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ACCESS TO ELECTORAL RIGHTS

BELGIUM

Jean-Michel Lafleur

June 2013



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Access to Electoral Rights Report, RSCAS/EUDO-CIT-ER 2013/4
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

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Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported, at various times, by the European Commission grant agreements JLS/2007/IP/CA/009 EUCITAC and HOME/2010/EIFX/CA/1774 ACIT, by the European Parliament and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh). The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at <http://eudo-citizenship.eu>

Access to Electoral Rights

Belgium

Jean-Michel Lafleur¹

1. Introduction: The enfranchisement of foreign residents and external citizens in the Belgian political and ethno-linguistic context

Electoral rights for EU citizens and for other foreign residents have been a major topic of political debate in recent Belgian history, whereas most Belgian political parties have always considered electoral rights for Belgian citizens abroad of secondary importance. Despite this discrepancy, the voting rights of non-citizens and of external citizens were frequently discussed jointly in the Belgian Federal Parliament because they raise similar political and ethno-linguistic concerns.

Belgian politics is divided along ethno-linguistic lines, which entails that, except in Brussels and its surroundings, Flemish and French-speaking voters can only vote respectively for Flemish and French-speaking parties and candidates. As a result of a historical compromise, French-speaking citizens residing in selected Flemish municipalities around Brussels were also given the right to cast a vote for French-speaking candidates. This right – which has been a major source of controversy in Belgian politics over the past decades – rendered the adoption of different legislation on the voting rights for foreign residents and Belgian citizens abroad very controversial².

With the adoption of EU Council Directive 94/80/EC on local elections, Belgium found itself obliged to grant local electoral rights to EU citizens residing in the country. This triggered two kinds of fears among Belgian parties. First, Flemish political parties (and particularly the dominating Christian Democratic party) feared that EU residents living in Flemish municipalities outside of Brussels would primarily support French-speaking parties³. Second, Flemish and French-speaking right-wing

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² For more on the political debate on the enfranchisement of foreigners in Belgium, see: Jacobs, D. “The Debate over the Enfranchisement of Foreign Residents in Belgium”, *Journal of Ethnic and Migration Studies*, vol. 24, No. 4: 649-663. For more details on the enfranchisement of Belgian expatriates, see: Lafleur, J-M., “Political Transnationalism and the State”, Doctoral dissertation, Sciences-Po Paris & Université de Liège, 2008, Available at <<http://hdl.handle.net/2268/143640>>.

³ There was indeed a fear that foreigners residing in Flemish municipalities around Brussels would primarily speak French as a second language. Accordingly, if they were to be enfranchised, these citizens would tend to vote for French-speaking parties and candidates.

parties were concerned that EU residents would primarily vote for left-wing parties. Altogether, these fears made it impossible to modify the Constitution (article 8) to allow non-Belgians to vote. In 1998, the European Court of Justice thus found Belgium guilty of failing to transpose the directive.⁴

Though historically less controversial, discussions on the right to vote of nationals residing abroad were marked by similar electoral preoccupations. Left-wing parties feared that right-wing parties would fare better with citizens abroad. Their impression was supported by the fact that the French-speaking Liberal Party had tabled most legislative proposals on external voting.

By the end of the 1990s the topics of external voting and of the voting rights of second country nationals became inseparable within the Belgium Parliament. The French-speaking Liberal Party agreed to support the revision of the constitution in exchange for the adoption of a law on external voting.⁵ The enfranchisement of citizens residing abroad and of second and third country citizens residing in Belgium was thus primarily interest-driven. Political parties tried to make sure that the impact of these new voters on both their electoral performances and the ethno-linguistic equilibrium between French-speakers and Dutch-speakers would be limited.

2. Eligibility: Who has electoral rights under national law?

Since the adoption of the law granting voting rights to foreigners in local elections on 19 March 2004, three categories of individuals have electoral rights under Belgian national law: citizen residents of Belgium, Belgian citizens residing abroad, and foreign residents of Belgium.⁶ However, not all three categories are given the same sets of rights. Whereas being a citizen resident (the default category) includes a full range of passive and active voting rights in different types of elections, the other categories are less inclusive.

