

# Spotlight

Overseas voting in presidential elections: representative democracy, electoral integrity and the situation in EU States

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# **Abstract**

The Government is proposing to amend the Constitution to allow for the extension of voting rights in presidential elections to Irish citizens overseas. This L&RS Spotlight examines the policy objectives and the implications of this proposal, in particular the consequence for representative democracy and electoral integrity, and presents comparative information on this practice in other EU States.

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# Introduction

There is no general right for Irish citizens residing overseas to vote in Presidential elections (or in general elections or referendums). Voting for citizens living abroad is limited to the diplomatic corps and their spouses posted abroad, and to members of the defence forces who, under the *Electoral Act 1992 s12*, are "deemed to be ordinarily resident in the State." The only other exception is that Irish citizens residing abroad who have lived in the State in the last 18 months may return to the State and vote 'in person.' These citizens are interpreted as being "ordinarily resident" in the State. The <u>Good Friday Agreement 1998</u> (Constitutional Issues) guarantees the right of all people born on the island of Ireland to Irish citizenship. Citizens residing in Northern Ireland are not afforded a vote in Presidential elections; the franchise applies only to citizens ordinarily resident in the State (Electoral Act 1992, s7(2)).

The Government will publish a Bill in 2019 which proposes to amend the Constitution to allow for the extension of the franchise in Presidential elections to Irish citizens residing abroad.<sup>3</sup> The Bill will fulfil a commitment made by the (then) Taoiseach, while on official business in the USA in March 2017, to hold a referendum on the issue.<sup>4</sup>

The right to vote in Presidential elections is provided for in Article 12.2 of the Constitution (Box 1) which clearly links the scope of the franchise in Presidential elections to that applicable in Dáil elections (provided for in Article 16.1.2). The Government has indicated that the proposed constitutional amendment will remove this link to allow for this extension of the franchise in the case of Presidential elections.<sup>5</sup> While there is some debate over whether a constitutional amendment is required to introduce emigrant voting (Box 1) it is not the focus of this *L&RS Note* which is an analysis of the policy proposal and the political implications if it is implemented.

Three key reasons for the Government's proposal to extend voting rights to Irish citizens residing abroad can be discerned from its statements: that it is in keeping with practice in the majority of other States, is consistent with Ireland's Diaspora Policy and that it is in line with the recommendations of the Constitutional Convention.<sup>6</sup> The Convention was established by a resolution of both Houses of the Oireachtas in 2012 to consider and make recommendations on certain topics - including this proposal to extend the franchise to overseas citizens for Presidential elections - as possible future amendments to the Constitution<sup>7</sup> (its recommendations are discussed in Section 5 below and in Appendix 2). Most recently, the Taoiseach Leo Varadkar stated that the President should be elected by the Irish nation, as opposed to the Irish state.<sup>8</sup>

This *Spotlight* is an analysis of the policy objectives behind proposals to extend voting rights to overseas citizens in general, and the potential political implications if this proposal is enacted in

<sup>2</sup>. Presidential Elections Act 1993 as amended.

<sup>&</sup>lt;sup>1</sup> Electoral Act 1992 s7(2).

<sup>&</sup>lt;sup>3</sup> Department of the Taoiseach (2019) Legislative Programme.

<sup>&</sup>lt;sup>4</sup> Department of the Taoiseach Press Release (12 March 2017) <u>Taoiseach's announcement on Voting rights</u> in Presidential elections for Irish citizens abroad [accessed 27 November 2018]

<sup>&</sup>lt;sup>5</sup> Department of Housing, Planning and Local Government and Department of Foreign Affairs and Trade (March 2017) <u>Voting at Presidential Elections by citizens residing outside the State: Options Paper</u>

<sup>&</sup>lt;sup>6</sup> Department of Foreign Affairs (2015) The Global Irish.

<sup>&</sup>lt;sup>7</sup> <u>See here</u> for background and make-up of the Constitutional Convention [accessed 27 November 2018]. See Appendix 2 for summary of its recommendations.

