

7

Participation of EU citizens in the Union's democratic functioning



Active political participation is the core of democracy. The year 2011 saw some European Union (EU) Member States undertake reforms to make elections more accessible to all persons, thereby fostering democratic participation. For instance, by the end of 2011, 19 EU Member States had ratified the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), placing themselves under a legal obligation to enhance the right to vote of persons with disabilities. Ever greater levels of abstention in elections to the European Parliament prompted discussions on electoral reform. Beyond elections, 2011 also witnessed developments in the wider context of participation in public life. Further preparatory discussions took place on the European citizens' initiative, a potentially powerful participatory tool at EU level.

This chapter covers developments in EU and EU Member State policies and practices in the area of participation of citizens in the EU's democratic functioning. The chapter begins with an overview of current developments in the right to vote in elections. Particular emphasis is placed on the participation of non-national EU citizens. The subsequent sections also look at general reforms in electoral legislation because these have a direct impact on the way citizens express their vote. While arrangements for voting processes are freely chosen by each Member State, electoral reforms often affect all types of elections, including European Parliament, national, regional and local elections. They are therefore directly relevant for European Parliament and municipal elections, in both of which EU citizens have the right to vote and to stand as candidates, regardless of where they reside in the EU. Drawing on last year's report, the chapter examines limitations on voting rights faced by persons with disabilities and concludes with an update on developments related to participatory democracy.

7.1. Voting rights in the EU

7.1.1. EU citizens' right to vote

The participation of EU citizens in European and municipal elections is an important issue. Article 20 (2) (b), 22 of the Treaty on the Functioning of the European Union (TFEU) as well as Article 39 (1), 40 of the Charter of

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

- the adoption of the European citizens' initiative provides the basis for participatory democracy at EU level and the European Commission takes various steps to make the new instrument operational;
- whereas public debates on the citizens' initiative remain limited, the creation of the online 'Citizen House' is an example of efforts to make the existing avenues for participation better known and more accessible;
- the European Commission proposes designating 2013 the European Year of Citizens and the European Parliament discusses electoral rule reforms;
- against the background of the CRPD, the participation of persons with disabilities in elections becomes an issue to be addressed – various EU Member States take steps to facilitate the participation of persons with disabilities in elections, whereas in the case of mental health problems and persons with intellectual disabilities a majority of the EU Member States still link disenfranchisement to the loss of legal capacity.

Fundamental Rights confer on EU citizens, wherever they reside in the Union, the rights to vote and to stand as candidates in European Parliament elections and at municipal elections. This will also be the case

for **Croatia**. When Croatia joins the EU in July 2013 the necessary reforms enabling EU citizens to participate in local self-government councils as well as European Parliament elections will enter into force.

In 2011 the European Commission proposed designating 2013 the European Year of Citizens. Under this initiative, the EU has a total of €1 million in funds for projects of relevance to citizenship. The Commission underlines that raising awareness on citizens' electoral rights in their Member State of residence will be crucial in view of the European Parliament elections in 2014.¹

"The European Year of Citizens will be a good opportunity to remind people what rights they have thanks to the European Union and what the European Union can do for every one of us."

Viviane Reding, Vice-President of the European Commission, Brussels, 11 August 2011

The year 2011 witnessed some efforts to reform the European Parliament electoral system to make it more responsive to EU citizens in preparation for the next elections in 2014. In July, the plenary of the European Parliament failed to adopt a proposal, outlined in the 'Duff report', modifying the act of 20 September 1976 concerning the election of Members of the European Parliament (MEPs) by direct universal suffrage.² The matter was referred back to the Committee on Constitutional Affairs which subsequently approved the draft.³ The report proposes introducing a pan-European constituency electing 25 extra MEPs on Europe-wide party lists.⁴ Also in 2011, negotiations between Member States in the Council reopened regarding a legislative proposal⁵ aiming to simplify the mechanism to prevent double voting in European Parliament elections by EU citizens resident in a Member State other than their own.

