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# EUDO CITIZENSHIP OBSERVATORY

## ***ACCESS TO ELECTORAL RIGHTS*** ***LUXEMBOURG***

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EUDO Citizenship Observatory

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## Access to Electoral Rights

### Luxembourg

*Denis Scuto*

#### 1. Contextual backdrop

Debates on electoral rights have been a major issue over the last three decades in Luxembourg. But let's first explain the specific historical context of immigration in Luxembourg. After having been an immigration country for a century (with twelve per cent foreign residents in 1900, eighteen per cent in 1910, 22 per cent in 1930, and 26 per cent in 1981), the last three decades have been characterised by major increases in population, work force and immigration. The population grew from 360,000 in 1981 to 525,000 in 2012. The proportion of immigrants in the population went from 26 per cent in 1981 to 44 per cent today. In 1985, 70 per cent of resident wage earners were Luxembourgers, whereas the figure stood at only 52 per cent in 2008. The number of commuters increased from 22,000 in 1982 to 150,000 today (or 50 per cent of the active population having an employment).

The "right for immigrants to vote" has been an issue since the 1970s, advocated not only by NGOs working in the field of immigration<sup>1</sup> but also by the socialist and communist parties and the Economic and Social Council (a tripartite permanent consultative body of the government composed of representatives for employers, workers and government experts). In 1981, the NGO Asti submitted a statement for signature to political parties and labour unions. This statement was signed by the main political parties, CSV (Social Christian), LSAP (Social Democrats), DP (Liberal), KPL (Communist Party), and the two major labour unions OGB-L (Socialist) and LCGB (Social Christian). The diocesan commission of the Catholic Church also agreed with the position stated in the platform. But during the eighties, both Social Christians and Liberals refused to put the issue on the political agenda, waiting instead for initiatives from the EC in this direction. Meanwhile a populist right-wing party with a nationalist program had appeared (ADR-Aktiounskomitee fir Demokratie a Rentengerechtegheet) and further politicised this topic.

It was only after a judgment of the European Court of Justice in 1991 that the government decided to give immigrants the right of vote and of making them eligible to run

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<sup>1</sup> Asti, founded in 1979 (formerly Uniao, founded in 1972) is an NGO based on individual membership, active in the city of Luxembourg and fighting for equal rights for all residents in Luxembourg; Caritas is active in the fields of asylum seekers and refugees; Clae is an organisational platform bringing together roughly a hundred foreigners' organisations, fighting for equal rights and organising a yearly multicultural festival; Sesopi (since 2010 called Cefis) is a catholic research centre and think tank.

for professional chambers (f. e. Chamber of Workers, Chamber of Employees).<sup>2</sup> As for local elections, it was not until the Maastricht Treaty and EU Council Directives 94/80/EC on local elections that political participation was granted to non-national EU citizens (law of 28 December 1995). However, the right to vote for local elections was introduced with a system of derogations for Luxembourg, since it is a country whose inhabitants include non-national EU citizens amounting to at least twenty per cent of the population. These derogations pertained to the duration of residency required to obtain voting rights, granting the passive right to vote, and the composition of electoral lists. For EP elections derogations on the duration of residency required to obtain voting rights and the composition of electoral lists also exist (law of 28 January 1994). The derogations on the passive right to vote on local elections were removed in 2011, while the derogations on the duration of residency required to obtain voting rights and the composition of electoral lists were modified, but not removed. The first local elections with the participation of non-national EU citizens were held in 1999. Since the law of 18 February 2003, third country nationals can also participate in local elections. In the 2005 elections, 189 candidates (six per cent of all candidates) were non-nationals.<sup>3</sup> Fifteen per cent of resident foreigners had registered to vote. In the 2011 elections, 233 of the candidates (seven per cent) were non-nationals, while seventeen per cent of non-nationals had registered to vote.<sup>4</sup>

While the debate on these derogations persists a new debate has attracted increased attention in recent years, namely a proposal for a kind of residential citizenship that would grant political participation rights to foreign residents for national elections. The demographic and economic evolution of the last three decades in Luxembourg has created a democratically deficient form of political representation: in 2009, only 45 per cent of the resident population had the right to vote in national elections (55 per cent in 1994), while only 34 per cent of the total citizen population were living or working on the territory of Luxembourg. Furthermore, the pattern of immigration has changed with an ever greater percentage of immigrants being high skilled workers. The residential citizenship proposal is advocated by NGOs, the labour unions (except civil servant unions) and the young sections of political parties while gradual steps in this direction are being promoted by the Chamber of Commerce. Officially, in their 2009 election manifestos, only the Green Party and left-wing parties have put this issue on their agenda. Liberals and socialists (now the junior partner in government) declared themselves open for a debate on this point. Social Christians (currently the senior partner in government) were against debating the issue in 2009.

