

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



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**TRENDS IN THE EU-27
REGARDING PARTICIPATION
OF THIRD-COUNTRY NATIONALS
IN THE HOST COUNTRY'S
POLITICAL LIFE**

Briefing Paper



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JUSTICE, FREEDOM AND SECURITY

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BRIEFING PAPER

Abstract

Participation of third country nationals in the host country's political life has been a core issue for international organisations at European level. The Council of Europe as well as EU institutions, notably the European Parliament and the Commission, have constantly and for quite some time supported the idea of opening up "civic participation" to non-nationals. The ultimate decision in this matter, however, lies in the hands of member states. This Briefing Paper looks at recent developments on this issue at member state level and seeks to identify trends in the EU-27. It casts a closer look at voting rights, access to citizenship, advisory councils and arenas of dialogue as well as the extent to which freedom of association is granted. The author is able to observe that while progress towards more participation is made, this progress is not only slow, but often does not meet the previous standards established by pioneer northern member states and the Council of Europe. With regard to access to citizenship there are signs that European member states are on the verge of imposing more restrictive criteria. Concerning the other assessed elements, trends are more difficult to identify, however, it seems as though there is still more than enough room for further development.

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I. Introduction: The Political Participation of third-country nationals in the European Polity - Legal and Policy Scenarios

Political participation of third-country nationals – a core issue for Europe

International organizations at European level have for a very long time paid special attention to the contested issue of participation of third-country nationals¹ in the host country's political life. However, the decision of whether to open or to close avenues of political participation for non-nationals ultimately lie in the hands of the member states, their parliaments, governments and societies. The question of who is part of the *demos*, the *sovereign power* and who can influence, form, take decisions with democratic legitimacy, 'who makes up the state?' is decided at member state level. Yet in democratic societies political participation can take different forms.

Based upon an account of the European framing, this Briefing Paper assesses recent developments that have taken place in this regard. In order to identify trends, it casts a closer look at the following issues: voting rights, access to citizenship, advisory councils and arenas of dialogue as well as the extent to which freedom of association is granted.

Council of Europe

The Council of Europe ("CoE") has shown considerable efforts in this field. Its Convention on the Participation of Foreigners in Public Life at Local Level opened for signature on 5th February 1992 ("Participation Convention"). It contains common rules on the most institutionalized topics connected to foreigners' political participation, i.e. consultative bodies and the right to vote. Although state responses to this convention are still rather weak, the CoE's Parliamentary Assembly has never lost its stance to urge and remind member states to go beyond the status quo. E.g. in a recent recommendation the Assembly called for shortening of the minimum legal residency requirement from five to three years² (five years being the standard duration foreseen in article 6 of the Convention, but leaving room for shorter periods). And also the CoE's Congress of Local and Regional Authorities stated that "immigrants should be encouraged to take part in local elections and stand for election"³.

In addition, the European Convention on Nationality ("Nationality Convention") negotiated within the CoE framework and opened for signature since 6th November 1997, contains common rules on access and loss of citizenship. It constitutes another very important element when talking about conditions for participation of migrants in their host countries. Article 6 sec. 3 provides for a maximum residence requirement that qualifies for naturalization of ten years.

EU level

At EU level, the European Parliament ("EP") has taken a clear position, already advocating in 1996 for voting rights at local level for all foreign residents and facilitating dual nationality. In a resolution of 2003, the EP developed this line further, calling for electoral rights in local and EP elections, but stressing that civic participation requires more than implementing legal initiatives. In particular, it highlighted that citizenship

¹ A "third-country national" is generally defined as any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community, see Cf. e.g. Art. 2 a Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016 , 23.1.2004 , pp. 44-53.

² Council of Europe, Parliamentary Assembly, Recommendation 1625 (2003), *Policies for the integration of immigrants in Council of Europe member states*, 30.9.2003.

³ Council of Europe, The Congress of Local and Regional Authorities, 13th Plenary Session of the Congress 30.5.-1.6.2006, *Effective access to social rights for immigrants: the role of local and regional authorities*.

requirements at national level must be non-discriminatory.⁴ Other EU bodies representing civil society have expressed similar views. Only last year, e.g. the Economic and Social Committee expressed an opinion that “citizenship rights and the right to vote in municipal elections must be guaranteed for third-country nationals who are stable or long-term residents (...)”⁵.

Political participation of third-country nationals does also form part of the European Commission’s common integration agenda. Following the mandate of the Tampere European Council conclusions of 1999, the European Commission proposed in 2000 the development of a “civic citizenship” concept that could be rooted in the Charter of Fundamental Rights.⁶ In its seminal Communication on immigration, integration and employment of 2003, this concept was further elaborated⁷. The Communication paid special attention to participation in political life at local level and in this regard put high hopes on the Constitutional Treaty. In the very same document, the Commission committed itself to take the development of the civic citizenship concept forward. With regard to naturalization, the Commission underlined that “naturalization is a strategy, which can help to promote integration and which Member States should consider when granting residence to immigrants and refugees”⁸. Although for some, this statement may not appear ground-breaking, it is in fact a clear position on an issue that in certain member states is in fact *the* dividing line between political factions: naturalization as a *means* within the integration process or as the crowning achievement at the *end* of successful integration? Entire political, sociological, legal and philosophical concepts can be traced back along this question.