2.1. Citizen residents

In Belgium, all male and female citizen residents are entitled to both active and passive electoral rights in local and national elections since the adoption of universal suffrage in 1948. With the 1988 constitutional reform that increased the prerogatives of regions within the country, resident citizens saw these rights extended to regional elections as well. Despite subsequent reforms that gave the three Belgian regions the right to organize local, provincial and regional elections, the conditions of access to electoral rights are still set by the Federal Parliament. Two basic norms define the criteria under which citizen residents can access these rights: the Constitution and the Electoral Code created through the 12 April 1894 Law (and modified by subsequent reforms).⁷ It is to be noted that, since 1893, the Constitution has made voting mandatory among all citizen residents. This obligation applies equally to all elections organised in Belgium: municipal, provincial, regional, federal and European elections.

⁴ See Case C-323/97 *Commission v Belgium* [1998] ECR I-4281.

⁵ Loi du 18 décembre 1998 modifiant le Code électoral en vue d'octroyer le droit de vote aux Belges établis à l'étranger pour l'élection des Chambres législatives fédérales.

⁶ Loi du 19 mars 2004 Loi visant à octroyer le droit de vote aux élections communales à des étrangers.

⁷ Loi du 12 avril 1894 relative à la formation des listes des électeurs pour les Chambres législatives (Code électoral).

Residency is the central concept that defines access to electoral rights by Belgian citizens living on the national territory. Until 1988, Article 61 of the Constitution (formerly known as Article 47) provided that electoral rights were reserved to citizens who had been domiciled in the same municipality during the six-month period preceding the closing of the electoral register. In 1988, legislators found themselves obliged to remove this requirement following political turbulence in a Flemish village close to the Walloon city of Liège. There, French-speaking citizens demanded the right to participate in the national elections in a Walloon electoral district and not in the Flemish electoral district to which this municipality belonged. From then on, the concept of residency has been solely defined by the Electoral Code, which considers residency as being registered with the population registry of any Belgian municipality (Article 1). Following the terms of the 1991 Law on Population Registries and Identity Cards, every Belgian citizen must register with the population register of the municipality where s/he primarily resides⁸. This implies *de facto* that all citizen residents who do not find themselves in an exclusionary case defined by the Electoral Code are automatically registered as voters. The Electoral Code provides for three kinds of restrictions to the electoral rights of citizen residents based on the following: age, mental disabilities or prison sentences.

The Constitution and the Electoral Code have set the age threshold for both passive and active electoral rights to eighteen years of age since 1981. There are however two exceptions to this principle. First, for local non-binding referenda (where regional laws define their organization), the threshold to vote is set at sixteen years of age. Second, to stand as a candidate in the Senate or the House of Representatives, a citizen must be at least 21 years old. With regard to citizens suffering from mental disabilities, the Electoral Code allows for the suspension of their electoral rights by a court order in two cases (Article 7). First, the Court can declare her/him unable to exercise his/her rights and duties when s/he comes of age. Second, the Court can order this person to be treated in a psychiatric hospital. Concerning inmates and persons convicted of criminal offences, the Electoral Code provides for the lifetime exclusion from electoral registries of all people incarcerated after committing criminal offenses (Article 6). Also, any person sentenced to prison for a non-criminal offense for at least four months sees her/his electoral rights suspended during the time in prison. Detainees awaiting trials and those sentenced to less than four months in prison are able to vote by proxy if they request the right to do so (Article 147bis).

2.2. Citizens abroad

2.2.1. Citizens temporarily abroad

As underscored in the previous sub-section, residence in a Belgian municipality is a general condition for franchise in local, provincial, regional and national elections. Citizens who find themselves temporarily abroad on Election Day have traditionally been invited to vote by proxy. Logistically speaking, to vote by proxy, the voter need not take any administrative measures to arrange for the proxy vote before the election. On Election Day, his/her proxy needs to submit the proxy voter registration form signed by the person who is absent and attach a proof that s/he is indeed abroad on

⁸ Loi du 19 juillet 1991 relative aux registres de population et aux cartes d'identité et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques.

Election Day (see section 4.2.2 Casting the vote). On Election Day, no further step is required other than showing these documents to the president of the polling station where the voter was supposed to vote in person (Electoral Code, Article 147bis). Any other voter can be designated as proxy but no voter can vote in the name of more than one other voter. In the Electoral Code, three of the seven situations under which a citizen can make use of his/her right to use a proxy concern temporary presence abroad. First, a citizen who finds herself/himself abroad on Election Day for professional reasons (or for the professional reasons of her/his family) is allowed to vote by proxy if this absence is justified by a letter from the employer (Article 147bis, 2°). Second, students whom, for the purpose of their studies, are unable to travel to their polling stations on Election Day can also vote by proxy provided that it is justified by a letter from their educational institution (Article 147bis, 2°). Third, voters who find themselves abroad on Election Day for any other reason than the aforementioned (e.g. holidays abroad) have to request the authorisation to do so in advance from the mayor of the municipality where they reside (Article 147bis, 7°).

