EU level, with the European Commission registering a number of initiatives after the 1 April 2012 start date. EU Member States also undertook reforms to make elections more accessible for persons with disabilities, thereby acknowledging the importance of the standards set by the United Nations Convention on the Rights of Persons with Disabilities.*

In their decision to make 2013 the European Year of Citizens, the European Parliament and the Council of the European Union wanted to celebrate the 20<sup>th</sup> anniversary of EU citizenship, a concept introduced by the Maastricht Treaty.<sup>1</sup> EU citizenship is conferred automatically on any national of an EU Member State in addition to national citizenship.<sup>2</sup>

Participation of EU citizens in the EU's democratic functioning, including voting rights and limitations, as well as the right to engage in participatory democracy, are rights and responsibilities attached to EU citizenship. This chapter addresses these rights in turn.

### 7.1. Voting rights in the EU

#### 7.1.1. The implication of EU citizens' right to vote

Articles 20 (2) (b) and 22 of the Treaty on the Functioning of the European Union (TFEU), as well as Articles 39 (1)

#### Key developments in the area of participation of EU citizens in the Union's democratic functioning

- The European Citizens' Initiative takes effect on 1 April 2012 and provides the basis for participatory democracy at EU level. The European Commission registers 12 such initiatives in 2012.
- Preparations for the European Year of Citizens 2013 prompt discussions and consultations on the future of citizens' participation in EU decision-making processes.
- The European Parliament and the Council of the European Union discuss reforming electoral rules to facilitate non-national EU citizens' participation in European Parliament elections.
- Various EU Member States take steps to facilitate the participation of persons with disabilities in elections in line with the UN Convention on the Rights of Persons with Disabilities (CRPD).
- EU Member States generally continue to link the loss of voting rights to the loss of legal capacity for persons with psycho-social disabilities and persons with intellectual disabilities.

<sup>1</sup> Decision No. 1093/2012/EU of the European Parliament and the Council, OJ 2012 L 325/1; for more information, see: <http://europa.eu/citizens-2013/>.

<sup>2</sup> European Commission (2012a).

and 40 of the European Union Charter of Fundamental Rights confer on EU citizens, wherever they reside in the EU, the rights to vote in and to stand as candidates for EU parliamentary and municipal elections.

Ahead of 2013, the Year of Citizens, which celebrates and commemorates 20 years of EU citizenship and the rights deriving from it, the European Commission launched a broad EU-wide consultation on EU citizens, *Your rights, Your future*.<sup>3</sup> The consultation will contribute to a second EU citizenship report to be published in 2013,<sup>4</sup> following an initial report in 2010.<sup>5</sup>

The consultation was open to the public, with responses welcomed from all citizens and organisations concerned with developing EU citizenship.<sup>6</sup> Around 12,000 people took part, informing the European Commission about obstacles they had encountered when exercising their rights as EU citizens, in particular their voting rights in municipal and European Parliament elections.<sup>7</sup>

*“The European Parliament elections in 2014 are an occasion for a broad debate: should we move towards a full-fledged political union? Can we do it with all Member States or just with euro area countries? European political parties should develop their visions and propose candidates to become the next President of the Commission.”*

*Vice-President Viviane Reding, speech on a New Deal for Europe, 14 March 2012*

In 2012, efforts were made to reform the European Parliament electoral system before the 2014 elections. On 2 February 2012, the European Parliament Committee on Constitutional Affairs (AFCO) adopted a second report on a proposal for a wide-reaching reform of the act concerning electing members of the European Parliament by direct universal suffrage of 20 September 1976.<sup>8</sup> Due to a lack of political support across the parties represented in the European Parliament, however, the debate in plenary was delayed.<sup>9</sup>

The European Parliament adopted in November 2012, by a wide majority, a non-binding resolution on the 2014 elections to the European Parliament.<sup>10</sup> The resolution calls on political parties to nominate candidates for the presidency of the European Commission and expresses the hope that members of the future commission would be elected Members of the European Parliament. The

resolution furthermore suggests holding the European elections in May 2014, instead of June, to ensure that the new commission can take office on 1 November 2014.

The Council of the European Union adopted on 20 December 2012 a Directive amending 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.<sup>11</sup> These amendments are not as far reaching as the European Parliament had originally hoped. They do not allow, in particular, for a candidate to stand for election in more than one constituency, or in other words, in more than one EU Member State, during the same election.<sup>12</sup>

The amendments alleviate some of the burden placed on national authorities and non-national EU citizens who wish to stand as candidates for the European Parliament in an EU Member State other than their own. The amending directive simplifies the procedure for candidacy. These citizens must simply declare that they are not deprived of the right to stand in European elections in their home Member State. The Member State of residence must notify the home Member State about this declaration.

Prior to these amendments, potential candidates had to provide an affidavit certifying their right to stand in EU elections from their home Member State. This procedure proved to be a barrier and helped keep the number of such candidates low.

A 2012 European Commission report highlights how important it is for every citizen to participate in the democratic life of the EU. This is particularly true “at local level where the decisions taken directly affect citizens”.<sup>13</sup>

According to this report, at the end of 2010, more than eight million EU citizens of voting age resided in an EU Member State other than their own.<sup>14</sup> This figure has significantly increased, also thanks to EU enlargement, since the first report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections was published in 2002.<sup>15</sup> In **Italy**, for example, the number of non-national EU citizens of voting age increased to 1,050,000 from 56,000; in **Germany** to 2,239,641 from 1,521,000; in **Greece** to 114,377 from 16,000; in **Ireland** to 247,980

3 European Commission (2012b).

4 Decision No. 1093/2012/EU of the European Parliament and the Council, OJ 2012 L 325/1, Recital 20.

5 European Commission (2010).

6 For more on the consultation, see: [http://ec.europa.eu/justice/newsroom/citizen/opinion/120509\\_en.htm](http://ec.europa.eu/justice/newsroom/citizen/opinion/120509_en.htm).

7 Nemitz, P. (2012).

8 European Parliament (2009); see also: [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=580688](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=580688). See also FRA (2012), p. 184.

9 [Thenewfederalist.eu](http://thenewfederalist.eu) (2012).

10 European Parliament (2012a).

11 Council Directive 2013/1/EU, OJ 2013 L 26/27; see also Council of the European Union (2012); and European Parliament (2012b), para. 40.