Following the 2003 communication, the Commission started to issue annual reports on the development that has been made in the common immigration agenda. In its 2004 first annual report, it took note that at least some progress has been made in granting political rights to immigrants at local level⁹. It expressed its optimism that while implementing the long-term residents directive, more member states will take up the opportunity to allow for stronger political participation. However, the long-term resident directive¹⁰ itself does not address this issue at large. With regard to civic participation, it concentrates merely on freedom of association and representation of workers or employees in professional organizations. In this respect, art. 11 sec. 1g requires member states to grant equal treatment with EU citizens.

Over the years, while the Council has not taken any substantial measures in this field, the JHA configuration finally adopted a set of “Common Basic Principles for immigrant integration policy in the European Union” (CBPs) in November 2004¹¹. Principle No. 9 states:

“The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.”

⁴ European Parliament, *Report on the Communication from the Commission on immigration, integration and employment*, A5-0445/2003, 1.12.2003, point 32.

⁵ European Economic and Social Committee, *Opinion on Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organizations*, SOC/219, 13.9.2006, point 6.18.

⁶ European Commission, *Communication on a community immigration policy*, COM(2000) 757 final, 22.11.2000, p. 19.

⁷ European Commission, *Communication on immigration, integration and employment*, COM(2003) 336 final, 3.6.2003.

⁸ European Commission, *Communication on immigration, integration and employment*, COM(2003) 336 final, 3.6.2003, p. 30.

⁹ European Commission, *First Annual Report on Migration and Integration*, COM(2004) 508 final, 16.7.2004, p. 19.

¹⁰ Council directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, pp. 16-53.

¹¹ Council of the European Union, Press release, 2618th Council meeting, Justice and Home Affairs, 14615/04 (Presse 321), 19.11.2004, pp. 19-25.

And the explanation of CBP no. 9 continues:

“Wherever possible, immigrants could even be involved in elections, the right to vote and joining political parties. When unequal forms of membership and levels of engagement persist for longer than is either reasonable or necessary, divisions or differences can become deeply rooted. This requires urgent attention by all Member States.”

At the same time, the Commission published the first edition of the “Handbook on integration for policy makers and practitioners”, advocating political rights for all residents (at least at local level) and minimizing obstacles to the use of these rights. The handbook inter alia also highlights the impact of consultative councils and promotes facilitated naturalization as an integration tool.¹²

In 2005, the Commission further invigorated the debate with its Communication on a common agenda for integration.¹³ This document aims at laying the ground for a coherent European framework for integration and proposes concrete measures to put the CBPs into practice at national and EU level. With regard to political participation, the Commission once more referred to its concept of civic citizenship and elaborated ideas for how the EU can foster co-operation in this field. It also clearly supported a more pro-active stance at national level. Following pilot integration projects funded by the Commission under the INTI scheme, a European Integration Fund for the years 2007-2013 has also been set up with a financial allocation of 1 771 million Euro. One of its six main policy objectives is the increase of civic, cultural and political participation by third-country nationals in the host society¹⁴.

Taking into account this quite strong position in favor of further political participation, it came somehow as a surprise that in the Commission’s second annual report on migration and integration, civic participation is hardly mentioned. The initial optimism and vigor seems to have decreased. The document merely states:

“An increasing number of Member States attach growing importance to the participation of minority groups in the political decision-making progress, although overall progress is slow”¹⁵.

Chances are, however, that the debate will be re-invigorated in 2007-2008. During the informal meeting of EU integration ministers held the 10th and 11th of May 2007 in Potsdam, the ministers requested their National Contact Points on Integration to analyze and discuss various current integration strategies and to examine how these strategies can help inter alia to enhance immigrants’ participation in social and political life. Results are expected for the next ministerial conference on integration in 2008¹⁶. Also during this meeting, Commissioner Frattini announced that he is to launch a new approach towards investigating the concept of active participation and citizenship. He stated that he intends

“to launch a new, structured package, to be called *Active Participation*, which has to be set up and anchored in the legal system of EU Member States. The rights and obligations of immigrants could be derived from this new package, which envisages a structured integration path enabling all immigrants to participate actively in the social and economic life of their communities”¹⁷.

¹² European Commission (ed), *Handbook on integration for policy makers and practitioners*, 2004, pp. 38-48.

¹³ European Commission, *Communication – A common agenda for integration – framework for the integration of third-country nationals in the European Union*, COM(2005) 389 final, 1.9.2005.

¹⁴ SCADPlus, Summaries of legislation, Framework programme on solidarity and management of migration flows for the period of 2007-2013, 25.3.2006.

¹⁵ European Commission, *Commission Staff Working Document – Second Annual Report on Migration and Integration*, SEC(2006) 892 final, 30.6.2006, p. 6.

¹⁶ German Council Presidency, *Greater cooperation among EU integration ministers, also on cultural dialogue*, Press release, 11.5.2007.

¹⁷ Franco Frattini, *A common approach for European policy on the integration of migrants –European debate*, Speech/07/295, 10.5.2007.

II.1. Trends regarding criteria of eligibility for access to political participation

In the following we will identify trends in the EU-27 regarding: voting rights, access to citizenship, advisory councils and arenas of dialogue as well as the extent to which freedom of association exists. In accordance with the request by the LIBE Committee of the EP, only the situation of third-country nationals will be assessed.