2.2.2. Citizens permanently residing abroad

After revising the Constitution to remove residency requirements to access voting rights (see section 2.1 on Resident citizens), the enfranchisement of citizens abroad became possible with the adoption of a simple revision of the Electoral Code. However, few parties had historically been in favour of external voting. As previously discussed, the adoption of such a law was made possible at the request of the French-speaking Liberal Party in exchange for its support for the revision of the Constitution, opening the way for second-country nationals' right to vote in Belgian local elections. The 18 December 1998 Law thus modified the Electoral Code and introduced the right for citizens abroad to vote in federal legislative elections. This law however introduced an extremely bureaucratic registration system that only allowed 18 non-resident citizens to participate in the 1999 legislative elections. The electoral system was subsequently subjected to profound reforms in the 7 March 2002 Law⁹ and, more recently, in the 19 July 2012 Law¹⁰. Since 2002, Belgians living abroad who have voluntarily registered with the consular registry are, just as citizens resident in Belgium, subjected to mandatory voting (Article 180 of the Electoral Code). This obligation to register as an external voter only applies for federal legislative elections (i.e. the Senate and House of Representatives). Belgian citizens permanently residing abroad, however, remain unable to participate in local, provincial and regional elections. Similarly, Articles 64 and 69 of the Constitution prohibit citizens residing abroad from exercising passive electoral rights, due to the requirement that candidates must reside in Belgium.

2.3. Foreign Residents

The topic of foreign residents' participation in Belgian elections has been controversial in Belgian politics since the 1980s. Whereas second-country nationals

⁹ Loi du 7 mars 2002 modifiant le Code électoral en vue d'octroyer le droit de vote aux Belges résidant à l'étranger pour l'élection des Chambres législatives fédérales et instaurant la liberté de choix du mandataire en cas de vote par procuration.

¹⁰ Loi du 19 juillet 2012 portant modification du Code électoral, en ce qui concerne le vote des Belges à l'étranger

have been able to participate in local elections since 2000 (see section 3. Electoral rights of EU citizens), third-country nationals have only been able to do so since 2006 and in a more restricted way than EU citizens residing in Belgium. Further, all foreign residents are excluded from participating in provincial elections, which are held on the same day as municipal elections in Belgium¹¹.

The Law of 19 March 2004 granting foreigners the right to vote in local elections indeed set specific conditions to the access of electoral rights by third country nationals (in addition to the restrictions based on age, mental disability, and prisoner sentences, which apply equally to Belgian and foreign resident voters). First, only third-country nationals who have resided in Belgium for five years without interruption preceding the election can register as voters. Second, contrary to resident citizens, third-country nationals who comply with the residence requirement are not automatically registered. Upon registration, however, foreign resident voters are also subject to the principle of mandatory voting. Third, the voter registration form must be accompanied with a formal declaration, by which third-country nationals swear to respect the country's laws, its Constitution and the European Convention on Human Rights. Fourth, the legislation on voting rights for third country nationals does not provide any passive electoral rights. These last two points *de facto* introduce large differences in status between second-country national voters and third-country national voters in Belgium.

In addition to local elections, third-country nationals are also invited to take part in local non-binding referenda (which are extremely infrequent in Belgium). The organisation of these referenda is regulated by different regional legislation in all three regions of the country.¹² The different laws in each region however, set similar conditions for voting in local referenda. Contrarily to local elections, foreign residents are automatically registered for participation and voting is not mandatory. Only two conditions are set to access political rights at this level: an age requirement of sixteen years and registration in the population registry of the municipality in question.

3. Electoral rights of EU citizens

Two EU directives on the electoral rights of EU citizens in Belgium received starkly different levels of political controversy surrounding their implementation. Directive 93/109/EC on EP elections was transposed without too much debate between political parties while, conversely, debates around the transposition of Directive 94/80/EC on local elections triggered major controversy because of the anticipated impact second-country nationals would have on electoral results (see section 1. Introduction). This led the European Court of Justice to find Belgium guilty of not transposing the directive within the prescribed period.¹³ A parliamentary majority was eventually secured to modify Article 8 of the Constitution and to transpose the Directive.