<sup>&</sup>lt;sup>8</sup> In a statement to the Dáil, reported in Belfast Telegraph, 13 February 2019 'Northern Ireland residents should have vote in Irish presidential elections'

particular for representative democracy and the integrity of the electoral process. It is estimated that approximately 3.6 million Irish citizens currently reside outside of the State who are citizens by virtue of being born on the island of Ireland, as a result of a parent's Irish citizenship (where that citizenship is from being born on the island, or who have citizenship through the Foreign Births Registration process). This figure includes 1.87 million people entitled to Irish citizenship by virtue of being born in Northern Ireland. It is estimated that approximately 820,000 Irish citizens born in the State reside abroad, the remaining Irish citizens being second-generation (see Appendix 1).

Extending voting-rights to citizens who reside outside of a state confronts a fundamental theoretical question regarding how to appropriately conceptualise a political community <sup>10</sup> and has implications for sovereignty and democracy. The implications of this proposal for representative democracy and electoral integrity will depend to a large extent on choices made about policy implementation. This *Spotlight* is intended to aid Members to contribute to this policy-making process in advance of the Government's publication of the *Amendment of the Constitution* (Extending the Franchise at Presidential Elections) Bill.

While much of the material presented on the political implications of this proposal is applicable to **the Seanad Reform Group's proposal to include overseas voters in the electorate**, the *Spotlight,* and the comparative data on which it draws (set out in full in Section 4), focuses on the proposal to extend the franchise in Presidential elections.

The remainder of the Note is set out as follows:

- Section 2 draws on political theory, political science and migration studies literature to
  examine the arguments for and against the extension of voting rights to citizens residing
  overseas, including an analysis of different perspectives on the relationship between
  citizenship and territory;
- Section 3 presents the policy options for the implementation of the overseas franchise, building on the analysis set out in Section 2;
- Section 4 explains how overseas voting is implemented in EU Member states which have extended the franchise to overseas citizens for Presidential election, and examines the extent to which features of a qualified or an expansive regime dominate (using the policy options set out in Section 3);
- Section 5 considers the implications of the different policy options for democratic representation and electoral integrity in Ireland.
- Section 6 (Conclusions) draws together key themes and sets out possible ways to ensure the inclusion of overseas citizens in the electoral process while minimising the risks that the policy could pose to representative democracy and ensuring electoral integrity.

# Methodological approach

This *Spotlight* examines the implications for representative democracy and electoral integrity of the proposal to extend the franchise to overseas citizens. It draws on empirical and theoretical research published in international, peer-reviewed journals in the political science, political theory, political geography and migration studies fields for Sections 2 and 3 but also throughout the Spotlight. The sources and methodological approach to data presented throughout the Spotlight, and in particular in Sections 4, are outlined in detail in the Appendices.

<sup>9</sup> Department of Foreign Affairs (2017), <u>Irish Emigration Patterns and Citizens Abroad</u>, parag. 5 and 16-18.

<sup>&</sup>lt;sup>10</sup> Burean Toma (2011) 'Political participation by the Romanian Diaspora' in Sum Paul and R.F.King (edrs) *Romania under Basescu* Lanham: Lexington Books p.3.

## Box 1: Constitutional provisions relevant to the proposal in this Bill

The right to vote in Presidential elections is provided for in Article 12.2 of the Constitution:

"Every citizen who has the right to vote at an election for Members of Dáil Éireann shall have the right to vote at an election for President." (Article 12.1)

#### Article 16.1.2:

"i. All citizens, and

"ii. Such other persons *in the State* as may be determined by law. [emphasis added]

without distinction of sex who have reached the age of eighteen years who are not disqualified by law and comply with the provisions of the law relating to the election of Members of Dáil Éireann, shall have the right to vote at an election for Members of Dáil Éireann."(Article 16.1.2)

Article 16.1.2, as it currently reads, was inserted by the Ninth Amendment to the Constitution (1984). This amendment removed the condition that electors in Dáil elections had to be Irish citizens in order to provide for the right of British citizens residing in the State to vote in Dáil elections. The franchise in Presidential elections remains limited to Irish citizens, while non-citizens resident in the State, are now constitutionally permitted to vote in Dáil elections if the Houses of the Oireachtas pass legislation to this effect (to date this right has only been extended to British citizens residing in the State).