II.1.1. Voting rights, privileged access and the emergence of an “ethnic vote”

The term “voting rights” requires a specification as to the precise scope of the entitlement. It may comprise the right to vote (so called “active voting right”) or to stand as candidate in elections (“passive voting right”). In the course of this paper, the differentiation will be of importance in several instances. When we refer to “full voting rights,” we mean both active and passive rights. When we refer to “voting rights,” it shall be understood in a general sense. In addition, speaking about voting rights requires specification as to the political level we refer to. Unless otherwise indicated, this section assesses rights at local level for the reason that this is the level at which third country nationals are most commonly granted voting rights, in contrast to regional and national levels. Identifying trends in this regard requires furthermore a common standard against which recent developments can be assessed. For the purpose of this Briefing Note, the Council of Europe “Participation Convention” at local level shall serve as a yardstick. At European level, it is so far the only document that provides concrete criteria. With regard to the scope of the rights, it requires signatory states to grant full, i.e. active and passive, voting rights after a lawful and habitual residence of five years preceding the elections. Although the convention allows signatories to limit the scope to active voting rights, it considers this as the exception - not as the norm. At the time the convention was drafted, full suffrage was in fact the standard in those European states that can be characterized as pioneer states in this matter, such as, e.g. Denmark, Finland, Ireland, the Netherlands, Sweden and Norway. Based on these preliminaries, the following trends in the EU-27 can be identified.

The CoE Participation Convention is widely ignored in the EU-27

Judging from the number of signatures and ratifications, the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level is widely ignored by EU member states. As of June 2007, only nine EU member states¹⁸ have signed and only five of them have actually ratified the text¹⁹. Out of these five member states, four already granted local voting rights for foreigners at the time of ratification. With the exception of one EU member state, no other has signed the convention within the last seven years. Slovenia’s example, signing the text only six months ago, on 23.11.2006, therefore constitutes an unconventional, positive step that should be taken into account by fellow member states.

An increase in quantity is accompanied by some decrease in scope

In spite of the lacking enthusiasm shown towards the “Participation Convention”, there is in fact a growing number of EU member states that have granted some kind of voting rights to third-country nationals at local level, leading to a total of seventeen as of June 2007.

Most of these reforms have been instigated in the last seven years: Czech Republic in 2001, Estonia, Lithuania and Slovenia in 2002, Luxembourg and Slovakia in 2003, as well as Belgium in 2004. Whether this trend has been influenced by the growing consciousness of the matter at EU level - following the Tampere Council and the

¹⁸ Cyprus, Czech Republic, Denmark, Finland, Italy, the Netherlands, Sweden, Slovenia, UK.

¹⁹ Denmark, Finland, Italy, Netherlands, Sweden.

emergence of an EU integration agenda - is hard to assess. The fact, however, that a majority of these reform states belong to the EU-10 and have implemented their reforms prior to joining the EU in May 2004 might be indicative of some kind of EU policy impact.

In the other member states, reforms were mostly made in the 1970s and 1980s, e.g. in Denmark, Ireland, Sweden and the UK. In contrast, the 1990s were rather quiet, with only Finland (1990), Hungary (1990) and Malta (1993) engaging in reforms.

A closer look at recent developments, though, reveals that the progress is in fact somewhat limited. Nearly half of reform states have only granted active voting rights, barring third-country nationals from full-grown political participation and undercutting the Council of Europe standards, ultimately amounting to a discrimination against third-country nationals. This observation applies to Belgium, Estonia and Luxembourg. Only the Czech Republic, Lithuania, Slovenia and Slovakia have granted full voting rights. Yet, the Czech Republic has made these rights subject to a reciprocity requirement (see below) and has not concluded any bilateral agreements so far. As a result, full voting rights exist only in theory but no third-country nationals are actually entitled to participate.

A total of ten EU member states do not foresee any voting rights for third-country nationals. These are Austria, Bulgaria, Cyprus, Germany, France, Greece, Italy, Latvia, Poland and Romania. However, at least in Italy, chances are that the new 2006 government will initiate a reform soon. A general overview is provided in Annex 1 illustrating the differing scopes of voting rights at local level in the EU-27.

A high number of diverging, mostly restrictive criteria

While the Council of Europe Participation Convention merely requires a lawful and habitual residence of five years in order to obtain voting rights, the picture of criteria in the EU-27 is highly divergent.

Only some member states go below the five year standard, most of them the well-established pioneers in the field, like Denmark and Sweden (three years). Among the newcomers, only Slovenia and Slovakia foresee this possibility. Only Finland goes below the three year residency requirement, considering two years as sufficient. Most of the other states require a legal residence of five years. However, what is interesting is the fact that those states that are more lenient with the residence requirement do generally grant the full set of voting rights, while those that require the whole five years sometimes only foresee the active right to vote. This applies, e.g. to Belgium, Estonia and Luxembourg. At the same time, however, there are also member states that combine the five year requirement with full voting rights, e.g. Lithuania and the Netherlands.

The minimum residency requirement is often coupled with additional criteria, going beyond normal conditions for own nationals, e.g. full age. In some member states, an explicit application or registration requirement affecting only third-country nationals is foreseen. This is the case e.g. in Belgium, Luxembourg and Spain. In this respect as well, it is worthwhile noting that additional criteria are generally foreseen in member states that only recently have granted voting rights to third-country nationals. Belgium (2004) e.g. requires third-country nationals to sign an oath of allegiance. In Estonia and Lithuania (2002), third-country voters must be in possession of a permanent residence permit. In the Czech Republic (2001), voting rights are only granted on the basis of reciprocity, i.e. only to those third-country nationals whose countries of origin provide similar rights to Czech nationals. As stated before, bilateral agreements have not been concluded yet by the Czech government.