As reported last year, EU citizens still face obstacles when accessing their voting rights.⁶ In the **Cypriot** village of Pegia, for instance, where citizens of the **United Kingdom** represent over 20 % of the population, Greek Cypriots are reported to fear the impact and influence of this 20 % vote on the outcome of local elections. In general, however, data showing how many EU citizens are voting outside their country of origin are lacking or of insufficient reliability. In **Italy**, for instance, the Ministry of Interior Circular no. 39/2011⁷ called upon municipalities to collect precise data on the registration and actual participation of non-national EU citizens. The necessary software was, however, unavailable and the data were

1 European Commission (2011a).
 2 European Parliament (2009).
 3 European Parliament (2011a).
 4 Duff, A. (2011).
 5 European Parliament (2011b).
 6 European Commission (2010).
 7 Italy, Ministry of the Interior (2011).

apparently not completely processed during the reporting period. The overwhelming majority of non-national EU citizens who registered to vote for the May 2011 municipal elections are Romanian citizens (65.88 %), followed by Polish (7.19 %) and German (5.69 %) citizens. In **Spain**, similar statistics are reportedly available, but again only registered non-national EU citizens are recorded; no data are available on their actual participation in the May 2011 municipal elections. In 2012, the European Commission adopted a new report on local elections, providing fresh information on this topic across the EU Member States.⁸

Promising practice

Informing EU citizens about their right to participate in elections

The 'I can vote' campaign in Luxembourg aimed to encourage high registration of non-national EU citizens in municipal elections in October 2011. By the registration's closing date, 30,937 foreigners living in Luxembourg had registered. The campaign, organised by non-governmental organisations and municipal authorities and launched in early 2011, provided information on rights and responsibilities in five languages (available at: www.jepeuxvoter.lu). Various expatriate platforms and social networking sites were engaged to spread the word and to translate information, especially to involve the English-speaking community. The campaign also sent workers door-to-door in the various communities.

In September, the Cypriot authorities sent out 1,500 personal letters to EU citizens who did not participate in the last municipal elections informing them of their rights to participate. The authorities informed the relevant embassies. They also ran advertisements in the two English-speaking newspapers informing all non-Greek speaking voters of their right to vote.

7.1.2. The right to vote: national-level trends

The concrete electoral procedures governing the various elections at local, regional, national or even EU level are drawn up by the EU Member States; they are not determined by EU law. Such procedural rules, however, have an impact on the conditions under which EU citizens participate in local and European elections. The following therefore provides an overview of key developments at national level, including plans to make elections more accessible by, for instance, allowing for postal voting, e-voting, advance voting or even voting from abroad.

Some EU Member States made progress in enlarging voting rights for citizens living abroad. Both **Belgium**,

8 European Commission (2012).

with reference to European Parliament elections,⁹ and **Romania**, with reference to national elections,¹⁰ discussed proposals to expand the voting rights of citizens living abroad. In the 2011 Parliamentary elections **Cyprus** organised, for the second time, voting abroad in some of its diplomatic representations. Under this system, at least 30 voters must be registered on the electoral roll for a polling station to be opened abroad.¹¹ The **Hungarian** constitutional reform removed residence requirements for voting. But although there is no residence requirement in the general rule of Article XXIII paragraph (1) of Fundamental Law, paragraph (4) states that a cardinal Act may condition the right to vote to residence in Hungary. Finally, a development in the opposite direction took place in **Spain**, where the Organic Act 2/2011 removed the right to vote in municipal elections for Spanish citizens permanently living abroad.¹² Finally, the topic was also argued before the European Court of Human Rights (ECtHR) in May. The voting rights of nationals living abroad is central to the *Sitaropoulos and Others* case heard by a Grand Chamber. The applicants complained that they were unable to vote at their place of residence during the 2007 parliamentary elections because no rules existed governing the voting rights of **Greek** voters living abroad.¹³ A judgment was expected for March 2012.

In June 2011, the Venice Commission adopted a report on out-of-country voting (CDL-AD(2011)022).¹⁴ This report, based on a comparative study of the situation in the member States of the Venice Commission, is mainly devoted to the right to vote (and not eligibility). It noted that the right to vote is no longer reserved to residents in most States concerned (mainly EU Member States) and concluded that States should adopt a positive approach to the right to vote of citizens living abroad.

Germany addressed the issue of thresholds. The Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) handed down a judgment ruling that the 5 % minimum threshold parties must reach to gain seats in European Parliament elections is unconstitutional. The threshold, which is prescribed by the German European Elections Act, makes it more difficult for small parties to be represented in the European Parliament. Admittedly, the 5 % clause also applies in German national elections, but the Constitutional Court concluded that the situation was different in European Parliament

elections, where a splintering of party representation would not lead to a failure to form a government.¹⁵ An amendment to the German European Elections Act will apply at the next European Parliament elections in 2014, making it easier for small parties to play a role in European Parliament elections.