There is some debate as to whether or not it is necessary to amend the Constitution to provide for emigrant voting, though there is little commentary or case law on the issue. On the one hand, it has been argued that Article 16.1.2 gives *all* citizens (without reference to territory) the right to vote in Dáil elections and, as a consequence, Article 12.1 extends voting rights to this same group (*all* citizens) for Presidential elections. On the other hand, the *Electoral Act 1992* has interpreted Article 12.1 and 16.1.2 to refer to all citizens ordinarily resident in the State. Leading constitutional lawyer, Gerard Hogan, has suggested that while it would be possible to extend the franchise to emigrant voters for Presidential and General elections under the current constitutional arrangements, this right to vote may need to be in some way time limited to comply with Article 5 of the Constitution. Article 5 states that "Ireland is a sovereign, democratic and independent State." An open-ended extension of voting rights to people who have long since departed the jurisdiction could be interpreted as undermining values of sovereignty and democracy.<sup>12</sup> Further, where the aim is to allow for an extension of the franchise in the case of Presidential elections only, a constitutional amendment is necessary to de-couple Article 12.1 from 16.1.2.

<sup>&</sup>lt;sup>11</sup> A right of Irish citizens to vote in British elections was conferred by the *Ireland Act 1948*.

<sup>&</sup>lt;sup>12</sup> Glór na Deoraí, (1993) Give a Voice to the Voiceless: The Case for Emigrant Voting Rights Dublin.

# 2. Policy analysis: Why enfranchise citizens residing abroad?

Many democratic states have extended the franchise to overseas citizens for national elections, a trend which has accelerated since the 1980s. Eleven of the 14 EU Member States which directly elect their President

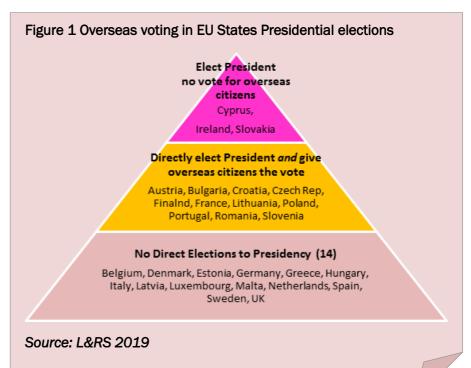
enfranchise overseas citizens (Figure 1). 13

# 2.1 Policy goals

Why do states choose to extend the franchise to citizens overseas?

At least five policy goals have been identified by political scientists, migration specialists and legal analysts for extending the franchise to overseas citizens.

First, extending voting to citizens abroad is the outcome of the home states' growing interest in maintaining strong



connections with its citizens abroad and in forging loyalty and attachment.<sup>14</sup> It is argued that the impact of migration on citizens has changed; migration is either more transient or, where permanent, cheap airfares and the internet have made it far easier for citizens to stay connected and to be politically informed and, therefore, to vote in an informed way.<sup>15</sup>

**Secondly**, in some cases governments propose the extension of voting rights to ensure the continuing flow of remittances and to draw resources from emigrants via development projects (as part of broader diaspora engagement policies).<sup>16</sup>

**Critics of the first and second policy rationales** argue that, while fostering links with citizens abroad for cultural or economic reasons is a valid policy objective, the extension of voting rights is not the only way to engage positively with the diaspora. Political theorist and expert on issues of citizenship, immigration and diversity, Honahon argues that "there may be more appropriate ways to award the recognition warranted for those who share national origins or cultural identity." Political geographer, Collyer, highlights other benefits to citizenship and notes that "of all the various elements which may be linked to the status of non-resident citizens" [e.g. protection, the

<sup>16</sup> Laufleur Jean-Michel (2015) 'The enfranchisement of citizens abroad: variations and explanations' *Democratisation* Vol. 22(5) pp.840-860, Mencutek and Erdogan (2015) 175;

<sup>&</sup>lt;sup>13</sup> See Section 4 of this Paper for detailed analysis of this practice for Presidential elections in EU States.