The idea of reciprocity also persists in some member states which can rely on longer traditions. This is e.g. the case for Portugal, which grants full voting rights to third-country nationals since 1971; due to the reciprocity requirement, however, currently only to nationals of Argentina, Chile, Israel, Norway, Peru, Uruguay and Venezuela. Spain is

yet another example of reciprocity, which was re-established by the Aznar government. Previously, all third countries nationals had voting rights. Currently only Norwegian citizens are entitled to vote in Spain. Similarly, full voting rights for third-country nationals in Malta are granted only under the condition of reciprocity and in theory, to third-country nationals from countries which are part of the same alliance of states as Malta. However, this is not currently put into practice and third-country nationals are not granted any voting rights.

Some member states grant privileged access to voting rights not only on the basis of reciprocity, but sometimes based on colonial links. This is most visible in the UK, where voting rights have been granted for a considerable time and on quite generous terms, however, only to citizens of the 50 Commonwealth states. Colonial past and cultural similarities are also the reason for Portugal to grant voting rights to citizens from Brazil and Cape Verde.

Less progress at regional level and no progress at national level

Drawing a precise line between “local” and “regional” for each of the EU-27 member states is sometimes difficult, due to a high number of evolving concepts and terms. Based on the material we have consulted, it is nevertheless possible to conclude, that only a minority of states grant voting rights to third-country nationals at regional level. However, if rights at regional level are granted, they cover both the right to vote as well as to stand as candidate. This applies, e.g. to Sweden, Slovakia, Portugal, Malta and the UK. Exceptionally, Hungary foresees only active voting rights. It is important to stress that reciprocity or colonial links are furthermore decisive factors in granting voting rights in half of these states, i.e. Portugal, Malta and the UK.

Turning to the national level, the picture is quite plain. Only two member states open elections at national level to third-country nationals: Portugal and the United Kingdom, reciprocity and colonial links being the underlying rationales. As a result, only Brazilians can vote in Portugal. In addition, only active voting rights are granted in this state, which are furthermore only granted for parliamentary elections. Presidential elections are excluded. In contrast, the UK provides for active and passive voting rights for at least all citizens of the 50 Commonwealth countries. All of these provisions have been in place since the 1970s (Portugal) or 1980s (UK). See Annex 2 for an overview.

Constitutional constraints persist in some member states

In some member states, constitutional constraints have barred further development. The German example is well known. In October 1990, its Federal Constitutional Court ruled unconstitutional attempts to grant active voting rights at local level by the northern Länder Hamburg and Schleswig-Holstein²⁰. No change is to be expected in this regard. In October 2006, on a recent question from the Liberals in the German Parliament, the government replied that it does not intend to sign the CoE Convention as the constitutional constraints formulated by the Federal Constitutional Court persist²¹. Granting voting rights to third-country nationals would require a constitutional amendment. However, there is a division among constitutional lawyers whether such an amendment would actually be possible. The “eternity clause” of the German constitution, forbidding amendments to certain fundamental provisions, might prevent such a move.

Efforts by local authorities in other member states have only recently been faced with similar difficulties. Attempts to grant active voting rights in the City of Vienna e.g. had been ruled unconstitutional by the Austrian Constitutional Court in 2004²². In France, a 2/3 majority of the residents of Saint-Denis have approved a proposal by its mayor

²⁰ Bundesverfassungsgericht, judgment of 3.10.1990, 2 BvF 2/89, 3/89, 6/89.

²¹ Drucksache des Deutschen Bundestages (BT-Drs.) 16/2882, 9.10.2006.

²² Verfassungsgerichtshof, judgment of 30.6.2004, G-218/03.

granting voting rights to foreigners in local elections. The administrative court, however, ruled the vote not to be binding²³.

The emergence of a third-country nationals' "ethnic vote" requires further research

According to Martiniello, the 'ethnic' or immigrant vote should be understood in two ways. First, it can refer to the actual vote cast by an individual who belongs to the same ethnic category as one or several candidates in an election, or to a vote cast for a party which regroups candidates from this same category. This type of ethnic vote occurs irrespective of the political platform presented by the candidate or party, as the voter's feeling of shared ethnic belonging for the candidate/party is the basis for their choice. The second understanding is broader and refers to the phenomenon in which a substantial majority of voters from a same ethnic group vote for a specific candidate or party, irrespective of ethnic links. This latter type of ethnic vote refers to collective or block voting, and may be characterized by a degree of bargaining between the electors and the candidates.²⁴ As to the question of whether an "ethnic vote" is emerging in any of the EU-27 states, the scope of this Briefing Paper needs to be recalled: it shall only cover third-country nationals. The voting behaviour of members of ethnic groups with citizenship of their host states therefore falls outside this scope. Available research on the ethnic vote in EU member states hardly makes the distinction that is necessary for this Briefing Paper, i.e. subdividing the surveyed ethnic group into citizens and third-country nationals. At least for the Netherlands and the UK, some information exists. This information suggests that the "ethnic factor" is only secondary to political ideology. However, once the ideological choice has been made, ethnicity does play a role. E.g. in the Amsterdam local elections in 1998 83% of Turkish voters supported Turkish candidates. Declared "ethnic" parties or independent ethnic candidates, however, tend not to gather too many votes. It is mainly *within* the established political families that ethnicity becomes a factor. It is interesting to note that in Belgium, particularly in local elections in Brussels, parties are recruiting large numbers of candidates of non-Belgian ethnic origin (but with Belgian citizenship) to attract the increasingly ethnically diverse electorate. This indicates that not only may there be evidence of an ethnic vote in Brussels, but also that political parties try to attract potential "ethnic voters" by presenting multiethnic candidates at elections.