An open issue, however, remains how to increase voter participation in the upcoming European Parliament elections in most EU Member States where voting is no longer compulsory. **Belgium** witnessed discussions in 2011 on a legislative proposal supporting the abolition of compulsory voting. The proposal reflects the belief that the evolution of democratic patterns no longer requires mandatory voting.¹⁶ In those very few EU Member States which continue to have compulsory voting, including **Cyprus**, **Luxembourg** and **Greece**, penalties for non-voters in the form of fines have grown ever rarer.¹⁷

In order to facilitate actual voting, **Italy**¹⁸ offers financial allowances to voters travelling from their workplace, even if it is abroad, to their place of residence, where they are registered to vote. The availability of, and reforms in, postal voting were also reported. **Austria**, for instance, amended its Law on National Assembly Elections (*Nationalratswahlordnung*) and, in **Romania**, a bill to introduce postal voting was discussed. A new **Portuguese**¹⁹ law standardises and broadens an advance voting system. It defines which electors may exercise the right to cast their ballot in advance and how this right may be exercised. Voters who are unable to go to polling stations due to ill-health, as well as prisoners who are not deprived of their political rights, are among those who benefit from this reform.

The introduction of e-voting might also make elections more accessible. **Estonia** has allowed e-voting, including at European elections, for several years. E-voting security was unsuccessfully challenged after the country's March parliamentary elections.²⁰ In **Lithuania**, some municipalities introduced an electronic registration system for voters, which enabled them to vote electronically in the 2011 municipal elections. **Austria** piloted e-voting in student representation elections in 2009, but it was never generally applied, because the Constitutional Court ruled that the implementation had been unlawful.²¹

9 Belgium, House of Representatives (2010a).

10 Romania, Ministry of Foreign Affairs (2011); For more information, see also: www.ziare.com/articole/abuzuri-la-vot. All hyperlinks were accessed on 17 April 2012.

11 Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2011a).

12 Spain, Organic Act 2/2011.

13 ECtHR, *Sitaropoulos and Others v. Greece*, No. 42202/07.

14 European Commission for Democracy through Law (Venice Commission) (2011a).

15 Germany, Federal Constitutional Court, Decision of 9 November 2011.

16 Belgium, House of Representatives (2010b).

17 Malkopoulou, A. (2009), pp. 8 and 9.

18 Italy, Law of 1 June 2011, No. 78/2011.

19 Portugal, Organic Law 3/2010.

20 Estonia, Postimees (2010a); Estonia, Postimees (2010b).

21 Austria, Constitutional Court, Decision of 13 December 2011.

Another topic of interest in 2011 was the disenfranchisement of convicts. It triggered discussions in **Estonia**, contentious debate in the **United Kingdom** and reforms in **Austria**, which in response to the ECtHR's judgment in the *Frodl* case as of 1 October abandoned the automatic loss of voting rights upon conviction for a severe crime.²² In a case against **Italy** in January, an ECtHR Chamber held that the automatic nature and the indiscriminate application of a voting ban imposed upon a convicted person violated their right to vote.²³ This judgment was referred to a Grand Chamber of the ECtHR which held a hearing on 2 November.

7.2. The limitation of voting rights in the case of disability

The right to political participation of persons with disabilities took more concrete shape in 2011. On 16 November, the Committee of Ministers of the Council of Europe adopted a Recommendation on the participation of persons with disabilities in political and public life.²⁴ The recommendation's scope extends beyond participation in elections, but the following section focuses on this aspect only. The recommendation calls on Council of Europe Member States to guarantee persons with disabilities the right to vote and the right to stand for election in a manner equal to that of any other citizen. It seeks to enhance the accessibility of voting procedures, by: improving access to polling stations; providing political information in a variety of accessible formats, such as sign language, braille, audio and easy-to-read formats; and ensuring fully accessible voting procedures. In guaranteeing such enhanced accessibility, the recommendation also aims to empower persons with disabilities, which requires a meaningful involvement in the whole policy cycle and, if necessary, assistance during elections.

In adopting this recommendation, the 47 Council of Europe Member States agreed to increase the political and public participation of persons with disabilities, including in elections. The Recommendation contains a set of standards, which applies to all types of elections, therefore including municipal and European Parliament elections. As a result, it also helps support the broader implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD)²⁵ for those EU Member States that have ratified it (see Chapter 10).

22 Austria, Modification law on the electoral law, BGBl. I Nr. 43/2011. See also: Council of Europe, Committee of the Ministers, Resolution CM/ResDH(2011)91 concerning the execution of the case ECtHR, *Frodl v. Austria*, No. 20201/04, 8 April 2010, final on 4 October 2010.

