

RESPONSE BY THE EUROPEAN MOVEMENT INTERNATIONAL

To the EU citizens' rights consultation

1) What are the main obstacles European Union citizens currently face in the exercise of their rights resulting from Union citizenship? What could be done to address these obstacles (for example, by providing citizens better and simpler access to information, advice and problem-solving assistance, etc.)?

First and foremost, it is quite regrettable that this consultation is only available in English. It seems paradoxical to invite EU citizens to discuss the extent of their rights in a consultation which is only available in English and ignoring the 22 additional official languages of the EU. In this particular case, the denial of EU citizens' right to have access to information in their own language is all the more incomprehensible that the subject of the consultation is about their rights. It would not be surprising to see a very limited number of responses from EU citizens. It may then be difficult to assess how EU citizens themselves regard the extent of their rights and in which area they would like to see their rights strengthened.

Generally speaking, the most important obstacle EU citizens face in the exercise of their rights is the difficulty of accessibility of appropriate information as to the extent of their rights. There is admittedly a lot of information available on the internet, at the representation offices of the institutions, etc, but it seems not to reach EU citizens effectively. It would be fair to say that a small minority of EU citizens are aware of the existence of SOLVIT for instance. Perhaps it is because it is the EU citizens who must go out and get the information, rather than getting the information come to them. In order to do so, EU documentation stating EU citizens' rights and what citizens are entitled to do and claim in the host country should be presented to them when they visit the first public local authority for administrative formalities for example. Raising the profile of SOLVIT in EU documentation that citizens first come across to in the host country is another example.

2) In which areas should the rights of citizens be strengthened?

There are still a certain number of obstacles for EU citizens to exercise their free movement rights in the Union. This is particularly the case for the students willing to study abroad e.g. the complexity of the school/university administration, the numerous grading systems in Europe, the recognition of qualifications abroad, etc.

There is also the patent issue of double standards of free movement rights for same sex partners'. This issue is all the more important because the citizens' directive itself is flawed in that respect and its application can easily allow discriminations by Member States on grounds of sexual orientation.

- **Students' mobility**

Notwithstanding the success of exchange programmes throughout the Union, there are still a number of obstacles for students to move and study outside their home country. The following is a series of proposals to strengthen their rights. Some proposals appeal for a regulatory intervention of the Commission whilst others are an invitation to the Commission to foster constructive dialogues between Member States to resolve deep-rooted issues.

- A common educational grading system and a more flexible European framework for qualifications

EU citizens have the right to study anywhere in the EU and although there is the 'Bologna process', designed to help streamline the educational systems of the Member States, one essential aspect is missing: a universal grading system.

Also, there are still some problems for the validation and recognition of formal learning abroad.

When Erasmus students return to their home countries, the marks obtained in the visiting countries are sometimes challenged and diminished, the diploma are sometimes not even recognized and students have to

sit their exams again when going back home. The matching levels of education and certification and the transfer of credits should therefore be improved and there should be a focus on bilateral recognition of diplomas, or between institutions (double degree), or between states (international agreements). The Erasmus scheme exchange is without a doubt a success, but it still contains flaws after 20 years of existence, mainly because of the broad autonomy and discretion of universities on the matter.

The completion of the implementation of the three-cycle LMD system is also required in order to ensure that all countries provide effective training based on these three levels of studies and finding solutions adapted for atypical courses.

Diploma and Magister degrees have to be recognized just like Bachelor and Master degrees are. Students having studied under a former study programme should have the same chances on the labour market and education programmes as current and future students.

The credits earned during a university degree should be kept for a certain amount of time in order to complete the degree later, especially if only one credit is needed to pass. Flexibility between universities and working places should be enhanced.

The validation of non-formal learning is poor. A document the like of Youthpass (established under the EVS) should be given to every young person serving a period of mobility abroad.