<sup>&</sup>lt;sup>14</sup> Baubock Rainer (2005) 'Expansive citizenship – voting beyond Territory and Membership' *Political Science and Politics* Vol.38 no.4 pp.683-687

<sup>&</sup>lt;sup>15</sup> Sahin-Mencutek and Murat Erdogan (2015) 'The Implementation of Voting from Abroad: evidence from 2014 Turkish Presidential Election' *International Migration* vol.54(3) *p.175; Baubock (2005) p.683* 

<sup>&</sup>lt;sup>17</sup> Honahan Iseult (2013) Presentation to the Convention in Constitutional Convention (2013) Fifth Report

right to return, favourable financial arrangements to encourage investment], "the right to political participation is the most controversial"<sup>18</sup> in terms of its potential to change the nature of representative democracy (discussed further in 2.2 and throughout this *Spotlight*).

Thirdly, the political motivation of the parties who propose to extend the franchise are frequently very clear; political parties who hold the majority introduce it because they believe expatriates will support them over their competitors. Donservative parties in the UK in the 1980s and in Austria in the 1990s introduced absentee ballots with this expectation. Case studies of Hungary, Mexico, Turkey and Honduras also found that parties that support extending the franchise to overseas citizens do so to maximise their votes, regardless of their ideological stance. That political motivations matter can be seen in the implementation of this policy. For example, when the Bulgarian Electoral Code was amended to reduce the number of polling stations abroad for the 2016 Presidential Election, it was widely seen as politically motivated and disadvantageous to the minority diaspora residing in Turkey. For Romanian overseas citizens, restrictions on the number of polling stations abroad in the 2014 elections led to the closure of polling stations while citizens queued outside and ultimately to the resignation of the Foreign Minister. The overseas vote is considered to have been instrumental in determining the result of that same Presidential election in favour of the non-government candidate (Box 3, Section 5 below).

**Fourthly**, some proponents are motivated by **normative**, **democratic objectives**; the expansion of voting rights to citizens abroad is in the name of the democratic principles of universal suffrage and equal participation.<sup>24</sup> The right to vote is a fundamental right under the 1966 International Covenant on Civil and Political Rights.<sup>25</sup> Proponents argue that suffrage for emigrants is "effectively suspended for the period of migration" and that sending states have a "human-rights-based obligation to provide expatriates with such rights."<sup>26</sup> A non-resident citizen is seen as losing all voting rights if he/she may not vote in the host country or the country of origin.<sup>27</sup> This is presented as a particular issue in the EU as it is argued that EU citizens are dis-enfranchised EU citizens (in national elections) as a result of exercising their rights of free movement.<sup>28</sup>

Participation of third country citizens residing in the EU and of EU citizens residing in third countries' p.16. 'European Parliament Policy Department (2013) p.16

<sup>&</sup>lt;sup>18</sup> Collyer (2014) 'A geography of extra-territorial citizenship: explanations of external voting' *Migration Studies* Vol.2 no.1 pp. 55-72 p.56

<sup>&</sup>lt;sup>19</sup> Baubock Rainer (2005) cited above. p. 684.

<sup>&</sup>lt;sup>20</sup> Sahin-Menutek and Erdogan (2015) p. 176

<sup>&</sup>lt;sup>21</sup> Sahin-Menutek and Erdogan (2015) p 183,

<sup>&</sup>lt;sup>22</sup> 'Another day of drama over Bulgaria's electoral law changes' The Sofia Globe 22 April 2016. Republic of Bulgaria, Electoral Code as amended March 2017(Article 14) <u>available to download from this official site</u> For analysis see article by an electoral observer for the Bulgarian Presidential elections (2016) 'The Bulgarian Presidential Election: A Kafkaesque Scenario' published on website of German Green Political Foundation - Heinrich Foundation Boll Stiftung

<sup>&</sup>lt;sup>23</sup> Barbieru M (2015) 'Accuracy Data of the Presidential Voting Outcomes to an Inferential Bias of the New Romanian Electoral Code and Electronic Voting 2014 (2015)' <u>RSP (Revista de Stiinte Politice. Revue des Sciences Politiques) peer-reviewed journal of University of Craoiva</u> No.45

<sup>&</sup>lt;sup>24</sup> Sahin-Mencutek and Murat Erdogan (2015) 'The Implementation of Voting from Abroad: evidence from 2014 Turkish Presidential Election' *International Migration* vol.54(3) p.175.