In 2012, lively debate about residential citizenship was sparked by controversial moves by two important actors. First, in March 2012, the Luxembourg Chamber of Commerce, in defending the interests of employers, supported further liberalisation of nationality law and of electoral rights. The title of its publication “Actualité & tendances”, Nr 12 (march 2012) is clear: “*La diversité règne, l’intégration piétine: La Chambre de commerce analyse l’apport socio-économique des étrangers et plaide pour une meilleure intégration politique.*” (Diversity reigns, integration marks time: The Chamber of Commerce analyses the socio-economic contribution of foreigners and argues for better political integration.)<sup>5</sup> While underlining that 43 per cent of the inhabitants of Luxembourg are not

<sup>2</sup> In 1988 NGO Asti refused to pay the contribution of three of its employees for the professional chambers arguing “no taxation without the right to vote”. This citation of Asti in court triggered a judicial process that led to the affairs Asti 1 and 2 at The European Court of Justice (affaire Commission c/Luxembourg, C-118/92, Rec. 1994, p. I-1891).

<sup>3</sup> Dubajic, Nenad, Le vote des étrangers au Luxembourg. Evolution de 1999 à 2005, in: *Migrations Société*, XIX, 2007, p. 129-140.

<sup>4</sup> <http://www.clae.lu/html/m3sm2.html>.

<sup>5</sup> [http://www.cc.lu/uploads/media/AT\\_12.pdf](http://www.cc.lu/uploads/media/AT_12.pdf)

citizens and 75 per cent of wage earners and entrepreneurs are not Luxembourgers, the Chamber of Commerce pointed out the democratic deficit in the political representation of foreigners. For the national elections of 2009, 70 per cent of electors were either non-actives (50 percent of electors, mainly retired persons) or wage earners in the public service (20 per cent of electors). Only 45 per cent of the resident population has the right to vote in national elections! The Chamber's report proposed that foreigners participate in parliamentary elections after five years of residence in the Grand Duchy. The Chamber also pleaded for facilitating the acquisition of Luxembourg nationality.

Second, at the initiative of Asti, a hundred institutions and organisations from Luxembourg have joined forces in the 'Making Luxembourg' campaign to put an end to racism and promote solidarity among people living in the Grand Duchy.<sup>6</sup> While companies can sign up to become a partner of the initiative, pledging to support diversity and tackle racism in their business, individuals can create their own avatar on a t-shirt design to take on the issue of racism and discrimination in everyday life. To become an ambassador for the scheme, one simply has to design an avatar, listing what makes one 'one hundred per cent Luxembourger and zero per cent racist'. This can then be shared on Facebook and can also be turned into a t-shirt.

These two actors, Asti and Chamber of Commerce, joined forces at the end of 2012 to move forward the debate on political participation.

In January 2013, this was taken up on the political stage where it was resolved that all Luxembourg residents should have the right to vote in national elections by 2019. The (socialist) Minister for Finance, Etienne Schneider, said in an interview with the French web-edition of the most read daily newspaper, *Luxemburger Wort*, on 16 January 2013: 'I am convinced that all those who live, work, have children, and contribute through their taxes should have the right to decide on the policies of a country, to participate in decision-making.'<sup>7</sup> (Socialist) Foreign Minister, Jean Asselborn, issued the same statement a few days later on RTL.<sup>8</sup>

Schneider was unambiguously supported by several business groups. Pierre Gramegna, head of the Chamber of Commerce, supported the idea focusing on the importance of the private sector being politically represented on the national level. 'The business model of Luxembourg is outward looking and international,' Carlo Thelen, the Chamber's chief economist, observed. 'Today, 40 per cent of people living in Luxembourg are not really involved in politics. This must change. The law on nationality should also become more flexible', he added.

Moreover, a TNS-Ilres study, published on 29 January reveals that more than two-thirds of Luxembourg residents say the country's voting system is not representative, with the proportion substantially higher among foreigners (85 per cent) than nationals (59 percent). 70 per cent of people polled want non-nationals to be able to vote in national elections. Additionally, 54 per cent of Luxembourg respondents said that giving non-nationals the right to vote would help tackle future challenges.