23 ECtHR, *Scoppola v. Italy* (No.3), No. 126/05, 18 January 2011.

24 Council of Europe, Committee of Ministers (2011).

25 For a detailed analysis of Article 29 of the CRPD requirements see: www.ohchr.org/EN/Issues/Disability/Pages/ThematicStudies.aspx.

In December 2011, the Venice Commission revised its interpretative declaration adopted in 2010²⁶ to better take into account CRPD requirements by reaffirming the principle of universal suffrage that should be applied in a non-discriminatory way.²⁷

The UN Committee on the Rights of Persons with Disabilities helped flesh out the meaning of 'participation'. In its Concluding Observations of its first State report on an EU Member State (Spain), it adopted a broad interpretation in September of what Article 29 of the convention calls "participation in political and public life".

"[...] all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others."

Committee on the Rights of Persons with Disabilities (2011), p. 7

7.2.1. The right to vote of persons with disabilities

Data on the right to vote of persons with disabilities are often lacking. The **German** National Action Plan on the implementation of the CRPD expressly recognises this gap and refers to a study that the Federal Ministry for Employment and Social Affairs is launching to better understand the situation on the ground.²⁸ That problems exist is, however, beyond doubt. The Organization for Security and Co-operation reported in 2011 that the right to vote of persons with disabilities was an issue of concern, resulting in dedicated recommendations in several instances (**Bulgaria**,²⁹ **Cyprus**,³⁰ **Estonia**,³¹ **Finland**,³² and **Latvia**³³).

With their ratifications of the CRPD, 19 EU Member States stand under a legal obligation to enhance the right to vote of persons with disabilities. When existing legislation was insufficient, countries drafted new legislation. Two examples can be reported. In March, **Spain** adopted Royal Decree 422/2011,³⁴ which includes measures ranging from the accessibility of polling stations and of public and official spaces where electoral campaign activities are held, to the provision of free-of-charge sign-language interpretation. In **Poland**, a new Electoral Code entered into force on 1 August. It defines a person with disabilities as one with limited physical, psychological,

26 FRA (2011), p. 136.

27 European Commission for Democracy through Law ('Venice Commission') (2011b).

28 Germany, Federal Ministry for Work and Social Affairs (2011), p. 86.

29 OSCE/ODIHR (2011b), p. 9.

30 OSCE/ODIHR (2011a), p. 6.

31 OSCE/ODIHR (2011c), p. 23.

32 OSCE/ODIHR (2001d), p. 5.

33 OSCE/ODIHR (2011e), pp. 4 and 18.

34 Spain, Royal Decree 422/2011.

mental or sensorial ability to take part in elections.³⁵ It introduces solutions to accommodate the needs of voters with such disabilities and gives them the right to: information about elections; proxy and postal voting; and to vote in dedicated, accessible polling stations. Persons with a visual impairment have the right to use Braille voting templates and/or have personal assistance during voting. A lack of awareness about the new rules meant, however, that on election day, 9 October, only 211 voters requested Braille templates and just 841 used a postal vote. An additional complication was that the Braille templates did not make it possible for voters to read the candidates' names; those using the templates therefore required further assistance. Just under 12,000 voters used proxies in the election, far fewer than the 19,800 that availed themselves of the possibility in the earlier 2010 elections.

Promising practice

Seeking voter information to drive accessibility improvements

Cypriot authorities requested a list of persons with disabilities from the Association of Persons with Disability (*Οργάνωση Παραπληγικών Κύπρου*) to determine where they vote, so as to make the necessary arrangements for them, such as setting up access ramps at polling stations. The Association of People with Disabilities confirmed that, as a result, in recent years their members had not lodged any complaints.

A variety of measures must be implemented to ensure the accessibility of polling stations. The most common relates to the building itself. A polling station should be accessible for persons with physical impairments; in particular, it should be wheelchair accessible. Furthermore, polling stations should be adapted to persons with visual impairments. Many EU Member States promote fully accessible polling stations. In **Austria**, for instance, there must be at least one barrier-free polling station per municipality.³⁶ **Belgium** requires that each polling station be equipped with one adapted voting booth and that one-in-five booths are adapted overall. In **France** at least one voting booth per polling station must be fully accessible, whatever the disability, and ballot boxes must be accessible to wheelchair users.³⁷ In **Germany**, the polling station should be as accessible as possible for persons with disabilities.³⁸ In the **Netherlands** at least a quarter of polling stations in a single municipality should be accessible to voters with physical disabilities.³⁹ In **Slovenia**, according to Article 79a of National Assembly Elections Act, at least one polling station per

county should be accessible. A visually impaired wheelchair user who considered that the accessible polling station was too far from his residence challenged this ratio, but both the administrative court and the supreme court rejected the complaint.⁴⁰