II.1.2. Access to citizenship and nationality

Access to nationality is most crucial as it endows third-country nationals with the "whole set" of citizenship rights²⁵. As genuine citizens there is hence no room for restricting their political participation in comparison to other nationals. Different possibilities of obtaining citizenship exist, however, for the purpose of this Briefing Paper, the focus lies on naturalization, its conditions and requirements.

Residency requirements

Conditions which must be fulfilled in order to qualify for naturalization differ from member state to member state. A common feature, however, is a residency requirement. The required minimum number of years is generally shorter for a spouse of a national. In some member states the privilege of shorter residency is furthermore granted to certain nationals due to colonial and cultural links. A most prominent example is Spain, where nationals from Latin American states can be naturalized after two years of residence. In

²³ Le Monde, *Les habitants de Saint-Denis favorables au droit des votes des étrangers aux élections locales*, 27.3.2006.

²⁴ Marco Martiniello, *Political Participation, Mobilisation and Representation of Immigrants and their Offspring in Europe*, Willy Brandt Series of Working Papers in International Migration and Ethnic Relations, 1/05, Malmö University, 2005, pp. 9-10.

²⁵ Aware of terminological ambiguities, we will use the term "citizenship" in the following.

the absence of such privileges, the number of years varies from three in Belgium, to ten in Austria, Spain, Greece, Italy, Lithuania, Portugal and Slovenia. Four years are necessary in Ireland. In the majority of member states, however, five years are the standard. This applies to Bulgaria, Czech Republic, Estonia, France, Latvia, Luxembourg, Malta, the Netherlands, Poland, Romania, Sweden, Slovakia and the UK. Six years are foreseen in Finland, seven in Cyprus, eight in Hungary and Germany (yet only seven if the applicant attends one of Germany's new integration courses), and nine years in Denmark. An overview is provided in Annex 3. Mere residence, though, is seldom enough. Citizenship laws in member states foresee a multitude of additional criteria. The following trends can be identified.

Additional requirements

In the overwhelming majority of member states, sufficient knowledge of the host state's official language is necessary. The same applies to the requirement of sufficient income and housing as well as having a clean criminal record. The situation, however, differs when the focus turns to the question of dual or multiple citizenships. Although a number of member states²⁶ still provide in their laws that - as a rule - dual citizenship is not allowed, exceptions are foreseen that make this phenomenon eventually quite common. Member states like Finland, Greece, Italy and Sweden, which from the beginning, show no difficulties with dual citizenship, therefore appear to be more pragmatic and straightforward.

While the question of dual citizenship has dominated the academic and political debate for several decades, a new topic has emerged in recent years in Europe: naturalization courses and naturalization tests. Being able to speak the host state's language as well as being personally and economically impeccable is not enough anymore for some member states. Now, knowledge of the political, sociological, geographical and cultural peculiarities of the host state is also required. Outright naturalization tests are either enacted or seriously under discussion, e.g. in Austria, Germany, the Netherlands and the UK. Knowledge or the attendance of courses is foreseen e.g. in Estonia, France, Hungary, Latvia, Lithuania. Yet, reproducible knowledge is sometimes not good enough. Some states also tend to inquire into the attitude of their would-be citizens, or at least to bind them closer by an oath of allegiance or a declaration of loyalty. This applies e.g. to Germany, Estonia, Greece, Ireland, Latvia, Lithuania and Romania.

II.1.3. Consultative bodies and representation of third-country nationals' interests

Advisory or consultative boards as institutionalized arenas of dialogue and representation exist in one form or another in a majority of member states. Members of these boards are either elected or appointed by local authorities. However, both with regard to structure and impact, it is very difficult to draw a clear line between institutionalized bodies established somewhere within the 'state's' sphere, on the one hand, and some kind of institutionalized dialogue between 'state' and non-state representatives of migrants' interests, on the other. In addition, most often these bodies are also open to EU citizens. In the case of elected or appointed bodies, the main criterion is regularly a minimum residency requirement. Member states in which no advisory councils or an institutionalized dialogue seem to exist are Bulgaria, Cyprus, Estonia, Greece, Ireland, Latvia, Lithuania, Malta, Poland and Slovenia.

With regard to the representation of "ethnic minorities" in government or parliamentary bodies at the different levels, careful attention must be paid not to mix up various categories. E.g. in most of the EU-12, special minority laws exist, that inter alia grant guaranteed seats in elected bodies or guaranteed posts in government/administration for