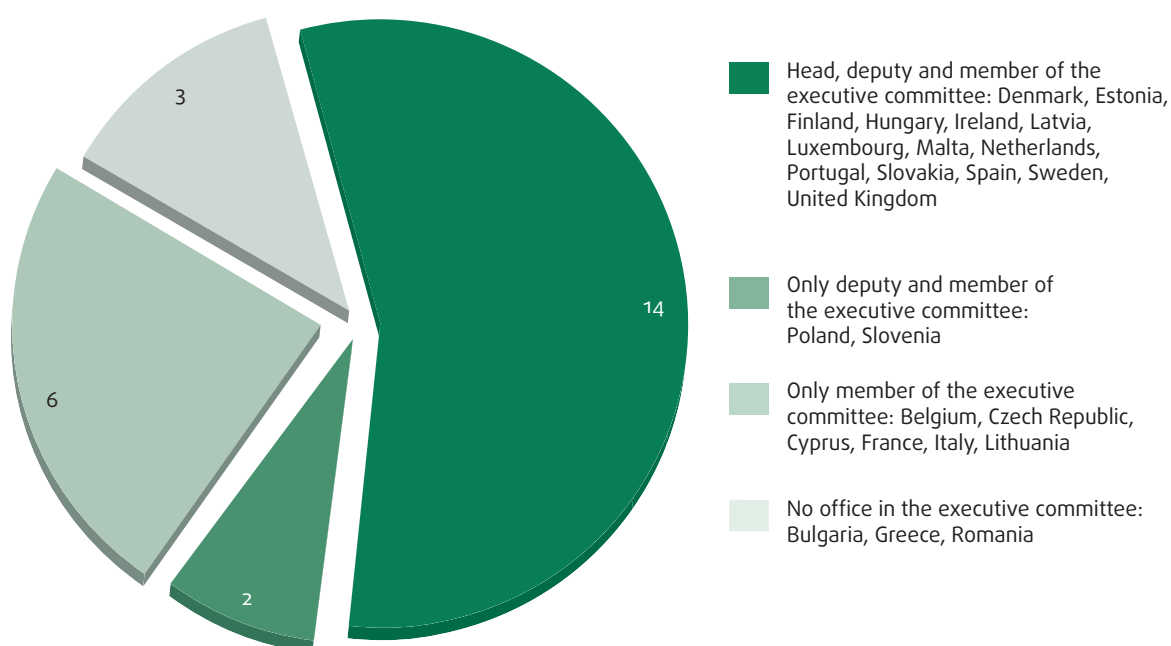
12 European Parliament (2012c).

13 European Commission (2012c), p. 3.

14 *Ibid.*, p. 6.

15 European Commission (2002).



**Figure 7.1: Offices which non-national EU citizens may hold in local government units**

Note: \*Austria and Germany are federal republics; provisions differ by state.

Source: Data extracted from the European Commission (2012), Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on 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, COM(2012) 99 final, Brussels, 9 March 2012, p. 10, as updated by FRA, 2013

from 76,000; in **Denmark** to 108,806 from 32,000; and in **Portugal** to 94,157 from 26,000.<sup>16</sup>

Only around 10 %, however, take advantage of the right to vote in their country of residence.<sup>17</sup> In **Bulgaria**, for example, of the 8,500 non-national EU citizens Eurostat said were living in Bulgaria in 2011,<sup>18</sup> only 248 asked to be registered for the October 2011 municipal elections and only five ran as candidates.<sup>19</sup>

The 2012 European Commission report found that the transposition of Directive 94/80/EC was broadly satisfactory. Non-national EU citizens nevertheless still faced some obstacles when exercising their right to vote in municipal elections, such as a minimum period of residency requirement or tighter deadlines to submit registration applications than nationals.<sup>20</sup>

EU Member States vary in how they apply Article 5 (3) of Directive 94/80/EC, which makes it possible to restrict the offices into which non-national EU citizens can be elected. Figure 7.1 illustrates the situation.

In many EU Member States, namely **Denmark, Estonia, Finland, Hungary, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Spain, Sweden** and the **United Kingdom**, nothing prevents non-national EU citizens from running for or being nominated to the position of mayor. Other Member States reserve all or some executive positions for nationals. **Poland** and **Slovenia** reserve the post of head of local administration for nationals.

In **Belgium, Cyprus**, the **Czech Republic, France, Italy** and **Lithuania**, non-national EU citizens may become members of the executive committee but they may not hold the post of deputy head of the local administration.

**Bulgaria, Greece** and **Romania** apply all the restrictions of Article 5 (3) of Directive 94/80/EC: non-national EU citizens cannot be members of executive committees.<sup>21</sup> The European Commission is of the opinion that a less restrictive approach would better support the integration of non-national EU citizens and their direct involvement in the EU Member State of residence.<sup>22</sup>

Data collection on non-national EU citizens' participation differs by Member State. In the **Czech Republic**, for

16 European Commission (2012c), p. 6.

17 *Ibid.*, p. 7.

18 Eurostat (2012).

19 Bulgaria (2011).

20 European Commission (2012c), p. 8.

21 *Ibid.*, p. 10.

22 *Ibid.*, p. 11.

example, ahead of the 12–13 October 2012 municipal elections, no data on the participation of non-national EU citizens were collected. In other Member States, statistical offices collect and provide aggregated data (**Belgium**<sup>23</sup> and **Finland**<sup>24</sup>) on non-national EU citizens' participation.

In all EU Member States, the lack of data makes it difficult to assess the actual participation of non-national EU citizens. While more data would be useful, it is understandable that public authorities in EU Member States are reluctant to collect such data as it would require them to single out non-national EU citizens during an election.<sup>25</sup> During municipal elections in Innsbruck (**Austria**) on 15 April 2012, for example, 9,633 non-national EU citizens were registered to vote but no information is available on how many actually voted.<sup>26</sup> Similarly, out of the 12,000 non-national EU citizens living in Burgenland (Austria), 3,000 registered to vote for the 7 October 2012 municipal elections but no data are available on how many actually voted.

In **Belgium**, the ratio of registered non-EU national citizens was 18.5 % ahead of the municipal election of October 2012 (653,958 potential and 120,826 registered voters).<sup>27</sup> Similarly, in **Cyprus**, during the December 2011 municipal and local elections, 12,333 non-national EU citizens were registered, 61 stood for office and nine were elected, of which two were Greek nationals and seven British nationals. However, no data are available on the number of non-national EU citizens that actually voted.