3.1. Local elections

¹¹ The Provincial Elections are only briefly touched upon in this report because they are increasingly becoming second-order elections in Belgian politics. Indeed, with the regionalization of the state, provinces are increasingly perceived as redundant institutions. Provincial elections are nonetheless organized every six years under similar regulations as local elections.

¹² In Wallonia: Code de la démocratie locale et de la décentralisation, Moniteur Belge du 12/08/2004, p. 59699. In Flanders: Gemeentedecreet van 15 Juli 2005.

¹³ See Case C-323/97 Commission v Belgium [1998] ECR I-4281.

The law of 27 January 1999 modified different Belgian laws to introduce passive and active electoral rights for second-country nationals in municipal elections.¹⁴ In terms of passive electoral rights, this law introduced two major distinctions between resident nationals and second-country nationals. First, resident nationals are automatically registered as voters, whereas second-country nationals have to register voluntarily by submitting a registration form to the authorities in their municipality of residence. This form mentions the name, birthdate and current address of the voter-to-be (Article 11). Second, unlike resident nationals who are obliged to vote, mandatory voting only applies to second-country nationals who have voluntarily registered as voters. There are accordingly no sanctions against second-country nationals who do not register.

In terms of passive electoral rights, Belgium has also chosen to implement certain restrictions allowed by Directive 94/80/EC. Upon registering as a candidate in local elections, second-country nationals have to submit a form which states that (1) they do not occupy any elected office in another EU Member State, (2) they do not occupy any position considered to be incompatible with holding an elected position in another EU Member State and (3) they are not deprived of their passive electoral rights in their country of citizenship. Belgian authorities may request an official document from second-country authorities to demonstrate the latter (Article 13).

Article 9 of the 27 January 1999 Law also includes the right of second-country nationals elected within a local legislative council to be appointed as aldermen. The law provides for such appointments under the same conditions as resident nationals elected in the Council. The law, however, does not include the right for second-country nationals to occupy the position of mayor. Altogether, because of laxer registration criteria and the inclusion of passive electoral rights that are almost as extensive as those for resident nationals, second-country nationals arguably enjoy a more favourable status than third-country nationals when it comes to local elections.

3.2. EP elections for EU citizens residing in Belgium

In order to transpose Directive 93/109/EC, Belgium amended the 23 March 1989 law regulating EP elections in 1994.¹⁵ Similar to Belgian local elections, the status of second-country national voters in EP elections differs from that of Belgian resident nationals in the following ways. First, second-country nationals are not automatically registered as voters in Belgian EP elections, but need to submit a voter registration form to the Belgian municipality where they officially reside (Article 1). The exact same conditions under which a Belgian resident national can be excluded from voting (age, mental disabilities, and imprisonment) apply to second-country residents. However, upon registering as voters, second-country nationals must also swear that they shall not vote in EP elections in another country besides Belgium, and that they have not been stripped of their political rights in their country of citizenship. Second, because registration is not mandatory for second-country nationals, the principle of mandatory voting only applies to second-country nationals who have indeed registered as voters (Article 39).

¹⁴ Loi du 27 janvier 1999 modifiant la loi du 19 octobre 1921 organique des élections provinciales, la nouvelle loi communale et la loi électorale communale, et portant exécution de la directive du Conseil de l'Union européenne n° 94/80/CE du 19 décembre 1994 (1)

¹⁵ Loi du 23 mars 1989 relative à l'élection du parlement européen & Loi du 11 avril 1994 modifiant la loi du 23 mars 1989 relative à l'élection du Parlement européen.

In terms of passive electoral rights, Belgium combines the requirements set in the Directive with additional requirements that take into consideration the ethno-linguistic divisions of the country. Article 41 of the law on EP elections sets five conditions that one needs to respect in order to stand as a candidate in EP elections in Belgium. First, one needs to be domiciled in the European Union and have Belgian citizenship or citizenship in another EU Member State. Second, the conditions for exclusion from passive electoral rights for elections organised under Belgian law also apply to anyone wishing to stand as a candidate in EP elections. Third, one cannot stand as a candidate in EP elections simultaneously in another Member State. Fourth, candidates must be at least 21 years old. The fifth requirement is very specific to Belgium, in that it requires that candidates speak the language of the constituency in which they stand as candidates. There are three electoral constituencies in Belgium based on the official language spoken in the country: Dutch, French and German. The validity of the language affiliation of the candidate is ensured by the fact that each candidate needs the support of five Belgian federal parliamentarians belonging to that language community or by 5,000 citizens registered as voters in these constituencies (Article 21).