- The non-portability of scholarships:

This is another obstacle to the exercise of the right to access education, and thus, an obstacle to students' free movement rights. Young people should be given the opportunity to continue to receive national grants when they study in another EU country and there should also be the possibility of national grants for non-residing EU citizens (this is already happening in some countries but not in all).

It would thus be essential to follow up the fairness of current EU policies, ie :

- Evaluate the extent of cross-national mobility between secondary education and undergraduate programmes, undergraduate and graduate programmes as well as between university graduation and the first employment.
- Evaluate the financial burden represented by relocation and subsistence costs for students starting academic programmes abroad.
- Evaluate possible discriminations in eligibility for scholarships and grants based on nationality or residence that prevent mobility and promote the adoption of common criteria for eligibility.
- Evaluate the practice of the recognition of credits obtained at host universities by sending universities

- Furthermore it is not always clear which administrative paperwork has to be done (registration at the town hall, at the embassy, which insurance is necessary...), there is a need for a contact person for EU citizens moving in another country in each embassy or consulate.

- Strengthening the right to education and compelling states to find solutions to resolve bilateral issues; e.g. (allegedly on ground of public health but on economic grounds in effect) and indirect discrimination against EU citizens that wish to study in another country.

- Case study: French students in physiotherapy, veterinary, and five other paramedical disciplines in Belgium.

The Belgian government has attempted to justify its indirect discrimination towards French students, but the true substance of the argument is economic rather than a public health issue. Whilst the reality of the cost incurred by the massive migration of EU students in Belgium is undeniable, it remains a purely economic argument and cannot serve as such as the legal basis to derogate from students' free movement rights. Students' free movement rights, considered even prior to the introduction of EU citizenship, constitute one of the core elements of EC/EU law. Aside from the public health and safety exceptions, only fundamental rights have had a higher status in the EC/EU legal order than the four fundamental freedoms. When examining the arguments for a lawful derogation to the right to access education, there should then be no consideration whatsoever regarding the sole economic argument resulting from the exercise of this right. The need to avoid

and/or resolve such situation is all the more pressing considering that access to education is enshrined in the Charter of Fundamental Rights which has now the same legal force as the TEU and TFEU. Put in this perspective, the economic argument advanced by the Belgian government seems less and less convincing. Instead, France and Belgium should be compelled to find a common agreement on their education policies on that matter. Such agreement should be fostered by DG education of the Commission. In sum, EU students see their right to free movement breached for lack of dialogues and solidarity between the host and home Member States.

- **Mobility in general: harmonization of the standard of protection of citizens and their third country national partners' free movement rights**

It has come to our attention that some EU citizens and their TCN partners' right to move and reside in another country cannot be fully respected throughout the Union. Beside the problems inherent to the different implementations of directive 2004/38 in Member States, which the EU institutions are already aware of, the directive itself leaves room for potential discrimination of citizens and their TCN partners' right to free movement on grounds of sexual orientation, particularly in Member States where same sex partnership is not recognised at all.

This is not to say that all Member States should regard same sex partnership as marriage. Partners' free movement rights conferred by one of the partners' EU citizenship should however be fully applicable in the jurisdiction of all Member States.

Although partners fall within the remit of the citizens' directive, the applicability of TCN same sex partners' rights to free movement varies from one member states to another given the lack of harmony of MS legislation on same sex partnership. Insofar as the right to family reunion stemming from the right to family life constitutes an indispensable element in exercising free movement rights, the applicability of TCN and EU partners' right to family reunion inferred from the right to family life (enshrined in the ECHR and the Charter of Fundamental Rights) also varies from one MS to another.

Whilst the said couples could potentially find refuge in Article 3 of the directive¹, the latter provision gives MS a broad discretion in defining what a durable relationship is, hence a broad discretion in the recognition of their rights, as opposed to the status of family member. The intentions of a MS to facilitate the right of entry and residence to registered same sex partners may seem dubious if that MS does not allow for a minimum of legal protection in a civil partnership in the first place.