<sup>&</sup>lt;sup>25</sup> Lappin Richard (2016) 'The Right to Vote for Non-Resident Citizens in Europe' *International and Comparative Law Quarterly* Vol.65, October 2016 pp. 859-892. P. 874

Rhodes and Harutyunyan (2010) 'Extending citizenship to emigrants: democratic contestation and a new global norm' *International Political Science Review* 31(4), Lappin Richard (2016) cited above p.874
 European Parliament DG Internal Policies Policy Department C (2013) *Franchise and Electoral*

<sup>&</sup>lt;sup>28</sup> Sahin-Mencutek and Murat Erdogan (2015)

**Critics of the proposal** that enfranchising overseas citizens is necessary to preserve the fundamental right to vote argue that it is centred on the assumption that *all* emigrant citizens abroad are dis-enfranchised in their country of residence when this is not always the case. Political scientist and migration analyst, Lafleur, notes that the combined effect of enfranchising citizens overseas, and the extension of the franchise to include non-citizen residents, is that some emigrants today can vote in multiple polities without having to move; and some emigrants who hold dual citizenship have been able to vote in two countries for several decades. As such, granting voting rights to overseas citizens may, in fact, create another inequality in voting rights (i.e. some people have two votes, others one) and this tends to be overlooked by those advocating it. Lafleur notes that in cases where dual citizenship is held, both states treat their citizens as if holders of voting rights in a single polity. It is suggested that if the goal is to guarantee equality of voting rights for all citizens, each citizen should have an opportunity to a *vote* in one polity and that extending the franchise to all overseas citizens is not necessarily the best way to achieve this.

**Fifthly,** the franchise has been extended in many states as part of a transition to democracy. In this context, a number of separate arguments are presented.

Proponents present the policy as in line with democracy's **historical expansion of suffrage rights to** marginalised groups, including those without property, those who do not pay taxes, the illiterate, national minorities, women, 18-year olds, prisoners and, now, emigrant citizens.<sup>31</sup>

Others explain that the policy has in some respects become a 'democratic norm,'32 a signal of democratization. For example, robust quantitative data explains the diffusion of external voting rights as caused by waves of democratisation that generalised certain 'democratic norms' across borders since the 1990s.<sup>33</sup> One study using data from 210 states found a strong mimic effect which suggests that the policy became a signal of a government's commitment to democratisation. It demonstrates how a neighbouring state's recent enactment of overseas voting is the best predictor that a country will enfranchise its own diaspora and a more powerful explanatory variable than any other variable tested.<sup>34</sup>

This helps to explain why diaspora enfranchisement is also common in autocracies which seek to establish democratic credentials – the extension of the franchise is a visible way to demonstrate the commitment to fair elections even while limited turnout and geographical remoteness among overseas voters mean that the risks of this innovation snowballing into regime-threatening democratic change are slim. Apart from the mimic effect and fig-leaf democracy in autocratic states, clear reasons for why extending the franchise to overseas citizens contributes to a transition to democracy are found. In many EU States the overseas franchise has occurred as part of a **transition to democracy**. In Spain, Portugal and Central and Eastern European States, extending the franchise to citizens overseas was a way to restore political rights and enhance inclusivity, to make amends for past human rights abuses, and to include those forced into exile

<sup>&</sup>lt;sup>29</sup> Lafleur Jean Michel (2015) p. 856

<sup>&</sup>lt;sup>30</sup> Honahan Iseult (2013) p.4; Sahin-Mencutek and Murat Erdogan (2015)