In **Finland**, 61,617 non-national EU citizens had the right to vote in the 28 October 2012 municipal elections and 143 stood as candidates.<sup>28</sup> In **Malta**, some 1,300 were registered to vote in the 10 March 2012 local council elections, but again no information is available on how many actually voted.<sup>29</sup>

An **Italian** Council of State decision clarified the deadline for registration on electoral lists for EU citizens.<sup>30</sup> All eligible Italian citizens automatically have their names inserted on the electoral lists of electors prepared by the Electoral Office (*Ufficio Elettorale*), while non-national EU citizens must register on a special voters' list within five days of the official election announcement. The

Council of State confirmed that this is mandatory and that the five-day deadline cannot be prolonged. Given the short time frame, the Ministry of Interior called on mayors to directly inform non-national EU citizens who are not on the electoral lists.<sup>31</sup>

In response to criticisms related to the residence requirement mentioned in the 2012 European Commission report, the **Lithuanian** government amended the Law on Elections to Local Government Councils by removing the five-year minimum residence requirement for non-national EU citizens.<sup>32</sup>

The **Slovenian** government also accepted the European Commission remarks on the compatibility of its domestic legislation on local elections with EU law and amended the local election act by lifting the current five-year minimum residence requirement for non-national EU citizens.<sup>33</sup> The amendments increased the number of non-national EU citizens allowed to vote to more than 8,200 from around 1,200.

The European Commission report also refers to the **Czech Republic, Germany, Greece, Latvia, Lithuania, Poland, Slovakia and Spain**, which limit the right of non-national EU citizens to become members of, or found, a political party.<sup>34</sup> The amendment to the **Finnish** Act on Political Parties, which entered into force on 1 September 2012, lifted previous limitations affecting non-national EU citizens' right to found a party.<sup>35</sup>

## 7.1.2. The right to vote: national-level trends

EU Member States draw up electoral procedures governing the various elections at local, regional, national or even EU level; EU law does not determine them. Such procedural rules, even if not specific to EU citizens, still have an impact on the conditions under which EU citizens exercise their right to participate in local and European elections.

23 Belgium, Directorate General of Institutions and Population (2012).

24 See: Statistics Finland at: [www.stat.fi/til/kvaa/index\\_en.html](http://www.stat.fi/til/kvaa/index_en.html).

25 European Commission (2012c), p. 7.

26 Austria, City of Innsbruck (2012).

27 Belgium, Directorate General of Institutions and Population (2012).

28 For the number of people entitled to vote (whole country), see: [http://192.49.229.35/K2012/e/aaniioikeutetut/aoik\\_kokomaa.html](http://192.49.229.35/K2012/e/aaniioikeutetut/aoik_kokomaa.html).

29 Malta, Office of the Electoral Commission (2012).

30 Italy, Council of State, Decision No. 01193/2012 of 1 March 2012.

31 Italy, Ministry of Interior (2012).

32 Lithuania, Law amending Art. 2, 35, 36, 87, 89, 90 of the Law on the Elections to Local Government Councils, 2 October 2012.

33 Slovenia, Act amending the Local elections act, 25 October 2012.

34 European Commission (2012c), p. 13.

35 Finland, Amendment to the Act on political parties (372/2012), 15 June 2012.



*"[The Parliamentary Assembly of the Council of Europe (PACE)] calls on Council of Europe Member States to [...] foster citizen participation in the electoral process, notably by: [...] enabling all citizens to exercise their right to vote through proxy voting, postal voting or e-voting, on the condition that the secrecy and the security of the vote are guaranteed; facilitating the participation in the electoral process of citizens living abroad, subject to restrictions in accordance with the law, such as duration of residence abroad, whilst ensuring that, if polling stations are set up abroad, their establishment is based on transparent criteria; safeguarding the right to vote of vulnerable groups (people with disabilities, the illiterate, etc.) by adapting polling stations and voting material to their needs; abolishing legal provisions providing for general, automatic and indiscriminate disenfranchisement of all serving prisoners irrespective of the nature or gravity of their offences."*

*PACE Resolution 1897 (2012) Ensuring greater democracy in elections*

EU Member States are taking steps to make elections more accessible by, for instance, allowing for postal voting, e-voting, advance voting or even voting from abroad.

The right to vote from abroad was the central issue in the *Sitaropoulos and Others* case.<sup>36</sup> The European Court of Human Rights (ECtHR) considered that no international treaty required states to arrange for the exercise of voting rights of persons residing abroad. Although the **Greek** Constitution allows for the possibility of the legislature organising this right, political consensus to enact the provision has never been reached. The ECtHR concluded that "the very essence of the applicants' voting rights [...] was [not] impaired in the instant case."<sup>37</sup>

As in 2011, the right to vote for citizens living abroad was also under continued discussion in several EU Member States. The Constitutional Convention established to reform the **Irish** Constitution, for example, will address the right to vote in presidential elections for Irish citizens living abroad.<sup>38</sup> The convention's inaugural meeting took place on 1 December 2012 and discussions are scheduled to finish one year from that date. The meetings will decide whether a referendum to change the constitution is to be held on each issue.

In the **United Kingdom**, British citizens may vote in parliamentary elections from abroad but lose this right if they are away from the United Kingdom for more than 15 years. In 2010, a British man resident in Spain, James Preston, applied for judicial review of the relevant legislation as to its compatibility with EU law. The High Court dismissed his application in December 2011.

Mr Preston's appeal was heard in July 2012 and in October 2012 the Court of Appeal dismissed it. A request to appeal to the Supreme Court is pending.<sup>39</sup>

In addition to legal challenges before the ECtHR,<sup>40</sup> the legislature also attempted to change the 15-year rule.<sup>41</sup> An amendment seeking to abolish the rule was added to the Electoral Registration and Administration Bill that went through Parliament in 2012, but the amendment was withdrawn before the bill gained royal assent on 31 January 2013.<sup>42</sup> An all-party inquiry on the issue remains a possibility.