The same day, the Chamber of Commerce, the Chamber of Craftsmen ("Chambre des métiers") and Asti organised a conference on "Le droit de vote pour tous" ("Voting rights for all"), where for the first time a Social Christian politician (President of Parliament Laurent Mosar) accepted to discuss the issue of revising voting rights in national elections.

<sup>6</sup> <http://www.makingluxembourg.lu>

<sup>7</sup> <http://www.wort.lu/fr/view/schneider-pour-le-droit-de-vote-pour-tous-50f6a783e4b0092f07fccc25>

<sup>8</sup> <http://tele.rtl.lu/magazin/kloertext/385209.html>

For the first time, among nearly all political parties, a debate has appeared on the necessity to draft a law during the next few years that will grant non-nationals the right to vote for national elections in 2019. At the same time Luxembourg's Minister for Justice, François Biltgen, wants to present a revised law to the parliament in 2013 and has launched a debate on the nationality law where not only political parties but also the whole of civil society is invited to participate.

## **1. Eligibility: Who has electoral rights under national law?**

### ***1.1 Citizen residents***

**Age:** The age for voting and running as a candidate is eighteen years. It is the same in all types of elections. The right to vote was set at eighteen years of age, down from the previous 21 year age of eligibility, by the Electoral law of 18 February 2003.

**Mental disabilities:** Adults under guardianship are disenfranchised (Art. 6 of Electoral law).

**Persons convicted of criminal offences:** Criminal convicts and persons, who by way of sanction, are deprived of the right to vote are disenfranchised (Art 6 of Electoral law). Former criminals are not disenfranchised.

### ***1.2 Citizens abroad***

Residence in the country is a condition for the franchise both for casting votes and for running as a candidate in local elections (Art. 8, 9, 10 of Electoral law) and for running as a candidate in national elections (Art. 2, 4 of Electoral law).

Citizen residents who are temporarily absent on Election Day can cast their from abroad for all types of election.

Citizens who reside permanently abroad can only cast votes by post vote for national elections and cannot run as candidates.

### ***2.3 Foreign residents:***

All foreign residents who meet certain residence or other conditions enjoy electoral rights in local elections. Non-national EU-citizens were granted this right by the law of 28 December 1995 and third country nationals by the law of 18 February 2003.

## **2. Electoral rights of EU citizens**

### ***2.1 Local elections:***

The directive 94/80/EC has been implemented since the local elections of 1999. Luxembourg was the only Member State invoking derogations. Non-national EU citizens could not stand for the office of head or member of the executive committee (mayor or alderman) of a municipality. By the law of 13 February 2011, these derogations were removed and the right to vote and stand for candidate for all local political offices was also opened to third country nationals.

Luxembourg restricted the right to vote to non-national citizens of the Union who have resided in its territory for six of the seven years period preceding the elections. Regarding the right to stand as a candidate, Luxembourg required non-national citizens of the

Union to have their legal domicile in the territory of Luxembourg and to have resided there for twelve of the last fifteen years before submitting their application for registration. These conditions were reduced by the law of 18 February 2003 to five years for both the right to vote and to stand as candidate.

While national citizens are automatically registered, non-national EU citizens who wish to participate for the first time in local elections in Luxembourg have to request registration on the electoral roll of their municipality, which are continuously updated by the municipal executive.

## **2.2 EP elections for EU citizens residing in the country**

EU citizens residing in Luxembourg had, for the first time, the possibility to vote for EP elections in 1994, under the condition that they had resided in the country for five of the six years prior to the elections or else for ten of the previous twelve years (law of 28 January 1994). Since the law of December 19 2008, non-national EU citizens must reside in the country for at least two years before the day of EP elections to be eligible to vote and at least five years if they are to run as a candidate.

EU citizens who wish to participate for the first time in EP elections in Luxembourg have to request registration on the electoral roll of the municipality in which they reside. The request must be accompanied by a formal declaration stating the applicant's nationality; address in Luxembourg; where applicable, the locality or constituency of the home Member State on the electoral roll of which their name was last entered; that they will exercise their right to vote in Luxembourg only; and that they have not been deprived of the right to vote in their home Member State (in case a false declaration is made, the legally established penalties are applicable). A valid identity document must be presented, as well as an official document proving the applicant's duration of residence.