The root of the problem is twofold: the 'MS recognition' conditionality in article 2 and the vague wording in article 3 which both impair the EU citizens' right to free movement and right to privacy and family life for these citizens.

Whereas the mosaic of different legal regimes for same sex partners throughout the territory of the Union may be acceptable given the different sensibilities in Member States on that issue, it is difficult to argue that Belgian, Dutch, or Spaniard same-sex couples, lawfully married in their country, should not benefit from the same standard of protection of their free movement rights as heterosexual couples do, most particularly where same-sex partnership is not recognized at all and where marriage is only limited to heterosexual couples. It seems all the more incomprehensible that it contradicts the supremacy of EU free movement law over national legislations.

- An amendment, stating that TCN partners, who contracted a legal partnership regarded as equivalent to marriage in the state of origin, shall enjoy the same right of free movement as any other family members do, regardless of whether the host Member State recognizes civil partnership or not, would be welcome in order to fully implement these citizens free movement rights.

¹ which requires the Member States to facilitate the entry and residence of the partner with whom the Union citizen has a durable relationship, duly attested

- Given the particular sensitivity of the issue from one MS to another, a softer approach for a fairer system of protection of same sex couples' free movement rights would be for the Commission to set up an enforceable guideline (preferably an amendment) which provides for a clear and common definition of the durability of a relationship and other eligibility criteria, if any, in article 3 of the directive.

- **Mobility in general: restricting the requirements to stay in an EU country.**

There are a certain number of requirements in some countries which impair the exercise of free movement and residents for EU citizens: in the UK for example, lots of complaints have been addressed regarding simple but essential tasks to do when settling down in another country i.e. opening a bank account, signing a mobile contract (banks and operators ask for a proof residence for more than 3 months in the country), etc. Similarly, students in Belgium often do not register to the commune upon request of their landlords. This may be a problem for non-Belgian students to find a job whilst studying for instance.

- **The creation of European documents for EU citizens**

As stressed by a recent report by MEP Alain Lamassoure (THE CITIZEN AND THE APPLICATION OF COMMUNITY LAW, Report to the President of the French Republic, 8 June 2008) some new documents could also make life easier for EU citizens moving to another EU country such as:

- A common system of registration of cars all over Europe
- The expansion of the "European Health Insurance Card "into a true European social security card, also covering family protection, work accidents, and retirement,
- A card of European citizenship could be created. The idea would be to bring together in one single document all the information and certificates an EU citizen may need abroad : identity details, nationality, residence, family status, working status and the right to work, access to social housing, skills and diploma, social security, pension rights & welfare rights. It would in particular be a permanent residence card, work card, certificate of nationality, health card and, beyond social security card. This "legal passport" would facilitate procedures in a very significant number of cases.

4. What could be done to improve the recognition of documents relating to birth, marriage, death, etc between Member States, and to reduce formalities and costs (for instance by ensuring automatic recognition of such legal documents in any other Member State, by establishing standard European formats for specific documents, etc)?

The creation of an official European family record book for every citizen would be a good initiative to help improve the recognition of documents relating to birth, marriage and death.

5. What could be done to improve consumers' access to goods and services from other Member States (for example by harmonising consumer legislation or otherwise motivating companies to sell cross-border)?

- Support to entrepreneurship by strengthening the efforts of the Commission in reducing bureaucracy and red tape for businesses would be an initial step not to impede consumers' access to goods and services from other Member States.
- A common and clear regulation for copyrights and patents is also needed.

6. What are the main obstacles faced by European Union citizens residing in another EU country when voting or standing as candidates in municipal and European Parliament elections? What could be done to remove these obstacles and enhance these rights (for example, by making it easier to register on the electoral roll, etc)?

- The necessity to be registered on a new list of the electoral roll for EP elections even if you are already registered for local elections as EU citizens is a major obstacle because most of EU citizens are not aware of this obligation. One single registration should be enough like for national citizens.