²⁶ Austria, Germany, Denmark, Estonia, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Slovakia

representatives of minorities. A “minority” in this sense is commonly defined as a community that is “compactly or dispersedly settled on the territory of a state; which is smaller in number than the rest of the population of a state; whose members are citizens of that state; which have ethnic, linguistic or cultural features different from those of the rest of the population; and whose members are guided by the will to safeguard these features²⁷.” The notion of a minority can then be subcategorized into national minorities and ethnic minorities. The term “national minority,” according to Benedikter, is used to designate a community that shares the cultural identity with “a larger community that forms a national majority elsewhere ... e.g., the Germans in Denmark, the Danes in Germany, the Hungarians in Romania, the Romanians in Hungary, etc.”²⁸ Ethnic minorities, in contrast, refer to communities who do not make up the majority of a population in any state or nation-state, eg., the Raetoromanians in the Alps, the Catalans in South-Western Europe, and a number of groups in Eastern Europe²⁹. According to the definition provided above, citizenship is an important requirement in order to be recognized as a minority. An example of the exclusion of non-nationals from the category of national minorities and ethnic minorities is Article 2 of Hungary’s Act LXXVII of 1993 on the Rights of National and Ethnic Minorities. At the same time, however, the concept of “minority” is evolving and is beginning to extend its scope beyond the traditional notion of “historical communities occupying a given territory ... and sharing a distinct language and culture³⁰,” to encompass “new minorities,” or immigrant ethnic groups.³¹ In addition, even the requirement that one must be a citizen of the country in which one wishes to be recognized as a minority is being called into question. Yet, from the sources we have consulted, it appears that no laws exist that would grant *guaranteed* seats in parliament or government to *third-country* nationals on the basis that they are linked to a specific ethnic group.

With respect to the factual representation of third-country nationals - independent of a legally recognized minority status - in government and parliamentary bodies, not a great deal of information exists. Some of the information that exists, however, is regarding Amsterdam, where it appears that 15% of city council seats are held by third-country nationals. In most other contexts, however, information that does exist regarding ethnic diversity in political institutions mostly focuses on ethnicity at large, disregarding citizenship status and rendering it therefore unusable for the framework of this Briefing Paper, of which the focus is only third-country nationals.

II.1.4. Freedom of Association

Associations deal with a high level of different issues. They may reflect merely private interests and hobbies, like sports or gardening clubs. But they may also get more political, e.g. as lobby groups, trade unions or full grown political parties. While freedom of association in general is largely granted to citizens and residents alike in the EU-27, there are some exceptions or restrictions in a number of member states.

Bulgaria’s constitution, e.g. foresees a ban on ethnic political parties, although there are some exceptions, especially with regard to the party representing Bulgaria’s Turkish minority. In the Czech Republic, the Ministry of the Interior denies third-country nationals an automatic right to form civic associations. In order to form associations, third-country nationals must either apply for a permit or bypass the application procedure by enlisting three Czech nationals in their organization as members of the preparatory

²⁷ Christoph Pan and Beate Sibylle Pfeil, *National Minorities in Europe*, Handbook, Ethnos 63, Vienna, 2003, p. 15.

²⁸ Thomas Benedikter, *Minorities in Europe: Legal Instruments of Minority Protection in Europe – An Overview*, Society for Threatened Peoples, Bolzano/Bozen, 2006, p. 2.

²⁹ Ibid.

³⁰ Ioana Tanase, *Defining National Minorities: Old Criteria and New Minorities*, Seminar Series "Citizenship and National Minorities in Europe," St. Antony’s College, Oxford University, January 2003.

³¹ Ibid.

commission. In Germany, associations which are mostly composed of third-country nationals are subject to tighter controls. Certain activities might be restricted. In addition, political associations with at majority of third-country nationals are excluded by law to be characterized as political parties. Finally, the legal status of religious associations has been impaired. Until 2001, religious associations could not be banned, which was not the case for non-religious associations. However, after 9/11, this privilege has been taken away from religious groups, as one of the first measures of Germany's counter-terrorism legislation. In Greece, third-country nationals neither have the right to rally, nor to enter into associations. Latvia does not allow third-country nationals to found political parties. Also, in Romania, third-country nationals do not have the right to create political parties or associations.

With regard to workers councils and trade union rights, Austria provides an example of the potential impact of EU policy and EU law. Until recently, workers of non-EU countries in Austria did not have full participatory rights in workers councils and chambers. Upon the complaint of a Turkish national claiming non-discriminatory rights under the EU-Turkey association regime, the European Court of Justice declared the Austrian legislation to be in violation of European law³². As a consequence, the Austrian legislator granted full participation rights to all third-country nationals.

III. Conclusions

This overview on trends in the EU-27 regarding participation of third-country nationals in the host country's political life has shown that the Commission quite correctly stated that there is some progress but that this progress is fairly slow. Length of residence and - to a certain extent - colonial and cultural links can be identified as the most important criteria for granting participatory rights.

The paper has shown that in order to assess recent developments, it is not enough to merely compile a list of the states that have, e.g. granted voting rights to third-country nationals. Instead, a close examination of the concrete scope of rights and the conditions that need to be fulfilled provides the real picture. This picture reveals that the standards set by the Council of Europe in 1992 for the political participation of third-country nationals at local level has hardly been reached over the last years.

With regard to citizenship and naturalization, this assessment gives reason to believe that access to citizenship has in fact become more difficult. While residency requirements actually tend to have decreased (in general five years) and the negative stance towards dual nationality softened, developments in some member states to put emphasis on naturalization courses and tests ultimately have ultimately posed new obstacles to the acquisition of citizenship.

Advisory councils do exist but they differ so widely in scope, composition and competence that a brief overview is hardly possible. However, depending on the concrete setting, such bodies might play an important role for the civic participation of third-country nationals.

With regard to freedom of association, this right seems to be granted in general to citizens and third-country nationals alike. However, this overview has shown that some member states impose certain restrictions and limitations on these rights for third-country nationals.