While several EU Member States make provision for non-national EU citizens to vote from abroad in parliamentary elections, few exercise this right. In **Slovakia**, for example, 8,018 citizens registered to vote from abroad in 2012,<sup>43</sup> with 7,051 of these exercising that right to vote via registered mail. With over 2,553,726 valid votes cast, votes from abroad accounted for just 0.28 % of the total vote in Slovakia,<sup>44</sup> but this still showed more than a doubling from the 3,427 citizens, or 0.14 % of the overall popular vote, who voted from abroad in 2006.

Following a 2010 redistricting of French legislative constituencies, 11 constituencies were created outside France for the election of representatives to the French National Assembly, creating direct representation for French citizens living abroad. These newly created constituencies returned 11 elected Members of Parliament to the National Assembly during the 2012 French Parliamentary elections.

The adoption of a law on electoral procedure in **Hungary**<sup>45</sup> was due to complete the electoral reform prompted by the new Fundamental Law together with Act CCIII on the election of the Members of the National Assembly.<sup>46</sup> Although the Bill was adopted on 26 November 2012, in its decision of 4 January 2013, the Constitutional Court quashed some of its key provisions, which compels Parliament to review the act.<sup>47</sup> The constitutionally rejected provisions included replacing the automatic voter registration system with a new mandatory registration scheme.

<sup>36</sup> ECtHR, *Sitaropoulos and Others v. Greece*, No. 42202/07, 15 March 2012.

<sup>37</sup> *Ibid.*, para. 81.

<sup>38</sup> Ireland, Lower House of Parliament (2012), Vol.771 No. 5, p. 27.

<sup>39</sup> United Kingdom, Court of Appeal (2012), *Preston, R (on the application of) v. The Lord President of the Council*, EWCA Civ 1378, 25 October 2012.

<sup>40</sup> ECtHR, *Shindler v. The United Kingdom*, No. 19840/09, lodged on 26 March 2009.

<sup>41</sup> White, I. (2013).

<sup>42</sup> United Kingdom, Electoral Registration and Administration Act 2013, 31 January 2013.

<sup>43</sup> SITA Slovak News Agency (2012).

<sup>44</sup> Slovakia, Statistical Office of the Slovak Republic (2012).

<sup>45</sup> Hungary, Bill T/8405 on electoral procedure, 26 November 2012.

<sup>46</sup> Hungary, Act CCIII of 2011 on the election of the Members of the National Assembly, 30 December 2011.

<sup>47</sup> Hungary, Constitutional Court, Decision I/3653/2012.

In a provision unaffected by the Constitution Court's ruling, the bill seeks to ensure the suffrage of citizens who live abroad by mandating that they may register by mail or electronically, any time during the general registration period. Once passed, the new electoral law will enable Hungarian citizens living abroad to register on electoral lists and have one vote for party lists, whereas citizens residing in Hungary may also vote for individual candidates in single-member constituencies. In essence, the reform would allow Hungarian citizens who move within the EU to retain partial suffrage at home. The right to vote by post would facilitate their participation in elections.<sup>48</sup>

The Council of Europe's Venice Commission and the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR), issued a joint opinion on the Hungarian parliamentary elections act, endorsing the legislature's decision to limit the right to vote for Hungarians living abroad to the proportional part of the elections, given that the new Citizenship Law would grant the vote to some five million new Hungarian citizens compared to the eight million voters who live in Hungary.<sup>49</sup> The remaining parts of Bill T/8405/73 will enter into effect if the Hungarian Parliament chooses to reaffirm them.

Calls for the equal representation of women and men in national parliaments were also renewed in 2012. The European Parliament called for a balance of the sexes in elected and nominated positions in political decision making, as well as funding for related awareness-raising campaigns.<sup>50</sup> In October 2012, the Parliamentary Assembly of the Council of Europe (PACE) called on Council of Europe member states to introduce legislation that would make it possible for political parties to adopt positive action measures including in the electoral field in support of the under-represented sex. To support these measures, funding should be made available to those parties that take positive action to promote women's representation or participation and sanctions applied to those parties that fail to comply with their gender-related legal obligations.<sup>51</sup>

Figure 7.1 shows the proportion of women in the national parliaments of EU Member States and Croatia and ranks them according to the Inter-Parliamentary Union's global ranking. In the majority of EU Member States and Croatia (20), the proportion of women is

below 30 % in the lower or single house. A similar situation can be found in the 13 EU Member States that have an upper house or a senate: in nine of these the proportion of women is below 30 %.<sup>52</sup>

The report attached to the PACE Resolution also presents promising practices aimed at enhancing women's representation in national parliaments, such as organising campaigns and activities to attract women's membership, ensuring maximum transparency in the selection of candidates to stand for election and the setting up of mentoring and training programmes to enhance the capacity of talented women to take up positions of political responsibility.<sup>53</sup>

Some EU Member States, including **Belgium**<sup>54</sup> and **Poland**,<sup>55</sup> have planned legislative amendments to ensure equal representation of female and male candidates on electoral lists, with similar proposals to promote equal opportunities for men and women on electoral lists in both European and regional elections.

In **Ireland**, an amendment to the Electoral Act provides that state funding for political parties will not be available unless at least 30 % of political parties' candidates are women.<sup>56</sup> In **Italy**, the Chamber of Deputies (*Camera dei Deputati*) approved a bill on gender balance in local legislative councils and government, but it is still pending in the Senate. The law stipulates, for example, a 5 % reduction of public funds allocated to a political party if two-thirds of its list of candidates are of the same sex.<sup>57</sup>

The **Czech** Ministry of Interior has announced plans for a general reform of the electoral code, but it has yet to decide whether this will be in the form of a new bill or an amendment to current election laws. The proposal will be submitted to the government by mid-2013. The reform should unify the existing laws that organise elections, thereby simplifying the legal framework.

48 Hungary, Bill T/8405 on electoral procedure, 26 November 2012, Art. 252.

49 Council of Europe, Venice Commission and the OSCE/ODIHR (2012), para. 43.

50 European Parliament (2012d), Resolution on women in political decision-making – quality and equality, P7\_TA(2012) 0070, Brussels, 13 March 2012.

51 Council of Europe, Parliamentary Assembly (PACE), Resolution 1898 (2012) on political parties and women's political representation, 3 October 2012, para. 7.

52 See also: European Commission, DG Justice, Gender balance in decision-making positions database, National Parliaments, available at: [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/politics/national-parliaments/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/politics/national-parliaments/index_en.htm).