62 days before Election Day the municipal executive sends a copy of the electoral roll, broken down by nationality, to the competent minister who informs the other Member States which of their nationals have been registered in Luxembourg. When the Luxembourg government is informed by another Member State that a national of that state or a Luxembourg national is also registered on the electoral roll for the EP elections in that other Member State, it will forward this information to the municipality concerned. These persons will not be allowed to vote for the EP elections in Luxembourg (Art. 9 of Electoral law).

## **2.3 EP elections for national citizens abroad.**

The electoral rights of national citizens abroad for EP elections are the same as for participation in national elections. There are no specific procedures for exercising EP electoral rights from third countries.

# **3. Exercising electoral rights**

## **3.1 National and regional elections**

### **4.1.1. Voter registration**

Eligible voters are automatically registered in the electoral register if they are citizen residents. Citizens residing abroad are enfranchised. However, to vote in national elections, citizens of Luxembourg residing abroad must request their polling card from the municipal



executive between ten weeks and 30 days before election day. Foreign residents are not enfranchised for national elections and regional elections do not exist in Luxembourg. Third country nationals are enfranchised for local elections only, while EU citizens are enfranchised for both local and EP elections.

#### **4.1.2. Casting the vote**

Citizen residents cast their votes at the polling station in the municipality of their habitual residence, where they usually reside and where they are registered as voters (Art. 10 of Electoral law). In case of absentee voting, citizen residents can only use postal voting, addressed to the committee of burgomasters and deputy burgomasters of the municipality where there are registered as voters, at the latest 30 days before the elections (Art. 171 of Electoral law).

#### **4.1.3. Running as candidate**

Foreign residents and Luxembourg nationals residing abroad cannot run as candidates in national elections.

#### **4.1.4. Assimilated or special representation of citizens residing abroad**

The model of ‘assimilated representation’ – whereby external voters are registered to a particular voting district – is used in Luxembourg. Citizens residing abroad are registered to a particular voting district. The municipality of the last common domicile is regarded as their municipality of registration in the Grand Duchy of Luxembourg. If the citizen residing abroad was born in Luxembourg but never resided in Luxembourg, the place of birth is considered as his/her municipality of registration. For those who were not born in Luxembourg and never resided in Luxembourg, the City of Luxembourg is regarded as their municipality of residence.

### **3.2 Local elections**

#### **4.2.1. Voter registration**

For national residents, voting is compulsory. They are automatically registered in the electoral roll at the age of eighteen. Foreign residents, by contrast, must actively apply to be included on the electoral roll.

For EU-citizens and third country nationals, the registration procedure is the identical. They must register on the electoral roll at least three months before the elections (until the law of 2011 they had to register eighteen months before election day). Several documents must be presented at the time of registration on the electoral roll in the commune of residence. These are as follows:

1. A formal written declaration specifying: nationality and address of the applicant in the territory of the Grand Duchy of Luxembourg; where applicable, the locality or constituency of the home Member State on the electoral roll of which their name was last entered; that they will only exercise their voting rights for local council elections; that they have not been deprived of voting rights in their member state of origin.

2. A currently valid identity document.

3. A certificate documenting that they have been resident in Luxembourg for at least five of the six years prior to registration. The application to be included in the electoral roll for local elections must be signed and dated. A receipt must be given to the committee of

burgomasters and deputy burgomasters who preside over the applicant's municipality of residence.

#### **4.2.2. Local franchise for non-citizen residents**

Regarding the right to stand as a candidate, Luxembourg requires that EU citizens must have resided in the country for at least five years before submitting their application to be registered in the electoral roll. Third country nationals must not only fulfil this condition, but must also be able to prove that they were in possession, during this minimum period of five years, of a residence permit, a valid passport and a valid visa (for citizens of those countries who must have a visa to reside in Luxembourg). Finally, by contrast with citizen residents, non-citizen residents are not registered automatically on the electoral rolls. Thus, as noted in a statement of NGO Asti in February 2012, in the field of duration of stay and the composition of electoral lists, twenty years after the Maastricht Treaty, the transitory derogation clause for countries with more than 20 % non-national EU citizens in their resident population still applies in Luxembourg.<sup>9</sup>

The same conditions for foreign residents to acquire the right to vote in local elections must also be met to be eligible to run as a candidate.

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<sup>9</sup> <http://www.asti.lu/2012/02/14/joyeux-anniversaire-maastricht-quand-feterons-nous-sans-derogations/>