7. What could be done to increase involvement in the democratic life of Union citizens residing in another EU country (for example, by facilitating their participation in political parties, etc)

- **The need for an intelligently designed European Citizens' Initiative (ECI)**

The European Parliament and the Council of the EU must be well aware that this could and should be a tool of expression for citizens who have no voice to be heard because they don't have the necessary political, critical mass.

- **The statute of European association**

It should be set up as soon as possible because associations on a European scale contribute to create a pan-European public sphere and would overcome the obstacle to freedom of association that persist in certain Member States. There are still numerous pan-European citizens' initiatives which are undermined by the sheer diversity of the regulatory arrangements which apply to associations in Europe. The statute for a European association is an essential instrument in order to consolidate the right of association as a fundamental freedom, enshrined in the EU Charter of Fundamental Rights, and an expression of European citizenship.

The European institutions need to continue the work which has been broken off in 2005 by the European Council on the adoption of a European association statute.

- **Harmonizing voting rights for national elections**

The law on voting rights for national elections varies from one Member States to another. Though it may seem to be a national issue, the disharmony between legislations on the matter does concern the EU as this situation can run counter to the principles and the rights enshrined within the Charter of Fundamental Rights when nationals of a Member States exercise their free movement rights.

When residing in another Member States, nationals of the MS of origins have the right to vote for municipal and European elections in their country of residence, by virtue of their status as European citizens. However, in some Member States, they do not have the right to vote for neither the parliament of their home country nor the parliament of their country of residence. Although some exceptions exist, this implies that an EU citizen can be in a position without voting right for any parliament.

This is a problem that the EU should be concerned with insomuch as the loss of their right to be represented at the national level occurs in the exercise of their right to free movement conferred by their EU citizenship. Put it differently, the exercise of EU free movement rights leads to an undemocratic situation in some countries. Although Member States are mainly responsible for this situation, the EU should strongly encourage its Member States to harmonize their legislation as regards the granting of voting rights for national elections (based on place of residence / place of taxation or based on nationality). If nationality serves as a common basis for voting rights at national elections throughout the Union (which is far more likely so as not to erode the sacro-saint national sovereignty), the EU shall encourage its member states to facilitate voting for national elections for their expatriates residing in the EU.

Case-study: The Øresund Region can be used as an example. In year 2000 a firm link (tunnel and bridge) between Denmark and Sweden was taken into use, one of the purposes being to integrate the eastern part of Denmark with the southern part of Sweden. As expected, a number of Danish citizens moved to southern Sweden as residents, but having their daily work in Denmark. With permanent residence (more than 2 years) in Sweden, these Danish citizens, although being Danish taxpayers, have no voting rights for neither the Swedish nor the Danish Parliament (see Article 29 of the Danish constitution).

- **Making the right to stand as a candidate for municipal and European elections a reality**

The TFEU provides in its article 22(2)(b) that citizens of the union shall have the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their country of residence, under the same conditions as nationals of the Member State.

In practice, EU citizens have certainly the right to stand as a candidate for local and European elections but do not and/or cannot exercise it, or even worse, are not aware of their right (e.g. there is only one British mayor in France).

The absence of EU citizens standing as candidates for municipal elections is somewhat comprehensible in that any candidate must be regarded by most of the electorate as being an important member of the community and sharing the local identity so as to be granted sufficient legitimacy for the representation of the municipality.

As far as European elections are concerned, it is not so much the provision of the treaty that is ineffective, but the very nationalistic perceptions by national parties (who choose their candidates to EP elections) and citizens of these elections that make this provision non-operational.

After all, it would be surprising to see EU citizens residing in a MS to stand as candidates in that country for what are essentially second class national elections (see point 8).

For that right to be effective, it is crucial to turn the debate during European elections to European in the first place. Such shift in the electoral debate can only occur on the basis of a twofold condition:

- Each European party holds onto a clear-cut, visible and understandable manifesto on European issues
- Each European party fights for the control of the legislative agenda of the European Union. The potential for a fight between parties already exists: surveys show that one third of EU legislation originates from the European Parliament's political initiative. In the future, the idea according to which parties' support for different personalities to the Commission presidency has already been voiced by political scientists and politicians.