53 Council of Europe, PACE (2012).

54 Belgium, Proposal of 5 June 2012 for a law with regard to the adaptation of the electoral law to promote the equal opportunity of men and women in elections, Doc. Parl. Chamber 2011–2012 No. 233/001; Proposal of 20 June 2012 with regard to equal representation on the electoral lists of the European elections of men and women, Doc. Parl. Chamber 2011–2012 No. 2274/001; Proposal for a special majority law of 20 June 2012 with regard to the equal representation on the electoral lists in the regional parliaments, Doc. Parl. Chamber 2011–2012 No. 2273/001.

55 Gazeta wyborcza.pl (2012).

56 Ireland, Electoral (Amendment) (Political Funding) Act 2012, Part 6, 42 (c).

57 Italy, Law No. 96 of 6 July 2012.



**Figure 7.2: Proportion of female parliamentarians in EU Member States and Croatia**



Note: Only 13 EU Member States have an upper house or a senate.

Source: Data extracted from the Inter-Parliamentary Union, *Women in National Parliaments as of 1 January 2013*, available at: [www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm).

Czech legislation does not provide for proxy voting, under which one person casts a vote on behalf of an absent other, but Czech citizens who cannot vote at the polling station of their residence can request a ‘voter ID’, enabling them to vote in other polling stations in the Czech Republic.<sup>58</sup> The idea of postal voting was abandoned after political discussion due to concerns about possible fraud.

The introduction of e-voting was discussed in the context of the overall reform of **Czech** electoral legislation. Although e-voting comes in many forms, from punch-cards to internet voting, it is characterised by the use of electronic systems for both the voting and counting processes. Financial reasons, however, forced a postponement of the first pilot e-vote to 2015 from the original plan to use it in the October 2012 Senate and regional elections. The Czech authorities are working on technical solutions for a possible use of e-voting in the future.

In **Estonia**, where e-voting has been in place since 2002, amendments to all relevant electoral laws were adopted in October 2012.<sup>59</sup> Their main aim was to further regulate electronic voting and in particular to establish a specific electronic voting committee, the function of which is to prepare and organise the e-voting, to solve any issues hindering e-voting procedure and to verify e-voting results.<sup>60</sup>

In the **United Kingdom**, a reform of the procedures for registration on the electoral roll was going through Parliament when this annual report went to print.<sup>61</sup> Whereas the current system gives the responsibility to one person in each household to register everyone living at that address (‘household registration’), the new system proposes Individual Electoral Registration with verifiable personal identifiers. When passed, this would be the biggest change in the voter registration process

59 Estonia, Act Amending the Election Law and other Acts, RT I, 1 November 2012, 1, 17 October 2012.  
 60 Estonia, Election Act, 2002, as amended, Section 17.  
 61 United Kingdom, Electoral Registration and Administration Bill (2012-2013), 31 January 2013.

58 Czech Republic, Ministry of Interior (2012).

since the introduction of the universal franchise, the extension of the right to vote to all adult citizens.

### Promising practice

#### Introducing e-voting in national parliamentary elections

Citizens residing outside France were able, for the first time, to e-vote via internet in the June 2012 French Parliamentary elections.<sup>63</sup> Voters submitted their e-mail addresses and mobile phone numbers to consulates, which then sent them a login and instructions on how to vote. This voting method was widely used: 57 % of voters used it during the first round of the election and 54 % during the second.<sup>64</sup> The French authorities evaluated the voting system positively and the OSCE/ODIHR issued several recommendations to improve it.

For more information, see : OSCE/ODIHR (2012a), p. 9., available at: [www.osce.org/odihr/elections/93621](http://www.osce.org/odihr/elections/93621)

The voting rights of convicted prisoners remained a contentious issue in 2012. In May, in the case *Scoppola v. Italy (No.3)* a Grand Chamber of the ECtHR found that in adapting voting bans to the individual's specific situation, the Italian system was not excessively rigid and did not contravene the European Convention on Human Rights (ECHR).<sup>64</sup>

This case was of great relevance for the United Kingdom. The government asked the ECtHR for a six-month extension to amend its related legislation in light of the *Scoppola* judgment,<sup>65</sup> which was granted.

In November 2012 the British government published a draft Bill, which a Joint Committee of both Houses must first scrutinise before the legislation can be brought before Parliament.<sup>66</sup> The draft Bill set out three options for Parliament to consider: a ban for prisoners sentenced to four years or more; a ban on prisoners sentenced to more than six months; and a ban for all convicted prisoners.

The Council of Europe's Committee of Ministers, at its December 2012 meeting on the supervision of the execution of judgments, welcomed the proposal but noted that the third option, of retaining a blanket ban on voting by prisoners, "cannot be considered compatible

62 France, Electoral Code, Art. L. 330-13 of the electoral code and Art. R176-3 to R176-3-10.

63 France, *Ministère des Affaires étrangères* (2012), p. 47.

64 ECtHR, *Scoppola v. Italy (No.3)*, No. 126/05, 22 May 2012; see also ECtHR, *Cucu v. Romania*, No. 22362/06, 13 November 2012, in which the Court finds Romania in breach of the ECHR because of its automatic voting ban on convicted persons.

65 ECtHR, Press release (2012).

66 White, I. (2012).

with the European Convention on Human Rights."<sup>67</sup> The Committee of Ministers decided to resume consideration of the case at the latest in September 2013.

### 7.13. The limitation of voting rights in the case of disability

The UN Committee on the Rights of Persons with Disabilities confirmed its broad interpretation of the meaning of participation in political and public life as guaranteed by Article 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD).

In its Concluding Observations on the State report presented by Hungary, the Committee called on the State to review "all relevant legislation [...] to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others."<sup>68</sup>

The United Nations (UN) standards are reiterated in several other forums. For example, the OSCE reported on several occasions its concern about inaccessible polling stations (**France**,<sup>69</sup> **Greece**,<sup>70</sup> the **Netherlands**,<sup>71</sup> and **Slovenia**<sup>72</sup>). It regularly refers to the CRPD standards when doing so.

Accessibility of polling stations remains a recurrent issue for EU Member States, 24 of which (and Croatia) ► have ratified the CRPD (discussed in detail in **Chapter 5** – discrimination on the ground of disability) and thereby accepted that elections should be barrier free. Some improvements can, however, be reported with respect to the accessibility of polling stations.