With regard to all the different elements assessed, we recommend member states to follow closely and pro-actively the debate at European level. The conditions laid down in the Council of Europe "Participation Convention" should, in our opinion, serve as a common yardstick. Existing restrictions and limitations to third-country nationals' political participation at member state level should be subject to further scrutiny, examining their justification and proportionality.

³² European Court of Justice, judgment of 16.9.2004, C-465/01.

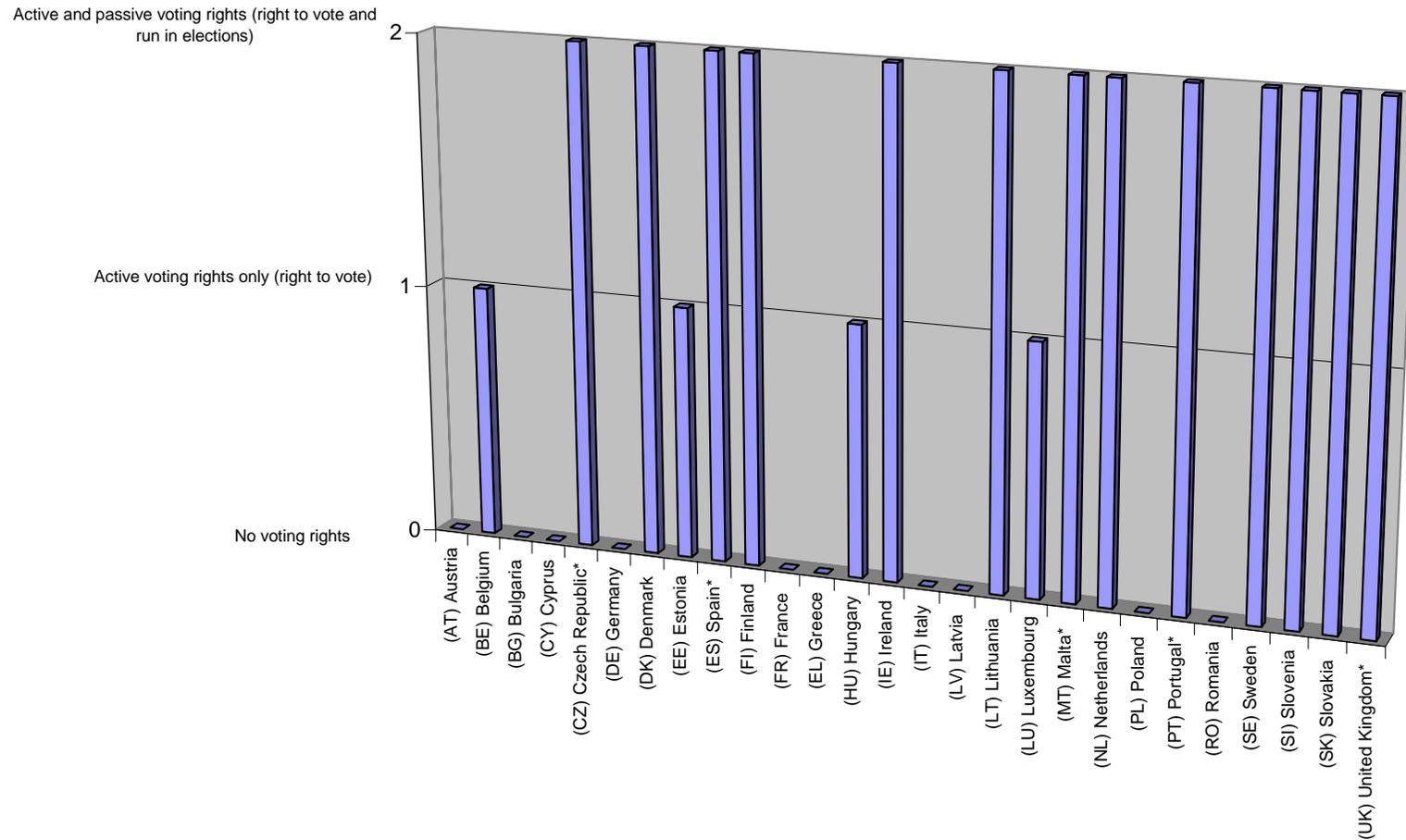
Existing research and sources

In recent years, a fair amount of scientific networks have emerged, enriching the debate with in-depth comparative studies on many of the issues relevant for this Briefing Paper. The information presented here consequently builds on already existing data provided by these networks; however, it goes beyond where there have been gaps or contradictions. Of particular importance have been the works of the following:

- POLITIS project, funded by the 6th EU Framework Programme (“FP6”), titled *Building Europe with new citizens? – An inquiry into the civic participation of naturalized citizens and foreign residents in 25 countries*. Inter alia this project has resulted in 25 country reports published in 2005. Bulgaria and Romania have not been covered.
- Another most important network is called IMISCOE – *International migration, integration and social cohesion*, a European Commission funded Network of Excellence as well as the connected FP6 project NATAC – *The acquisition of nationality in EU Member States: rules, practices and quantitative developments*. NATAC, however, only covers the EU-15.
- Within the framework of the European Migration Network during 2004 and 2005, a pilot research study has been conducted on the “Impact of immigration on Europe’s societies”. This study covers nine Member States.
- The Annual Country Reports on “Current immigration debates in Europe” published by the Brussels based Migration Policy Group (MPG) has also been a useful source.
- On citizenship Joern Luckfiel and Joanna Apap have compiled comprehensive information in a recent study: *Access to citizenship in the EU: A comparison of nationality rules in the EU*, European Parliament, Policy Department C, Citizens’ Rights and Constitutional Affairs, 2006.
- On voting rights for foreign nationals, Harald Waldrauch from the European Centre for Social Welfare Policy and Research in Vienna has provided very precise, comparative material on 36 countries³³.