These two elements will help national parties reconsider their positions as to the scope European issues should have in their agendas.

Consequently, the redefinition of the treatment of European issues in national parties would help facilitate the candidature of non-national EU citizens to European elections, thus contributing to the establishment of a truly European flavour throughout this elections and the rest of the legislature.

The re-adjustment of the importance of European issues in national parties would encourage the creation of a European unit within the political bureaus of national parties and would enhance the coordination between national and European parties on European issues. Given their multicultural background, the involvement of non-national EU citizens in the bureau could potentially be a real asset for the parties in drawing pan-European initiatives that could be relayed in pan-European political parties.

These suggestions must be read in conjunction with the main suggestion addressed in response to question 8, i.e. the rise of stakes in European elections.

8. What could be done to increase voters' participation in European Parliament elections (for example, by carrying out electoral campaigns focusing on European issues, etc)?

- **The politicization of the European elections**

Commentators and insiders agree on the relative impact of communication campaigns (launched in 2004 and 2009) on the aggregate turnout. Communication campaigns may have successfully brought forward European issues to EU citizens through numerous media, but they are not, and will never be, a sufficient incentive for the majority of EU citizens to go to the polls if such campaigns are not accompanied by a genuine electoral campaign where significant political stakes are identified.

An electoral campaign would require the European parties to present political alternatives to the citizens and a fight for the control over the agenda of the next legislature so that citizens could clearly assess the consequences of what a right-wing or a left-wing majority at the Parliament on European policies. There are already political divisions within the EP and the Council of Europe, and the distribution of portfolio within the Commission along right/left lines to raise the stakes of the European elections.

No treaty reform is required. The politicization of the European elections would only result in exploiting the existing partisan divisions between European parties and a change of current practice in the electoral campaign. It is the key to attract citizens' attention for the next elections, and get citizens closer to Brussels in the long run.

The argument according to which there is an impenetrable glass of wall between Brussels and the EU citizens and that Brussels is too distant from its citizens is not very convincing: the extent of the political substance in pre-election fora defines the extent of voters' participation and interest in elections and politics. This is particularly striking when one compares national and regional elections turnouts in the Member States: albeit the regions adopt rules which have a more direct impact on the local population than government's decisions, the turnout for regional elections is always lower than for national elections, even in regions which have a high degree of autonomy (Spain, Germany) and where local identities remain prominent. The argument according to which there is no European identity, no European demos, hence very little participation, is therefore irrelevant. If there is not a European demos, the politicization of the EU will then lead to the emergence of such a European demos.

"Politicization" of the EU would entail a high-profile debate on European issues:

- with the proposition of political alternatives by the different European parties on different themes where the EU is competent
- Each party should back a personality for the job of the person who sets the agenda of the Union for the legislature so as to show voters that their votes have an impact for the next 5 years, thus raising the stakes of the elections. The discussion over the person who should be holding the next presidency of the Commission would then occur before the elections, not after as this is the case. In the current state of play, the negotiations and investiture are closer to the election of a pope than to an open and competitive battle.

If there is no debate on the alternatives of public policies, citizens cannot be engaged in the European elections and would then rather use these elections as contests to voice their opinions on national parties, national politicians, and national political and policy issues.

9. What are the main obstacles faced by European Union citizens outside the European Union when seeking diplomatic or consular protection? What could be done to remove these obstacles and enhance this right (for example, by ensuring that Union citizens get exactly the same or at least a minimum level of assistance from any EU country, by simplifying the reimbursement of costs for evacuation operations in crisis situations, etc)?

- EU embassy's doors should really be opened and without the need of setting an appointment before.
- The right of diplomatic and consular protection and the reference to the treaty should be written on passports in order to make the information available for everyone. The same idea could apply for the urgency number 112.