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*This letter urges the European Commission to act against the disenfranchisement of EU citizens living and working in a third country through decisive actions to guarantee the right to vote in European Parliament elections, in line with EU democratic principles.*

### **A call to action: common plight for all EU citizens to have a voice in European elections**

Dear Secretary-General Juhansone,

We have previously written to the European Commission (“**Commission**”) about the issue of disenfranchisement in national elections experienced by European Union (“**EU**”) citizens that exercise their right to freedom of movement within the EU.<sup>1</sup> On this occasion, we write regarding the disenfranchisement of EU citizens from certain Member States (each, a “**MS**”) (i.e., nationals of Bulgaria, Cyprus, Denmark, Ireland, and Malta (referred to herein as the “**Affected MSs**”)) that are living outside the EU, namely, in the United Kingdom (“**UK**”). This letter calls attention to the common plight of citizens from the Affected MSs living in the UK: none has a right to vote in European Parliament (“**EP**”) elections and thus enjoy the full benefits of EU citizenship. Since the UK left the EU in January 2020, nationals from these MSs are not represented by Members of the EP (“**MEPs**”) from their host country, the UK. These nationals are barred by their MS’s restrictive national electoral laws from voting in EP elections because they reside outside the EU. Without the right to participate in EU democracy, nationals from the Affected MSs are second-tier citizens of the EU. We call on the Commission, as guardian of the Treaties, to help rectify this wrong and safeguard the right to vote for all EU citizens.

#### **1. Participating in the democratic life of the EU is an EU right**

The ability of EU citizens to participate in the democratic life of the EU is a fundamental political right laid down in Article 10(3) TEU.<sup>2</sup> Likewise, Article 39 of the EU Charter of Fundamental Rights (“**Charter**”) confers on every EU citizen the right to vote and affirms that the principle of direct universal suffrage is a fundamental aspect of EU citizenship.<sup>3</sup> The European Electoral Act of 1976, as amended,<sup>4</sup> lays down specific provisions relating to the election of MEPs, with a view to ensuring that all EU citizens are afforded the right to vote in EP elections by direct universal suffrage.<sup>5</sup>

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<sup>1</sup> Letter to the President of the European Commission, Ursula von der Leyen, on the ‘request to the European Commission to open infringement procedures against five EU Member States which disenfranchise their EU citizens who have practiced their rights to free movement in national elections’, 30 July 2021, by the European Citizens’ Right Involvement and Trust Foundation.

<sup>2</sup> Treaty on European Union [2012] OJ C326/13, art. 10(3).

<sup>3</sup> Article 39 of the Charter states that “*every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the State in which he or she resides, under the same conditions as nationals of that State.*”

<sup>4</sup> Council Decision amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom [2002] OJ L 283/1 (European Electoral Act).

<sup>5</sup> Article 1(3) of the European Electoral Act, as amended, states that “*Elections shall be by direct universal suffrage and shall be free and secret.*”

Voting in EP elections represents the pinnacle of democratic life in the EU and is a quintessential expression of EU citizenship. The right to vote ensures citizens' direct representation in EU decision-making and helps to safeguard the democratic fabric of the EU by empowering individuals to shape its future. As such, the right to vote in EP elections should be inalienable. In reality, however, it is not.

## 2. The right to vote in EP elections is not inalienable for all

For nationals of the Affected MSs, the right to vote in EP elections is a contingent right. Only if nationals of these MSs are resident in the EU can they avail of their right to participate in the democratic life of the EU: for them, the franchise does not extend beyond the EU's borders. As a consequence, nationals of the Affected MSs cannot fully participate in EU democracy and are denied the full benefits of EU citizenship.<sup>6</sup> While not disenfranchised as a matter of law, Italian nationals are in practice disenfranchised from participating in EP elections when residing in the UK.<sup>7</sup>

The disenfranchisement experienced by Affected MS nationals when living outside the EU is a direct consequence of restrictive electoral laws in the relevant MS. While the right to vote in EP elections is guaranteed under EU law,<sup>8</sup> the organisation of EP elections is the responsibility of each MS. Specifically, the MS decide how and where their nationals can cast their votes, including whether they are entitled to participate in elections when resident abroad.<sup>9</sup> Unlike the other 22 MSs, Bulgaria, Cyprus, Denmark, Ireland, and Malta do not allow their nationals living abroad to participate in EP elections 'at home' – whether they are resident in another MS (e.g., Ireland) or in a third country (such as the UK).

Article 22 TFEU guarantees the right of mobile EU citizens *living within the EU* to vote in EP elections in their host MS under the same conditions as nationals of that State.<sup>10</sup> But there is no equivalent provision in the Treaties guaranteeing the right of EU citizens *living abroad* to vote for EP candidates in their home MS. All but the five MSs mentioned above allow their nationals living abroad to vote for EP candidates in their home MS, so the issue of disenfranchisement raised in this letter does not arise in the first place.<sup>11</sup> However, nationals of Bulgaria, Cyprus, Denmark, Ireland, and Malta do not have this right. As long as nationals of the Affected MSs are resident within the EU, Article 22 TFEU guarantees the franchise, as they can participate in EP elections by voting for candidates in the host MS. However, they cannot vote in EP elections 'at home' when living in a third country, such as the UK.