*"[The Parliamentary Assembly of the Council of Europe (PACE)] called on Council of Europe Member States to: [...] foster citizen participation in the electoral process, notably by: [...] guaranteeing that all possible means are used to make all polling stations accessible".*

*PACE Resolution 1897 (2012) Ensuring greater democracy in elections*

The reality on the ground underscored the urgency of PACE's call.

Several national action plans adopted in 2012 aim at enhancing persons with disabilities' participation in public and political life (**Austria**<sup>73</sup> and **Finland**<sup>74</sup>). During

67 *Ibid.*

68 United Nations, Committee on the Rights of Persons with Disabilities (2012), para. 46.

69 OSCE/ODIHR (2012a).

70 OSCE/ODIHR (2012b).

71 OSCE/ODIHR (2012c).

72 OSCE/ODIHR (2012d).

73 Austria, Federal Ministry of Labour, Social Affairs and Consumer Protection (2012).

74 Finland, Ministry of Justice (2012).





the 2012 elections in Innsbruck, for example, 24 out of 42 polling stations (57 %) were barrier-free.

Other EU Member States adopted legislative and/or executive acts to encourage and organise the participation of persons with disabilities in elections and to set rules on the accessibility of polling stations.

This was the case in **Hungary** with the adoption of the Law on electoral procedure<sup>75</sup> and **Belgium** ahead of the 2012 municipal elections.<sup>76</sup> In Wallonia, NGOs criticised that those needing to use accessible polling stations were required to declare this 2-1/2 months in advance of the elections.<sup>77</sup>

The **Greek** Ministry of Interior sent a circular before the national election of June 2012 asking polling station election officials to assist voters if the polling station was not accessible. Such assistance could include entering the voting booth with the person to help them vote or bringing election materials outside inaccessible polling stations.<sup>78</sup>

This solution did, however, raise OSCE concerns, failing as it did to make provision for voters with disabilities to choose their own assistance providers. In its report on the Greek elections, it said: "In light of Greece's recent ratification of the UNCRPD and in order to ensure the secrecy of the vote, amendments should be introduced to the current legislation to require that polling stations be accessible to voters with disabilities and to allow such voters to select the assistance providers of their choice."<sup>79</sup>

The **Lithuanian** central electoral commission issued a decision calling for fully accessible polling stations to be set up.<sup>80</sup> The commission cooperated closely with the public agency Braille Printing (*Všį 'Brailio spauda'*) and the Lithuanian Union of the Blind and Partially Sighted (*Lietuvos aklyjų ir silpnaregių sąjunga*) to provide basic information in Braille for elections and in particular for the parliamentary elections in 2012.

The **Dutch** Ministry of Interior commissioned the Project Bureau Accessibility to develop a checklist on the accessibility of polling stations which was used for the parliamentary elections on 12 September 2012. The

checklist establishes four categories which contribute to a barrier-free polling station, namely communication, accessibility, enterability and usability.<sup>81</sup>

Visually impaired persons also experience difficulty in voting. Before the **Dutch** parliamentary elections, *Viziris*, an NGO supporting the rights of persons with visual impairments, highlighted problems of accessibility in polling stations. It called on its members to report on their voting experiences.<sup>82</sup> During the last Dutch elections, the Minister of Interior tested (and continue to test) alternative voting ballots adapted for visually impaired voters and people with low literacy levels. These ballots can also be transferred to voters digitally and then printed out so that the voter has more time to vote before mailing it in.<sup>83</sup> In its report on the **French** parliamentary elections, the OSCE noted that "no special means were provided for visually impaired voters who could thus not vote in secrecy."<sup>84</sup>

### Promising practice

#### Supporting candidates with disabilities

On 9 July 2012, the United Kingdom government launched the *Access to elected office for disabled people* strategy, to provide new support to people with disabilities who want to run for election. The strategy provides in particular for a training scheme encouraging persons with disabilities to participate in political life by giving an introduction to the skills that might be needed when standing for office, as well as a dedicated fund – the Access to Elected Office Fund – which provides financial support for candidates who have additional expenses linked to a disability.

*For more information, see: United Kingdom, Home Office (2012), details of the strategy are available at: [www.homeoffice.gov.uk/equalities/equality-public-political/access-elected-office/](http://www.homeoffice.gov.uk/equalities/equality-public-political/access-elected-office/)*

*For more information on the Access to Elected Office Fund, see: [www.access-to-elected-office-fund.org.uk/](http://www.access-to-elected-office-fund.org.uk/)*

The right to vote for persons with intellectual disabilities and persons with mental health problems is an area of law characterised by great diversity among EU Member States. The majority, however, still link the loss of legal capacity<sup>85</sup> – the withdrawal of legal recognition of a person's decisions, such as to register to vote<sup>86</sup> – to disenfranchisement. EU Member States follow three main

75 Hungary, Bill T/8405 on electoral procedure, 26 November 2012, Art. 153.

76 Belgium, Walloon Minister of Health, Social Action and Equal Opportunities (2012).

77 Socialist Association of Disabled Persons (ASPH asbl.) (2012a) and ASPH asbl. (2012b).

78 Greece, Ministry of Interior, Circular No. 33, Facilitation to citizens with disabilities for the exercise of their voting rights during the parliamentary elections of 17th June 2012, 19 May 2012.

79 OSCE/ODIHR (2012b), p. 5.

80 Lithuania, Central Electoral Commission (2012).

81 Project Bureau Accessibility (2012).

82 *Viziris* (2012).

83 Netherlands, Minister of the Interior and Kingdom Relations (2012).

84 OSCE/ODIHR (2012a), p. 2.

85 FRA (2012), p. 188.

86 FRA (forthcoming).

approaches: total exclusion, case-by-case consideration and full participation.<sup>87</sup>

EU Member States that exclude individuals link the right to vote to the legal capacity of the individual. In other Member States, national legislation prescribes an individual assessment of the ability to vote before taking the right away.

EU Member States that have removed all restrictions enable persons with intellectual disabilities and persons with mental health problems to vote on an equal footing with other citizens.<sup>88</sup>

There have been few changes since 2011. **Croatia**<sup>89</sup> reformed its legal framework and **Luxembourg**<sup>90</sup> has made plans to do so.