<sup>&</sup>lt;sup>31</sup> Lappin Richard (2016) p. 874

<sup>&</sup>lt;sup>32</sup> Rhodes and Harutyunyan (2010) cited above

<sup>&</sup>lt;sup>33</sup> Lafleur Jean Michel (2015) p. 845

<sup>&</sup>lt;sup>34</sup> Turcu Anca and R.Urbatsch (2015) 'Diffusion of Diaspora Enfranchisement Norms: a multinational study' *Comparative Political Studies* Vol. 48 (4) 407-437

<sup>&</sup>lt;sup>35</sup> Turcu Anca and R.Urbatsch (2015)

during the previous, authoritarian regime and unlikely to return.<sup>36</sup> In Romania, Poland, Bulgaria, Czech Republic, Estonia, Latvia and Lithuania, restitution laws in the early 1990s gave former citizens - who were forced into exile during the communist regime - the right to re-acquire citizenship and, in most cases, the right to vote.<sup>37</sup>

There is a distinction between on the one hand, extending citizenship (and perhaps voting rights) to those who lost it when forced into exile and, on the other, assigning citizenship on the basis of ethnicity. The Hungarian government took the latter approach in 2004 when it proposed to extend citizenship to up-to-three million ethnic Hungarians permanently residing in neighbouring states (Romania, Slovakia). The proposal was defeated in a referendum with opponents arguing against it on the basis that assigning voting rights could be the next step. Voting rights, in this instance, were perceived as a risk to the integrity of the electoral process on the basis that overseas citizens, who had never resided in the state, could have an effect on the outcome of an election disproportionate to their stake in the result. <sup>38</sup>

**Critics of the proposal** that a transition to democracy should include an extension of the franchise to overseas citizens argue that, while enfranchising citizens abroad is rational as part of a transition and in particular where citizens were forced into exile by the former regime, it can be controversial for the workings of representative democracy.<sup>39</sup> In fact, it is argued that the contribution of a franchise for overseas citizens to democracy is controversial, regardless of which policy goal motivates its proponents. It is controversial largely because of the fundamental questions it raises about citizenship, territory and the assignment of voting rights and the potential it has to affect the nature of representative democracy and the integrity of the electoral process. <sup>40</sup> These questions are next considered.

# 2.2 Citizenship, territory, voting rights and representative democracy

Central to the arguments for and against enfranchising overseas citizens is the perspective taken on how voting rights are allocated and the relationship between citizenship and territory.<sup>41</sup> In political theory three distinct approaches characterise the debate on voting rights.

A **traditional republican approach** rejects the extension of voting rights to overseas citizens as it is inconsistent with the 'polity' which emphasises territorial membership. It is argued that only citizens who are present in the polity can govern themselves by participating in making laws and, as such, voting rights must be an exclusive privilege of these citizens who, by definition, are residents. A republican polity is open to newcomers (so it is more willing to open up voting rights to residents who have lived in the State for a certain period but who are not citizens).<sup>42</sup>

The **ethnic nationalist perspective** would support the proposal to extend voting rights to overseas citizens as it conceives of the nation as a community of culture, imagined descent and

<sup>36</sup> Baubock (2005) p.684

<sup>&</sup>lt;sup>37</sup> Rainer Baubock, B Perchinig and W. Sievers **edrs (2009)** *Citizenship Policies in the New Europe* Amsterdam: Amsterdam University Press. Introduction.

<sup>&</sup>lt;sup>38</sup> Baubock Rainer (2005) pp.683-687 p. 68.

<sup>&</sup>lt;sup>39</sup> Sahin-Mencutek and Erdogan (2015)

<sup>&</sup>lt;sup>40</sup> Sahin-Mencutek and Erdogan (2015) p.175

<sup>&</sup>lt;sup>41</sup> Baubock Rainer (2005) Chair of the Board of IMISCOE, the academic network dedicated to the study of migration in Europe based at University of Florence. <u>See here</u>.