In *Delvigne*, the European Court of Justice ("ECJ") ruled that MSs are implementing EU law when organising EP elections. Accordingly, the Charter, including Article 39(2) on universal suffrage, applies.<sup>12</sup> Notably, the application of the Charter – and the principle of universal suffrage – is not contingent on an EU citizen exercising her free movement rights (unlike Article 22 TFEU); it also applies in purely internal situations. Accordingly, any restriction of the right to vote is subject to the

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<sup>6</sup> To note, in Germany a similar situation arises for German nationals residing outside the EU, including in the UK, for more than 25 years. These nationals cannot vote in EP elections unless they remain familiar, personally and directly affected with the political situation in Germany. This is the requirement in order to cast your vote in Germany for the EP elections. *See* Sections 6 (2), 6a (1) of the European Elections Act (EuWG) in conjunction with Section 12 (2) of the Federal Elections Act (BWG) and Sections 15 (2) number 2, (8), 17 (1) and (5), 21 of the European Electoral Regulations (EuWO).

<sup>7</sup> Italy requires its nationals who live in the UK to travel to Italy to be able to cast their vote for the EP elections. *See* <https://europastreet.news/eu-elections-italians-largest-group-of-eu-citizens-unable-to-vote-from-the-uk/>. For many Italians in the UK, this requirement imposes a significant hurdle to the exercise of the right to vote in EP elections.

<sup>8</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU), arts. 20 and 22.

<sup>9</sup> EU Voting Rights Directive [1993] OJ L329/34, art. 1(2).

<sup>10</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU), art. 22.

<sup>11</sup> Through diplomatic/consular representation, postal vote, proxy vote, e-voting or returning to country of origin to vote.

<sup>12</sup> *See* Judgment of 6 October 2015, Case C-650/13, *Delvigne v Commission*, EU:C:2015:648, §58.

Charter's proportionality requirement.<sup>13</sup> Following *Delvigne*, EU citizens living in a third country (e.g., the UK) retain their right to vote in EP elections in their home MS as a matter of EU law. Yet, as a matter of national law, citizens of the Affected MSs residing outside the EU are denied the right to vote in EP elections – and hence, the right to participate in the democratic life of the EU.

### 3. The current state of EU law is unsatisfactory

The impediments to participating in EP elections faced by nationals of the Affected MSs when living outside the EU highlight the unsatisfactory state of EU law and the pressing need for reform.

- **First**, EU law does not safeguard the ability of citizens to participate in the democratic life of the EU, as enshrined in Article 10(3) TEU, as a practical matter. In particular, EU nationals from Bulgaria,<sup>14</sup> Cyprus,<sup>15</sup> Denmark,<sup>16</sup> Ireland,<sup>17</sup> and Malta<sup>18</sup> residing in third countries, such as the UK, cannot vote in EP elections, even by returning to their home MS. Accordingly, they cannot fulfil the ideal of European democratic participation set out in the Treaties.
- **Second**, EU law fails to uphold core tenets of the democratic ideal. Notably, Article 20 of the Charter provides that all individuals must be treated equally.<sup>19</sup> In the current situation, nationals from the Affected MSs do not enjoy the same level of democratic participation as EU nationals from other MSs. As a result, the democratic principle of equal representation is undermined.
- **Third**, EU law does not respect Article 39 of the Charter and Article 1 of the European Electoral Act, as amended. Limitations of the right to vote in EP elections experienced by Bulgarians, Cyprus, Danish, Irish, and Maltese nationals suggest that the EU has yet to achieve an electoral system that fully reflects the spirit and reality of direct universal suffrage.

For these reasons, nationals from the Affected MSs cannot realise their fundamental democratic rights as citizens of the EU. Moreover, the principle of universal suffrage is undermined.

### 4. The need for reform is clear

The Commission has previously emphasised the importance of democratic participation in the EU,<sup>20</sup> and has addressed the issue of disenfranchisement in a range of communications, both in relation to

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<sup>13</sup> See Judgment of 6 October 2015, Case C-650/13, *Delvigne v Commission*, EU:C:2015:648, §§48–49.

<sup>14</sup> The Bulgarian electoral laws preclude their nationals to vote in EP elections when residing outside the EU, or when they have not resided in an EU country for at least three months immediately prior to the EU. See <https://egov.bg/wps/portal/egov/en/your%20europe/residence-in-another-ms/participating-in-elections/> and <https://www.cik.bg/bg/documents/acts>.

<sup>15</sup> In Cyprus, nationals are deprived of the right to vote in EP elections if they have not been residents in Cyprus for six months prior to the date to register in the electoral roll. See the Election of Members of Parliament Act of 1979 as amended by Act 3(I)/2003 (L. 72/1979), Art. 5.