3.3. EP elections for national citizens abroad

The 23 March 1989 Law on EP elections and its subsequent amendments also pertain to the electoral rights of Belgian citizens residing abroad. This legislation gave Belgians abroad the first opportunity to remotely participate in an election in their home country by mail (Article 31). Whereas few parties had historically supported the enfranchisement of citizens abroad for national legislative elections, their enfranchisement in EP elections was not a particularly sensitive topic in Belgian politics. Indeed, parties felt that only a limited number of Belgians abroad would choose to vote from abroad in Belgian EP elections because they also had the option to register as voters in their country of residence. In addition, EP elections were mostly considered as second-order elections compared to national elections¹⁶(Reif, Karlheinz & Schmitt 1980).

Following the terms of Article 5 of the law on EP elections, there is no obligation to register as an external voter. The principle of mandatory voting only applies to external citizens who do register. To register, citizens abroad have to submit a voter registration form to Belgian consular authorities at least 60 days before the election. Qualification criteria include the traditional causes for exclusion from the electoral register that apply to every Belgian election. Article 5 also sets three additional conditions to register as voter in Belgian EP elections from abroad. First, one needs to hold Belgian citizenship. Second, one needs to be at least eighteen years old on Election Day. Third, one needs to be residing in another EU Member State and have formal authorisation of said state. This last condition entails that two types of Belgian citizens residing abroad are *de facto* excluded from voting as external voters in Belgian EP elections. The first category is Belgian citizens who have not officially declared their residence abroad. This is the case of a large (though impossible to estimate) number of Belgians residing in neighbouring countries while maintaining their official residence in Belgium. These citizens, because they are not officially

¹⁶ See Reif, Karlheinz, and Hermann Schmitt. 1980. "Nine Second-Order National Elections: A Conceptual Framework for the Analysis of European Election Results." *European Journal of Political Research*, vol. 8, No. 1:3-44.

recognised as Belgians living abroad by home country authorities, are still considered as resident nationals. They are accordingly subjected to the obligation to vote and may do so in person or by proxy. The second category is Belgian citizens residing outside of the European Union. By excluding them from the scope of the external voting provisions in the Law on EP elections, legislators *de facto* introduced differences in the range of political rights accessible to expatriates according to their countries of residence.

To claim passive electoral rights five conditions must be met. First, national citizens must reside in another EU Member State. Second, they cannot fulfil any of the conditions for exclusion of their political rights in Belgium. Third, they must be at least 21 years of age. Fourth, they cannot stand as candidate in another Member State for the same EP elections. Fifth, candidates need support from national parliamentarians or Belgian voters belonging to either the Dutch, French or German-speaking constituencies.

3.4. Other elections

In addition to local and EP elections, EU citizens residing in Belgium — like third country nationals — are also invited to take part in local non-binding referenda (see section 2.3 Foreign Residents). As previously mentioned, second country nationals are automatically registered for participation in these local elections and voting is not mandatory. Only two conditions are set to access political rights at this level: being at least 16 years of age and being registered in the population registry of the relevant municipality.

4. Exercising electoral rights

Belgium has an electoral system based on automatic registration and mandatory voting for all elections (except for local non-binding referenda). Nonetheless, citizens abroad and foreigners residing on the national territory were both historically excluded from exercising electoral rights, and legislators have thus had to significantly alter electoral procedures in order to allow for their participation. As far as the organisation of elections is concerned, federal authorities were traditionally the sole organisers of elections in Belgium. With the increased regionalisation of the state, each region is now given the power to organise local, provincial and regional elections. Voter eligibility conditions, however, remain determined by federal authorities.