Many EU Member States and **Croatia** are taking steps to improve polling station accessibility, but they often face major hurdles. The **Latvian** Central Election Commission acknowledged that it was a matter of great concern that only 46 % of polling stations could be considered accessible. In March, the **Dutch** organisation Disabled National (*Handicap nationaal*) randomly sampled 320 polling stations to test their accessibility. It concluded that most of the stations surveyed were not fully accessible to wheelchair users, although electoral authorities had classified 83 % of the polling stations as accessible.⁴¹ The **Polish** National Electoral Committee said that 7,785 out of 25,993 voting districts (*obwody do głosowania*) were accessible, or some 33 %. In **Portugal**, voters with visual impairments encountered problems when voting. The Association of the Blind and the Partially-Sighted of Portugal (*Associação dos Cegos e Ambliopes de Portugal*, ACAPO) and the I Want to Vote Movement (*Movimento Quero Votar*)⁴² – a coalition of NGOs, individual persons, sponsors and private companies – called for solutions to enable persons with visual impairments to vote. Following the presidential elections on 31 January, ACAPO called for the development of Braille templates by the 2013 parliamentary elections.⁴³ Similarly, in **Spain** in January, the Catalan Association for the Integration of Blind People called for the use of Braille templates and envelopes to be extended to municipal elections. The templates and envelopes have been in use since 2007⁴⁴ in regional, national and European Parliament elections,⁴⁵ but the extension to municipal elections is considered a challenge.

In the absence of rules on accessibility, some governments, such as that of **Greece**,⁴⁶ issued ministerial circulars calling for practical alternatives for election day. Such measures may require an election official to go to the person's home to register a proxy voting request or to fetch a ballot box from an inaccessible polling station and bring it somewhere more accessible including the home. In the case of sensory impairment, it may mean accompanying the voter into the voting booth or enabling the voter to be accompanied by someone else. To a greater or lesser extent, **Austria, Belgium, Bulgaria,**

35 Poland, Electoral Code, Art. 5 para. 11.

36 Austria, Modification law on the electoral law, para. 52 (5).

37 France, Ministry of Labour, Social Relations, Family, Solidarity and of the City (2009), Art. D56-1 to D56-3 of the Electoral Code.

38 Germany, European Election Rule, para. 39.

39 The Netherlands, Elections Act, Art. J4 (2).

40 Slovenia, Supreme Court, Decision of 5 May 2011.

41 For more information, see: www.handicapnationaal.nl/verenigingsnieuws/010/010.html.

42 For more information, see: www.querovotar.com/movimento.asp.

43 Portugal, Association of Blind and Partially-Sighted Persons of Portugal (2011).

44 Spain, Royal Decree 1612/2007.

45 For more information, see: www.votoaccessible.com/default.asp.

46 Greece, Ministry of the Interior (2011a).

Croatia, the Czech Republic, Cyprus, Denmark, Greece, Ireland, Italy, Luxembourg,⁴⁷ Malta, the Netherlands,⁴⁸ and Slovakia all apply similar measures.

In some countries specific disability action plans address the challenge of elections. **Finland** plans two measures aimed at improving voters' accessibility as part of its Disability Policy Programme Vampo (2010-2015). One measure involves drawing up and monitoring guidelines ensuring the accessibility of all polling stations. The other is a commitment to take into account the needs of visually impaired people in the development of electronic voting, which improves the independence of voting. The Finnish Ministry of Justice is responsible for implementing these measures.⁴⁹

In other cases, national electoral commissions have launched wide consultations with organisations of persons with disabilities to tackle accessibility problems. **Romania** conducted such a consultation, focusing on physical barriers to polling stations.