**Table 7.1: The right to political participation of persons with mental health problems and persons with intellectual disabilities, by EU Member State and Croatia**

EU Member State	Exclusion	Limited participation	Full participation
AT			x
BE	x		
BG	x		
CY		x	
CZ	x	x	
DE	x		
DK	x	x	
EE	x	x	
EL	x		
ES		x	x
FI		x	x
FR		x	x
HU		x	
IE	x		x
IT			x
LT	x		
LU	x		
LV	x		
MT	x	x	
NL			x
PL	x		
PT	x		
RO	x		
SE			x
SI		x	
SK	x		
UK			x
HR	x		

Notes: An EU Member State can be represented in more than one column, as persons with mental health problems and persons with intellectual disabilities may be treated differently according to the national law of the respective Member State.

Source: FRA, 2012

87 FRA (2010), pp. 15 and following.

88 FRA (2012), p. 189.

89 Croatia, Voters' Register Act, Official Gazette 144/12.

90 Luxembourg (2012), p. 47.



On 14 December, the Croatian parliament passed the Act on the Voters' Register, removing all limitations on the voting rights of persons divested of legal capacity.<sup>91</sup> Article 64 of the Act ensures that "persons fully divested of legal capacity by a final decision of a competent court in the period preceding the coming into force of this Act shall be considered voters and shall be entered into the voters' register". In securing voting rights for persons divested of legal capacity, the Ministry of Public Administration has responded to criticism by the Ombudsperson for Persons with Disabilities.<sup>92</sup>

**Croatia** remains, however, in the 'exclusion' column in Table 7.1, because it still has a law that excludes persons without legal capacity from voting, although some NGOs have reported that there are plans to amend this Act on the Elections of Representatives to the Croatian Parliament.<sup>93</sup>

In **Luxembourg**, the National Action Plan for the implementation of the CRPD of March 2012<sup>94</sup> provides for a reform by 2015 of the legal capacity legal framework. In parallel, by June 2014, the Constitution will be amended in order to lift the total voting ban imposed on persons under guardianship, in other words persons who have a third party who is legally entitled to make decisions on their behalf.<sup>95</sup> The constitutional reform will put an end to the automatic ban, ensuring that individuals can only be divested of their voting rights on a case-by-case basis.

In the **Netherlands**, no legal restrictions are imposed on persons with mental health problems and persons with intellectual disabilities. The OSCE/ODHIR has, however, suggested, referring to Article 29 of the CRPD, providing support to persons with intellectual disabilities who are unable to vote without assistance.<sup>96</sup>

Table 7.1 provides an updated summary of a table published in the last FRA Annual Report.<sup>97</sup>

## 7.2. Developments in participatory democracy

Besides voting rights at municipal and European elections, EU law encourages wider participatory democracy. The Treaty on the European Union (TEU) facilitates citizens' direct involvement in EU affairs.

91 Croatia, Voters' Register Act, Official Gazette 144/12.

92 Croatia (2012).

93 Udruga Sjjaj (2012).

94 Luxembourg (2012), p. 47.

95 FRA (forthcoming).

96 OSCE/ODHIR (2012c), p. 5.

97 FRA (2012), p. 189.

The 'public exchanges' prescribed by Article 11 of the TEU can also take other forms, including through consultations. The European Commission closed 112 such consultations in 2012 after 131 in 2011, seven of which were in the area of Justice and Fundamental Rights as compared to four in 2011.<sup>98</sup>

The consultation documents should be made available in all EU official languages, according to the European Ombudsman. The Ombudsman said that the failure to do so was an example of maladministration.<sup>99</sup>

The European citizens' initiative provides a new tool of which citizens are taking advantage.

### 7.2.1. The European citizens' initiative

On 1 April 2012, the regulation governing European citizens' initiatives (ECI)<sup>100</sup> took effect. Since then, citizens' committees, made up of at least seven EU citizens who are resident in at least seven EU Member States, can make requests for registration.<sup>101</sup>

*"I am thrilled that European Citizens' Initiatives are finally a reality. This is a great boost for participatory democracy in Europe. Now the race is on to see which initiative will be the first to gather one million signatures."*

*Maroš Šefčovič, Vice-President of the Commission, Brussels, 8 May 2012*

The first European Citizens' Initiative, 'Fraternité 2020 – Mobility. Progress. Europe', was registered on 9 May 2012. It was proposed by a committee of EU citizens living in Austria, Belgium, Hungary, Italy, Luxembourg, Romania and Spain. The main objective is to "enhance EU exchange programmes – like Erasmus or the European Voluntary Service – in order to contribute to a united Europe based on solidarity among citizens".<sup>102</sup>

Twelve ECIs were registered in 2012, covering a variety of topics including media pluralism and press freedom,<sup>103</sup> animal protection ('Stop Vivisection')<sup>104</sup> and broader ecological considerations ('30 Km/h – Making the Streets Liveable!').<sup>105</sup> In the area of political participation and citizenship, the 'Let me Vote' initiative aims at

98 European Commission (2012d).

99 European Ombudsman, Case: 0640/2011/AN of 4 October 2012.

100 Regulation No. 211/2011 of the European Parliament and the Council, OJ 2011 L 65/1.

101 European Commission, European Citizens' Initiative, available at: <http://ec.europa.eu/citizens-initiative/public/welcome>; and FRA (2011), pp. 136 and following.

102 European Commission (2012e); for further information on such EU exchange programmes, see: [www.fraternite2020.eu](http://www.fraternite2020.eu).

103 For more information on the European initiative for media pluralism, see: [www.mediainitiative.eu](http://www.mediainitiative.eu).

104 For more information on the citizens' initiative against vivisection, 'Stop Vivisection', see: [www.stopvivisection.eu](http://www.stopvivisection.eu).

105 For more information on the citizens' initiative '30 km/h – making the streets liveable!', see: <http://de.30kmh.eu>.

granting the right to vote to non-national EU citizens in all political elections<sup>106</sup> while the ‘central public online collection platform for the European citizens’ initiative’ seeks to facilitate the registration and collection of signatures for future ECIs.

Seven requested ECI registrations were rejected because they did not satisfy the conditions laid down in the ECI regulation. Article 4 (2) of the regulation stipulates that the European Commission will register a proposed initiative within two months of a request provided that: the citizens’ committee has been formed and the contact persons designated; the proposed initiative does not manifestly fall outside the framework of the Commission’s powers; the proposed initiative is not manifestly abusive, frivolous or vexatious; and the proposed initiative is not manifestly contrary to EU values as set out in Article 2 of the TEU.