4.1. Local Elections

4.1.1. Voter registration

Resident nationals in Belgium do not have to take any formal steps to register as voters. Citizens who fulfil the qualification criteria are automatically added to electoral registers by the authorities of the municipality. Because one such criterion is residency in a Belgian municipality, Belgian citizens residing permanently abroad are automatically excluded from participating in these elections. Second and third-country nationals residing in Belgium, on the contrary, have to be proactive if they wish to participate in local elections. To register, foreigners living in Belgium have to

submit a voter registration form to the municipality where they are officially registered as residents. By signing and returning these forms (which are different for second and third-country nationals), the individuals solemnly swear that they respect the qualification criteria. After verification by local authorities that these criteria are indeed respected, second and third-country nationals are notified of their inclusion/exclusion from the electoral roll. Once registered, these new voters are automatically re-registered for subsequent local elections, even if they change their residence to another Belgian municipality. All registered voters for local elections receive an invitation to vote by mail before the election.

Local non-binding referenda, which are organised extremely rarely in Belgium, follow a different procedure. In this case, all individuals, independently of their nationality, who are at least sixteen years of age and whose names are listed in the population register of the municipality organising the referendum, automatically receive an invitation to vote by mail. In contrast to all other types of elections, voting is not mandatory.

4.1.2. Casting the vote

In local elections and in local non-binding referenda, the standard procedure is to cast a vote in person in polling stations located in the municipality where a voter is domiciled. On Election Day, voters show up at their assigned polling stations with their invitation to vote and their identity card. Four categories of voters can however cast a vote by proxy if they respect certain conditions (see section 2.2.1 Citizens temporarily abroad): resident nationals, Belgian citizens residing temporarily abroad, second-country nationals and third-country nationals. To vote by proxy, voters fill in a form to give to a proxy, who then submits it to the head of the polling station on Election Day. As discussed earlier, only citizens who are temporarily abroad for non-professional reasons need to request the explicit authorisation to vote by proxy from the mayor of the municipality where they are supposed to vote. No voter can act as a proxy for more than one other voter.

4.1.3. Running as a candidate

Only resident nationals, citizens temporarily abroad and second-country nationals are allowed to run as candidates in Belgian local elections. To run as a candidate, one first needs to be registered as a voter. A list of candidates must be submitted one month before the election to the head of the main polling station of the municipality. To be valid, the list needs to be supported by two members of the municipal council or by a minimum number of voters (the numbers vary according to the size of the municipality). Second-country nationals wishing to run as candidates need to attach a formal declaration that states their nationality and address in Belgium. In this declaration second-country nationals also swear that they are not occupying (1) local elected positions or (2) professions in their country of citizenship that would be considered incompatible with a local mandate in Belgium and (3) that they have not been stripped of their political rights in their country of citizenship.

4.2. Regional and National elections

For regional and national elections a distinction must be made between resident nationals and citizens temporarily abroad on the one hand, and citizens residing permanently abroad on the other hand. Resident nationals and citizens temporarily abroad can participate in both elections under the same conditions. Citizens permanently abroad, on the contrary, can only participate in national legislative elections and, to do so, they must follow a specific procedure. Second-country and third-country nationals are not allowed to take part in any of these elections.

4.2.1. Voter registration

Resident nationals and citizens temporarily abroad are automatically registered as voters in both regional and federal legislative elections as long as their names are listed in the population registry of any Belgian municipality (Electoral Code, Article 1). It is to be noted that every Belgian citizen has the obligation to register with the population registry of the municipality where s/he primarily resides.¹⁷ Every registered voter subsequently receives an invitation to vote before the election and voting is mandatory.

Citizens permanently residing abroad can only take part in federal legislative elections and are not automatically registered as voters for these elections. The registration procedure for these citizens is described in the Electoral Code and has been profoundly modified by an electoral reform on external voting adopted on 19 July 2012. Belgians residing abroad who are registered in the registry of a Belgian consulate or embassy are obliged to register as voters for the elections (Article 180 of the Electoral Code). However, because registration in consular registries is not mandatory, only a share of the total Belgian expatriate population complies with the obligation to register as a voter from abroad. During a three-month window, Belgians residing abroad have to submit a voter registration form to their consular or diplomatic representative. In the registration form, citizens abroad also indicate the modality through which they would like to cast their vote from abroad (see section 4.2.2 Casting the vote). Most importantly however, they indicate the name of the municipality in which they would like to be added to the electoral roll. Choosing the municipality determines the constituency in which the expatriate will be invited to cast a ballot from abroad.