In **Sweden**, electoral authorities conducted wide-ranging information campaigns directed at persons with disabilities in order to encourage their participation. The **Polish** Commissioner for Citizens' Rights, together with Polish Radio, also launched such a campaign.⁵⁰

Promising practice

Providing fully accessible electoral information

The **Swedish** Election Authority (*Valmyndigheten*) is responsible for public information on when, where and how voting takes place. To improve accessibility for persons with disabilities, the authority produced electoral information in various formats, including sign language, Braille, an easy-to-read booklet and a compact disc (CD). It circulated both the CD and the booklet to members of the Visually Impaired National Federation and the Centre for Easy-to-Read and sent the CD to audio libraries as well. It also created special documents that allowed visually impaired people to read in Braille and vote without assistance.⁵¹

The **United Kingdom** Electoral Commission issued a new factsheet in April entitled Disabled People's Voting Rights.⁵² It calls on local authorities to "take proactive steps to ensure that polling stations don't disadvantage disabled people". The document also spells out four key entitlements for persons with disabilities, the rights to: request assistance to

mark a ballot; use a tactile voting device; receive assistance when accessing polling stations and use large-print versions of ballot papers. Similarly, since a Government decision of 8 December 2010 on the implementation of the CRPD in **Lithuania**,⁵³ the Central Election Commission together with the Lithuanian Association of Municipalities are tasked with securing the electoral participation of persons with disabilities, by facilitating access to polling stations and providing relevant information. In February 2011, the **Irish** Department of the Environment, Community and Local Government together with the National Disability Authority developed guidance for election officials on how to ensure that the voting process and the choice of polling station are as disability-friendly as possible.⁵⁴

Promising practice

Enabling voters to learn about candidates by telephone

During the elections for the **Dutch** Provincial Councils held on 2 March, voters were able to acquire spoken information about candidates through a dedicated free-phone number. Visually impaired voters could dial the electoral list phone number (*Kieslijsttelefoon*), which provided an audio version of the electoral list.

7.2.2. The right to vote of persons with intellectual disabilities and persons with mental health problems

EU Member States differ greatly in how they handle the right to political participation of persons with mental health problems and persons with intellectual disabilities. Despite this heterogeneity, three main approaches characterise the participation spectrum: total exclusion, case-by-case consideration and full participation.⁵⁵ Member States which totally 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. Countries which have lifted all restrictions enable persons with intellectual disabilities and persons with mental health problems to vote on an equal footing with other citizens. There has been little change since 2010.⁵⁶

Hungary witnessed an important development with the adoption of a new Basic Law which entered into force on 1 January 2012. The new law (Article XXIII (2) of the Basic Law) says that guardianship will no longer serve as

47 Luxembourg, Election Law, Art. 79 as amended in 2004.

48 The Netherlands, Elections Act, Art. J28.

49 Finland, Ministry for Social and Health Affairs (2011).

50 For more information, see: www.rpo.gov.pl/pliki/13152985810.pdf.

51 Sweden, Election Authority (2011).

52 United Kingdom, Electoral Commission (2011).

53 Lithuania, Decision on the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol.

54 For more information, see: www.nda.ie/website/nda/cntmgmtnew.nsf/0/3965829F6783133B802578320058BB21?OpenDocument.

55 FRA (2010), pp. 15ff.

56 FRA (2010).



the basis for disenfranchisement. A judge must, instead, determine whether an individual should be excluded from voting based on an assessment of his/her "limited mental ability", a term whose exact meaning is as yet unclear but which a new electoral law is likely to address. Hungary thereby joined the group of EU Member States where an individual judicial assessment is made before a disenfranchisement decision is taken.

A majority of EU Member States still link disenfranchisement to the loss of legal capacity. **Croatia** also has such a system: Article 2 of the Act on Voter Registers (*Zakon o popisima birača*)⁵⁷ stipulates that Croatian citizens 18 years of age or older are listed in the register, except those who have lost legal capacity through

a final court decision. Thus, like many EU Member States, Croatia has an automatic exclusion provision.⁵⁸ According to the Annual Statistical Report on the Application of Social Welfare Rights for 2010,⁵⁹ 15,761 persons were without legal capacity on 31 December 2010. This issue stirred public debate in Croatia and in a report published in 2011 the Ombudsperson for Persons with Disabilities warned that the voting rights of persons with intellectual disabilities and persons with mental health problems is an issue of compliance with CRPD requirements.⁶⁰

Table 7.1 provides an updated summary of a table published in 2010.⁶¹

Table 7.1: The right to political participation of persons with mental health problems and persons with intellectual disabilities

Country	Exclusion	Limited Participation	Participation
AT			X
BE	X		
BG	X		
CY		X	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: A Member State can be represented in more than one column, as persons with health problems and persons with intellectual disabilities may be treated differently according to the national law of the respective Member State.

* Due to a legislative amendment, which does not affect the right to vote, the relevant article is now: Article L3211-3 7° Public Health Code. ** Hungary, Article XXIII (2) Basic Law. *** Croatia, Act on Voter Registers, 30 April 1996.