The initiative ‘My voice against nuclear energy’, for example, aimed at eliminating nuclear energy. The European Commission refused to register the initiative arguing that such a ban would be contrary to the Euratom Treaty. Since the TEU and TFEU provide no legal basis to propose an act contrary to the Euratom Treaty, the latter treaty would need to be modified by agreement between the contracting parties before such an ECI could be registered.<sup>107</sup>

Some European Parliament resolutions suggest that the Petition Committee of the Parliament should hold the public hearings prescribed by Article 11 of the ECI regulation,<sup>108</sup> given its experience of direct contact with citizens.<sup>109</sup>

The majority of EU Member States have in place the enabling legislation or rules allowing citizens to start or contribute to an ECI.

## 7.2.2. NGO involvement – consultations and preparations for the European Year of Citizens 2013

The Europe for Citizens programme (2007–2013) supports a wide range of activities and organisations promoting ‘active European citizenship’ especially the involvement of citizens and civil society organisations in the process of European integration.<sup>110</sup> In addition to the permanent themes of the programme, the pro-

gramme’s priorities in 2012 aimed at the promotion of European citizenship and democracy, including the development of understanding of the EU, its values and what it brings to citizens’ daily lives; and to ensure that the direct and current interest of citizens are fed into the European political agenda.<sup>111</sup> The specific priorities of the programme in 2013 will contribute to the objectives of the European Year of Citizens.

On 14 December 2011, the European Commission adopted the Proposal for a Council Regulation establishing for the period 2014–2020 the programme Europe for Citizens.<sup>112</sup> The programme aims at enhancing civic participation to ensure that civil society contributes to policy decisions. In addition, the programme should ensure that individual citizens participate in debates and discussions on EU matters.<sup>113</sup>

A number of actions are proposed to ensure the practical implementation of these aims, including: bringing people together from local communities across Europe through the twinning of towns; supporting civil society organisations through grants designed to provide structural support; enhancing European citizenship through high visibility events, studies and the dissemination of information; and promoting and preserving European remembrance by sponsoring projects such as those commemorating the victims of mass exterminations and deportations.

The European Commission commissioned a study on Participatory Citizenship in the European Union that mapped the theory, policy, practices and levels of engagement across the EU. The study’s policy recommendations are aimed at the upcoming 2013 European Year of Citizens, the new Europe for Citizens Programme (2014–2020) and the 2014 European elections.

The policy recommendations are divided into three Sections: Concepts and definition of Participatory Citizenship, Effective strategies for facilitating Participatory Citizenship and an EU strategy for Participatory Citizenship in the economic crisis and beyond. In essence, the recommendations are aimed at “effectively maintaining and enhancing democracy and social cohesion through Participatory Citizenship.”<sup>114</sup>



<sup>106</sup> For more information on the ‘Let me vote’ citizens initiative see: [www.letmevote.eu](http://www.letmevote.eu).

<sup>107</sup> European Commission (2012f), available at: <http://ec.europa.eu/citizens-initiative/public/documents/579>.

<sup>108</sup> Regulation No. 211/2011 of the European Parliament and the Council, OJ 2011 L 65/1, p. 1.

<sup>109</sup> European Parliament (2012b), para. 3; see also European Parliament (2012e).

<sup>110</sup> The current programme, with a €215 million budget, started on 1 January 2007 and will end on 31 December 2013.

<sup>111</sup> See: [http://eacea.ec.europa.eu/citizenship/programme/priority\\_themes\\_en.php](http://eacea.ec.europa.eu/citizenship/programme/priority_themes_en.php).

<sup>112</sup> European Commission (2011).

<sup>113</sup> *Ibid.*; both the European Economic and Social Committee (EESC) and the Committee of the Regions supported the Commission’s proposal, see: EESC (2012), p. 2 and Committee of the Regions (2012).

<sup>114</sup> Hoskins, B. and Kerr, D. (2012), pp. 7–8.



A debate with citizens in Dublin on 10 January 2013 officially kicked off the European Year of Citizens, coinciding with the start of the Irish Presidency of the Council of the European Union. The debate focused on the development of EU citizenship in particular and of the EU in general, with a view to the European Parliament elections of 2014. An EU-wide alliance of civil society organisations has set itself up expressly to collaborate with the European Commission on the European Year. This European Year of Citizens Alliance (EYCA)<sup>115</sup> is a key strategic partner representing civil society.<sup>116</sup>

As part of the European Year of Citizens, the European Commission started holding a series of debates or town hall meetings with citizens to discuss topics such as: How should we fight the crisis?, What do you expect from your European citizenship?, and: What kind of Europe do you want by 2020?

Twenty such debates, which are open to everyone, are planned to be held across the EU over the course of 2013.<sup>117</sup> The first debates took place in 2012 in Spain, Austria, Germany, France and Italy, respectively, and were established to ensure that the opinions expressed would feed into future European Commission proposals on strengthening citizens' rights, and maintaining a Union where those rights are fully respected. Twenty additional debates are planned to take place in 2013 across Europe.

## Outlook

To celebrate the introduction of EU citizenship 20 years earlier, 2013 was designated as the European Year of Citizens. The year will focus both on what the EU has already achieved for citizens and on meeting citizens' expectations for the future. Events throughout the year will explain how people can benefit directly from their EU rights and the policies and programmes that exist to facilitate the full enjoyment of EU citizenship.

The year should stimulate an EU-wide debate with citizens on how the EU should look in future and what reforms are needed to improve their everyday lives.<sup>118</sup>

The Council Regulation establishing the Europe for Citizens' Programme (2014-2020), which will be adopted by mid-2013,<sup>119</sup> will support active participation in EU life.

Another issue that will be debated is the broadening of EU citizens' right to vote in national elections in the country in which they are residing. This area of reform is central to the European Citizens' Initiative 'Let me Vote' and has already triggered robust discussions.<sup>120</sup>

115 For more information on the EYCA, see: <http://ey2013-alliance.eu>.

116 European Commission (2012g).

117 For more on the debates on the future of Europe, see: [http://ec.europa.eu/european-debate/index\\_en.htm](http://ec.europa.eu/european-debate/index_en.htm).

118 European Commission (2012g).

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