<sup>&</sup>lt;sup>42</sup> Baubock Rainer (2005) cited above pp.683-687. Honohan (2013) cited above.

destiny. From this perspective it is imperative to include external citizens in the citizenry and not so important to include resident non-citizens.<sup>43</sup>

From the **liberal democratic perspective**, a number of principles influence decisions about the allocation of voting rights, some which lend qualified support to including overseas citizens and others which reject it.

First, the principle of territorial inclusion, which like the republican perspective sees the polity as a community of individuals who are subject to the same political authority, does not lend support to extending voting rights to overseas citizens. In fact, such voting rights could be seen as undermining the integrity of the democratic process by giving equal rights to citizens who are not subjected to the laws of the polity.<sup>44</sup>

Second, liberal democracy's 'all-affecting principle' which proposes that what affects all shall be

approved by all<sup>45</sup> - lends some support to the proposal provided that some of their vital interests of overseas citizens are affected by decisions taken in their original state. In her address to the Constitutional Convention, Honahan argues that this principle lends support to the extension of voting rights to some citizens overseas e.g. citizens abroad who are forced abroad and continue to be affected by laws e.g. diplomatic protection, transmission of citizenship.<sup>46</sup>

Third, the 'stakeholder citizenship principle' combines insights from the republican and liberal-democratic

The stakeholder principle on citizenship and voting rights 'retains the attachment of voting rights to citizens who are members of a self-governing polity but proposes to give stakeholders a claim to membership.'

(Baubock, 2005)

perspectives; retaining the attachment of voting rights to citizens who are members of a self-governing polity (based on territorial belonging), it proposes to give stakeholders a claim to membership. Stakeholders are those whose fundamental rights are dependent on the protection of a particular polity and whose well-being is tied to the common good of that polity. Takeholders have life-long connections to the State.

Besides an ethnic nationalist approach, liberal democracy's stakeholder principle offers most support for the extension of voting rights to overseas; though it supports a qualified, rather than a blanket, extension. Operationalising the stakeholder citizenship concept is not without problems. For Baubock, it may be operationalised by giving voting rights to ex-patriates who have lived in the country, <sup>49</sup> For Honohon, to overseas citizens who have lived in the state *and* who maintain the possibility of returning to live or who spend considerable time in the state. Honahan argues that the political rights assigned under the stakeholder principle are designed to give overseas citizens a say in matters that determine their future lives (rather than being designed to compensate for some past wrong or to recognise or foster a sense of belonging amongst the diaspora). Further, it is not

<sup>&</sup>lt;sup>43</sup> Baubock (2005) p.685

<sup>&</sup>lt;sup>44</sup> Baubock (2005) p. 685

<sup>&</sup>lt;sup>45</sup> Burean (2011); Honohan (2013), Baubock (2005)

<sup>&</sup>lt;sup>46</sup> Honahan (2013)

<sup>&</sup>lt;sup>47</sup> Baubeck, (2005)

<sup>&</sup>lt;sup>48</sup> Honahan Iseult (2013))

<sup>&</sup>lt;sup>49</sup> Baubeck (2005) p.686

necessarily proposed that the weight of overseas voters' vote is the same as residents, as their stake is arguably less.

In sum, while some support of the allocation of voting rights to overseas citizens is found in the political theory literature, the arguments point towards a qualified, rather than a expansive, extension of the franchise. Further, while extending the franchise to overseas citizens is a policy advocated by soft international law, 50 it is not a principle of international law which reflects the more qualified support for the proposal found in parts of the political theory literature. The most relevant European Court of Human Rights judgement - Shindler judgement - ruled that voting rights at the national level may be conditioned on residency on the grounds of a citizen's normative bond to their country of origin and the extent to which laws passed by that government would affect them.<sup>51</sup> The Court listed a number of grounds for its decision including that the extension of voting rights to all citizens residing abroad can, under certain circumstances, pose challenges to other democratic principles e.g. the integrity of the electoral process, the territoriality of citizenship rights and the 'all-affected' principle (see above). It identified four legitimate reasons for restricting the franchise for emigrant citizens: that (a) they may be less informed on country issues, (b) less able to influence electoral platforms (i.e. candidates and parties and the campaign), (c) not directly affected by decisions and (d) may have 'undue' influence on decision-making (i.e. have equal influence in result while being less affected by it).<sup>52</sup>

# Implications for representative democracy and electoral integrity

In spite of the qualified support for it found in political theory and international law, the extension of the franchise (with few restrictions i.e. to all citizens residing abroad) has been increasingly adopted in practice by democratic states and, as Section 4 of this paper demonstrates, it has been adopted almost without restriction in 11 of the 14 EU States which directly elect the President.