<sup>16</sup> The Danish electoral law indicates that the right to vote in EP elections can be deprived when a national resides in a third country for a period of two years. See Consolidated Act Concerning the Election of the Danish Members of the European Parliament 2020, arts. 3(iv) and 3(b) (103).

<sup>17</sup> In Ireland, nationals are deprived from their right to vote when residing outside of Ireland. See The Irish Electoral Act 1963, Section 12.

<sup>18</sup> Maltese nationals can only vote for EP elections if they resided in Malta for a continuous period of six months or for a period amounting to six months during the 18 months preceding their registration as voter. See The European Parliament Elections Act, Article 11, <https://legislation.mt/eli/cap/467/eng> and the Constitution of Malta, Article 57(c), <https://legislation.mt/eli/const/eng>.

<sup>19</sup> Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art. 20.

<sup>20</sup> In 2014, the Commission addressed the consequences of disenfranchisement of Union citizens exercising their right to free movement. The Member States concerned were Denmark, Ireland, Cyprus, Malta, and the United Kingdom. See here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014DC0033&from=EN>

national and EP elections.<sup>21</sup> For its part, the EP has recognised the lack of parity in voting rights for EU citizens from different MSs when residing in a third country and has reflected these concerns in a proposal for a Council Regulation to reform the European Electoral Act.<sup>22</sup> This proposal aims to harmonise the rules for the election of the MEPs<sup>23</sup> and ensures that all EU citizens, including those who live or work in a third country, are able to exercise their right to vote in EP elections.<sup>24</sup> The proposal Regulation includes an obligation to ensure, at a minimum, that postal voting is accessible.<sup>25</sup>

Though no longer a MS, the UK has recently revoked the so-called “15-year rule”, whereby British nationals would lose the right to vote in national elections when residing outside the UK for longer than 15 years.<sup>26</sup> The UK’s action to strengthen the voting rights of its citizens living abroad underscores the importance of electoral laws that uphold the fundamental right to vote, irrespective of where one lives.

Despite efforts by the EP and various reforms to electoral rights at national level in a number of MSs,<sup>27</sup> the June 2024 EP elections were held under conditions which resulted in the disenfranchisement of nationals of the Affected MS residing in a former MS, namely the UK.

## 5. The Commission should act now

We urge the Commission to take up the cause of disenfranchised EU citizens and take all actions necessary to enable all EU citizens to participate in the democratic life of the EU to the full. With this goal in mind, we ask the Commission to undertake all possible measures to expedite reform of the current laws and thereby realise the principles enshrined in Article 10(3) TEU.

Concretely, we ask the Commission to support us in working towards:

- (1) the revision of the EU Voting Rights Directive, with particular attention to the modification of Article 1(2), which currently permits practices that result in the disenfranchisement of voters;
- (2) a revival of the Council Proposal to reform the European Electoral Act as adopted by the Parliament;
- (3) the adoption of a Commission Recommendation, Opinion, or Communication<sup>28</sup> that evaluates the current legal framework governing the participation in the EP elections and to establish

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<sup>21</sup> Following the EP elections in 2019, the Commission addressed the issue of mobile EU citizens living in United Kingdom. See [https://commission.europa.eu/document/download/751d0257-b512-4009-9a7b-4ac12fa682f7\\_en?filename=ares20195957437.pdf](https://commission.europa.eu/document/download/751d0257-b512-4009-9a7b-4ac12fa682f7_en?filename=ares20195957437.pdf). Next to this, we also refer to other Communications adopted by the Commission on election integrity and democratic participation. See [the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the 2019 elections to the European Parliament](#). See also [the Communication on protecting election integrity and promoting democratic participation](#).

<sup>22</sup> Proposal for a Council Regulation on the election of the Members of the European Parliament by direct universal suffrage [2022] OJ C465/180, art. 6(1).

<sup>23</sup> Proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage [2022] OJ C 465/180, art. 3.

<sup>24</sup> Proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage [2022] OJ C 465/180, art. 6(1).

<sup>25</sup> Proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage [2022] OJ C 465/180, art. 8.

<sup>26</sup> See <https://commonslibrary.parliament.uk/research-briefings/sn05923/>.

<sup>27</sup> For example, Bulgaria provided temporal polling stations in London during the 2024 EP elections to offer an alternative for their nationals to still cast their votes.

<sup>28</sup> This is already a common practice by the Commission to identify problems and suggest a line of action. For example see [the Communication from the Commission to EP and Council protecting election integrity and promoting democratic participation](#) or [the Commission’s Proposal for a Council Directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by Union citizens residing in a MS of which they are not nationals](#).

definitive legal impetus to the Council and MSs to enhance uniform rules and procedure pertaining the right to vote in EP elections to ensure that all EU citizens can participate in EU democracy irrespective of their place of residence; and

- (4) a renewed focus by the Commission in its forthcoming mandate on tackling the issue of disenfranchisement for good – and thus securing the full benefits of EU citizenship for all.

Yours sincerely,



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Founder of ECIT Foundation



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