Source: FRA, 2011; based on information published in the FRA report on The right to political participation of persons with mental health problems and persons with intellectual disabilities in November 2010, p. 23.

58 FRA (2010), pp. 15 and 23.

59 Croatia, Ministry of Health and Social Welfare (2011).

60 Croatia, Ombudsperson for Persons with Disability (2011).

61 FRA (2010), p. 23.

57 Croatia, Act on Voter Registers, 30 April 1996.

In the **Netherlands**, although legislation ensuring full participation is in place, there is a lack of specific assistance to help persons with intellectual disabilities. The Dutch Electoral Council considers that persons with intellectual disabilities who cannot vote without assistance cannot express their electoral opinion independently and therefore should not vote.⁶² This situation raises a wider question of the adaptation necessary to facilitate the vote of persons with intellectual disabilities. In May, a wide range of good practices and a set of recommendations were published in the context of the 'Accommodating Diversity for Active Participation in European Elections' (ADAP) project.⁶³

Promising practice

Supporting political participation for persons with intellectual disabilities

Sunbeam Media developed an awareness-raising video clip *Your Power, Your Vote*⁶⁵ for the 2011 **Irish** General Election and posted it on YouTube in February. The video explains the support required to enable political participation for persons with intellectual disabilities and provides an overview of why people with disabilities should vote and how they can exercise this right.

7.3. Developments in participatory democracy

The right to take part in municipal and European elections is only one element that EU law provides in the wider context of political participation. The Treaty on European Union (TEU) establishes in Article 10 (3) that all decisions at EU level should be taken "as openly and as closely as possible to the citizens". Article 11 of the TEU provides for various elements of participatory democracy; with the European citizens' initiative (ECI) the most important tool. Besides the citizens' initiative this Article provides for: "public exchanges" among "citizens and representative associations"; "open, transparent and regular dialogue" of the institutions "with representative associations and civil society"; and "consultations" to be carried out by the Commission "with parties concerned". The number of consultations rose last year,⁶⁵ with 131 closing in 2011, four of which were in the area of Justice and Fundamental Rights.⁶⁶

62 For more information, see: www.kiesraad.nl/nl/Onderwerpen/Thema-Stemmen/Hulp_bij_stemmen.html.

63 See: www.inclusion-europe.org/images/stories/documents/Project_ADAP/Good_Practices_EN.pdf.

64 For more information, see: www.youtube.com/watch?feature=player_embedded&v=aDk6gYnbFL8.

65 FRA (2011), p. 136.

66 For more information, see: http://ec.europa.eu/yourvoice/consultations/2011/index_en.htm.

In March, the European Economic and Social Committee (EESC) published a Roadmap for participatory democracy, which promoted practical implementation of civil dialogue.⁶⁷ The tumultuous events occurring in the Mediterranean region make clear the vital role that civil society should play in the processes of democratisation and clarifies the challenge for Europe in adopting concrete tools and making adequate investments to strengthen the infrastructure of democracies, the roadmap says. It calls for a comprehensive inventory of existing civil dialogue mechanisms in all EU institutions and bodies and an evaluation of these. Practices at national level should be mapped, it says, in order to draw lessons from them and further develop them at EU level.

"Providing clear, comprehensive and accessible information on local and regional policies strengthens active citizenship and fosters a feeling of belonging to a community as well as the civic duty to contribute to this community in a democratic society."

CLRA Recommendation 307 (2011) on citizen participation at local and regional level in Europe

The Council of Europe Congress of Local and Regional Authorities (CLRA) forcefully reaffirmed the importance of direct citizen participation as a tool for strengthening local and regional democracy. In a recommendation adopted in October, the CLRA advised the Council of Europe member states to increase public participation in decision making processes so that citizens can directly express their choices, preferences and opinions on given policies.⁶⁸

Promising practice



Enhancing access to Europe with a one-stop website

Citizen House is a new website providing a one-stop shop for EU citizens submitting complaints to the European Commission, requesting access to EU documents, submitting a petition to the European Parliament, delivering a request to the European Ombudsman or launching a European citizens' initiative. Citizenhouse.eu is a "360 degree resource by citizens for citizens to learn, share and engage". The European Citizen Action Service created the website as the first stage of an ambitious project to set up the 'European Civil Society House', aimed at enabling NGOs and individuals to make their voices heard within the EU by providing advice on how to lobby, fundraise and defend European citizenship rights. The website also plans to offer access to citizens on a national level.