Up until the 2012 reform, citizens abroad were free to choose any Belgian municipality. Several Flemish political parties were dissatisfied with this system, as they suspected that French-speaking expatriate voters strategically chose to register as voters in Flemish constituencies with large French-speaking minorities in order to artificially increase their weight there. After the reform, for future elections, citizens abroad will have to justify their link with the Belgian municipality where they want to register (Article 180). The selection of the municipality of registration must be guided by the following criteria (in order of priority): 1) the last Belgian municipality where the expatriate officially resided, 2) the municipality where s/he was born, 3) the municipality where the mother or father of the expatriate was/is officially residing, 4) the municipality where a relative of up to the third degree is/was officially residing, and 5) the municipality where any ancestor is/was born or officially residing. After

¹⁷ Loi du 19 juillet 1991 relative aux registres de population et aux cartes d'identité et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques, article 1.

they have registered one time from abroad, expatriates are automatically re-registered for subsequent federal legislative elections.

4.2.2. Casting the vote

For both national and regional elections, resident nationals cast their votes in person in polling stations located in the municipality where they are registered. In order to vote, they need to provide electoral officers with their invitation to vote and proof of identity. As an exception to the vote in person, resident nationals who cannot go to the polling station on Election Day for reasons related to their profession, health, religion or education are allowed to vote by proxy (Article 147). Citizens temporarily abroad for professional or educational reasons may also vote by proxy. In these different situations, citizens exercise their right to vote by filling in a proxy voter form and attaching a proof of absence. On Election Day, the proxy goes to the polling station where the absent voter was supposed to cast her/his ballot and submits these documents to the head of the polling station. Citizens temporarily abroad for non-professional motives need to request the authorisation to vote by proxy from the mayor of the municipality where they are registered as voters before Election Day.

Citizens permanently residing abroad have the freedom to choose any of the five modalities that are offered to them (Article 180). First, upon registration, citizens abroad can choose to vote in person in their municipality of registration if they are willing to travel back to Belgium on Election Day. Second, citizens abroad may choose a resident national voter as proxy. On Election Day, this person goes to the polling station in the municipality of registration of the expatriate to vote in her/his name. Third, citizens abroad can cast a ballot in person at a Belgian consulate or embassy. After the head of the polling station verifies his/her identity, the expatriate voter is given a ballot paper that corresponds exactly to the one given to resident nationals who are voting in person in his/her constituency. Fourth, citizens abroad can choose another expatriate voter as proxy. On Election Day, this person goes to the polling station located abroad (usually a consulate or embassy) to exercise another expatriate voter's right to vote in addition to his/her own right to vote. Fifth, citizens abroad can choose to vote by mail. In this case, s/he receives an electoral package by mail. It contains a ballot, a form that the expatriate fills in and signs to verify that s/he is indeed registered to vote, a blank envelope in which the ballot is sealed after it is completed, and a return envelope addressed to the head of the electoral district where the expatriate voter has registered.

4.2.3. Running as candidate

Only resident nationals and citizens temporarily abroad have passive electoral rights in regional and federal elections. According to Article 64 of the Belgian Constitution, candidates must: hold Belgian citizenship, be at least 21 years of age, have their full civic or political rights, and officially reside in a Belgian municipality. According to the size of the constituency, the list of candidates to the House of Representatives and the Senate need to be supported by a certain amount of voters from that constituency or by Members of Parliament/Senators. For regional elections, the age threshold to run as a candidate was lowered from 21 to eighteen in 2004.

4.2.4. The representation of citizens residing abroad

Even though parliamentarians have been debating the idea of allowing special representation of citizens abroad within the Senate¹⁸, Belgium has opted for the model of assimilated representation. Based on the selection criteria presented above, citizens abroad register as voters in a specific Belgian municipality. This municipality determines the constituency in which the expatriate voter is invited to cast a ballot from abroad. The rule adopted in 2012 constrains the municipality where one may register to vote based on personal and family linkages, and this rule applies to both elections in the Senate and the House of Representatives. Independently of the voting modality chosen by the expatriate and of the place where the ballots are actually open and counted, the votes cast abroad are eventually combined with votes cast by resident citizens in the same constituency.

¹⁸ Sénat, Doc. Parl., Révision de l'article 63, § 2 et § 3, de la Constitution, en vue de créer une circonscription électorale permettant la représentation des Belges résidant à l'étranger, n°3-437-1 (2003-2004), 6 Janvier 2004.