³³ H. Waldrauch, *Electoral Rights for foreign nationals: a comparative overview*, Paper prepared for the ESF/LESC-SCSS Exploratory workshop: Citizens, non-citizens and voting rights in Europe, University of Edinburgh, June 2005.

Annex 1: Voting Rights for Third-Country Nationals at the Local Level



*CZ: voting rights in theory (condition of reciprocity), but currently no treaties with third-countries exist.

*ES: voting rights currently only for Norwegian nationals (condition of reciprocity).

*MT: voting rights in theory (condition of reciprocity and for nationals of the same alliance of states as Malta), but currently not in practice.

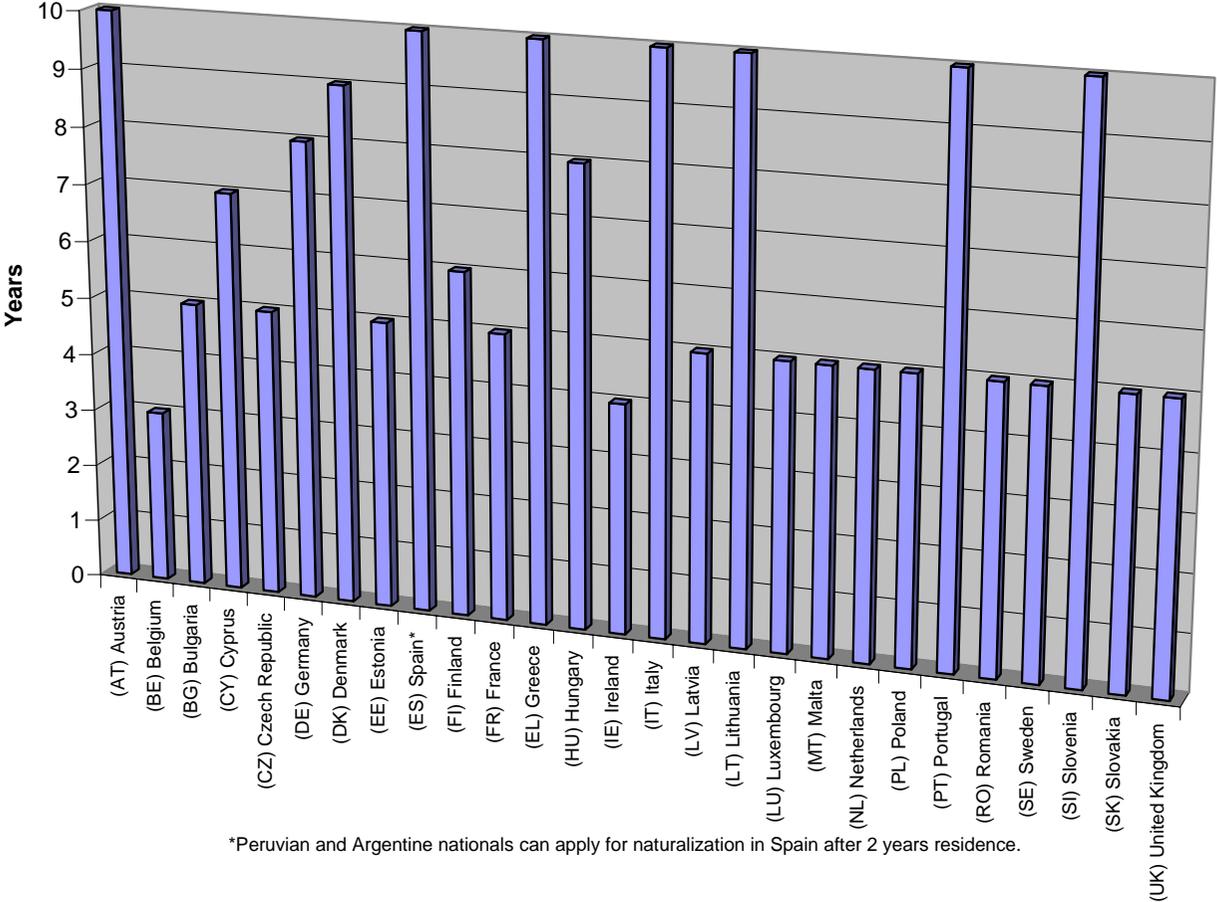
*PT: passive and active voting rights only for nationals of Argentina, Chile, Israel, Norway, Peru, Uruguay and Venezuela (condition of reciprocity), and Brazil and Cape Verde (condition of reciprocity and cultural similarities).

*UK: voting rights for nationals of Commonwealth states (colonial links).

Annex 2: Voting rights at national level for third-country nationals

	Portugal	United Kingdom
Scope of voting rights	Active	Active and passive
Institutions	Parliament	All
Conditions	Must be a Brazilian national with “special statutory political rights equality”	Must be a national of a Commonwealth country.
Rationale	Reciprocity and cultural similarities	Colonial links

Annex 3: Standard Residency Requirements for Naturalization of Third-Country Nationals



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POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

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