For more information, see: www.citizenhouse.eu

67 EESC (2011).

68 CLRA (2011).

On 1 April 2011, the EU Regulation on the citizens' initiative⁶⁹ entered into force; it applies as of 1 April 2012. On 17 November 2011, the Commission adopted the implementing Regulation (EU) No 1179/2011.⁷⁰ On 22 December 2011, it made "open source software" available.⁷¹ The European Commission is required to maintain "open-source software incorporating the relevant technical and security features necessary for compliance with the provisions of this Regulation regarding the online collection systems. The software shall be made available free of charge"⁷² and "technical specifications" must be "adopted" for this purpose.⁷³

The time between the adoption of the regulation and its application enabled EU Member States to implement various obligations under the regulation including: the certification of the online collection system;⁷⁴ the verification of the "statements of support", including the issuance of a certificate regarding the "number of valid statements";⁷⁵ data protection issues;⁷⁶ and to address questions of liability for damages caused by organisers of a citizens' initiative and penalties for false declarations made by organisers of a citizens' initiative and the fraudulent use of data provided in the context of a citizens' initiative.⁷⁷

With respect to the process of drafting implementing legislation, **Austria, Belgium, Bulgaria, the Czech Republic, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland** and the **United Kingdom** have taken concrete preparatory steps, and in seven of these countries (Austria, Bulgaria, Finland, Germany, Hungary, Latvia, Luxembourg) the process has already reached parliament. In some countries, like **Denmark, France, Greece, the Netherlands, Slovakia, Spain** or the **United Kingdom**, direct applicability of the regulation does not require specific legislation.

Public debates on the citizens' initiative were rather limited during the reporting period and it remains to be seen whether public awareness will increase when the first initiatives are launched on 1 April 2012. At least one feature of the legal framework of the citizens' initiative should already be highlighted, however: the option to collect signatures online sets a modern standard which could, in principle, enhance civic participation.

Outlook

Increasing citizen participation in EU elections and reforming the European Parliament's electoral system remain challenges to be addressed in the run-up to the next elections in 2014. Reforms of electoral systems at the national level are also likely to remain on the agenda, including as regards the right to vote from abroad.

Ensuring that persons with disabilities are able to vote in a manner equal to that of any other citizen will continue to pose concerns and challenges in many EU Member States. Progress in this area is even more pressing after the ratification of the CRPD and the adoption of a recommendation setting high standards in this area by the Committee of Ministers of the Council of Europe.

Active participation of EU citizens in the democratic life of the EU outside the context of elections remains a major challenge. Following the launch of the European citizens' initiative on 1 April 2012, the EU's democratic functioning should be enhanced. It remains to be seen how EU citizens will seize the opportunity provided by this tool.

69 Regulation (EU) No 211/2011, OJ 2011 L 65/1.

70 European Commission (2011b).

71 For more information, see <http://joinup.ec.europa.eu/software/ocs/release/100>.

72 Regulation (EU) No 211/2011, Art. 6 (2) (4).

73 Regulation (EU) No 211/2011, Art. 6 (5).

74 Regulation (EU) No 211/2011, Art. 6 (3).

75 Regulation (EU) No 211/2011, Art. 8 (2).

76 Regulation (EU) No 211/2011, Art. 12 (4), (5).

77 Regulation (EU) No 211/2011, Art. 13 and 14.

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UN & CoE

January

February

March

April

May

17-18 June – Council of Europe Venice Commission adopts a report on out-of-country voting

June

July

August

19-23 September – UN Committee on the Rights of Persons with Disabilities adopts its Concluding observations on Spain

September

18-20 October – Council of Europe Congress of Local and Regional Authorities adopts a resolution and a recommendation on citizen participation at local and regional level in Europe

October

16 November – Council of Europe Committee of Ministers adopts a recommendation on the participation of persons with disabilities in political and public life

November

16-17 December – Council of Europe Venice Commission adopts a revised interpretative declaration to the code of good practice in electoral matters on the participation of people with disabilities in elections

December

EU

January

16 February – European Parliament and the Council adopt a Regulation on the European citizens' initiative

February

22 March – European Economic and Social Committee adopts a Roadmap for participatory democracy in Europe

March

April

May

June

July

August

September

October

17 November – European Commission adopts the implementing Regulation laying down technical specifications for online collection systems

November

22 December – European Commission makes open-source software as regards online collection systems for the European citizens' initiative available to the general public

December