Noting a trend of low turnout amongst overseas voters (a trend which is also identified by L&RS in research set out in Section 4), political scientists have questioned the sincerity of the extension of the franchise in some (though not all) instances.<sup>53</sup> It is suggested that weak commitment to the policy may be caused by an apparent contradiction between the symbolic motivations behind an extension of the franchise to overseas citizens and the contribution, and perceived risks, its implementation can present to the democratic system. <sup>54</sup> The risks concern the challenges which extending voting rights to overseas citizens can pose to the democratic process and are primarily centred on:

 Whether citizens, who are comparatively unaffected by the outcome, should have an equal say in determining it, which leads to questions about the appropriate electoral impact of external votes vis-à-vis in country votes and whether or not they should have the same weight;

<sup>&</sup>lt;sup>50</sup> Soft law has been defined as "normative provisions contained in non-binding texts "and tends to cover those weak provisions of international agreements not entailing obligations." See <u>Fajardo in Oxford</u>
<u>Bibliographies</u>. For discussion of soft international law relevant to overseas voting see Lappin Richard (2016) 'The Right to vote for non-resident citizens in Europe' *International and Comparative Law Quarterly* Vol 65 pp.859-894 pp.871-2.

<sup>&</sup>lt;sup>51</sup> Lappin Richard (2016)

<sup>&</sup>lt;sup>52</sup> Lappin Richard (2016) pp.878-890

<sup>&</sup>lt;sup>53</sup> Collyer (2014) 'A geography of extra-territorial citizenship: explanations of external voting' *Migration Studies* Vol.2 no.1 pp. 55-72 Lafleur (2015)

<sup>&</sup>lt;sup>54</sup> Lafleur (2015) p.855

• Concern about the transparency and integrity of the electoral process where it is taking place in dispersed areas around the globe, <sup>55</sup> including a concern that practical issues around the organisation of elections are prioritised over the integrity of the electoral process. <sup>56</sup> Electoral integrity is defined as the electorate's trust that the process is fair and equitable, that votes are honestly cast by the voters who are entitled to the vote and that votes cast are accurately counted. Guaranteeing electoral integrity is the central consideration of electoral administration. Out-of-country operations are considered to be more susceptible to actual fraud and perceptions of fraud than in-country voting largely because of the challenges geography presents e.g. it is more difficult to supervise and harder to ensure independent observation by party agents. <sup>57</sup>

Whether these challenges become risks depends on a number of factors including the size of the overseas voter constituency relative to the resident constituency, the electoral system, and on other policy choices made on the implementation of a franchise for overseas citizens.

Section 3 sets out policy options from expansive to qualified regimes for overseas voters, while Sections 4 sets out the practice in EU States for Presidential elections. Section 5 sets out how the political implications for Ireland depend on the policy choices made by policy makers.

<sup>&</sup>lt;sup>55</sup> Lafleur Jean-Michel (2015) 'The enfranchisement of citizens abroad: variations and explanations' *Democratisation* Vol. 22(5) pp.840-860 p. 845.

<sup>&</sup>lt;sup>56</sup> Malay Michael (2018) 'The Secret ballot in Australia: what does it really mean and how secret is it really? IPSA Panel (July 24 2018) 'Electoral integrity and the quest for secret voting

<sup>&</sup>lt;sup>57</sup> Erben, Goldsmith, Shujaat (2012) 'Out-of-Country-Voting' *IFES White Paper, International Foundation for Electoral Systems* p. 4.

# 3. Policy Options: expansive and qualified regimes

To formulate a coherent policy on extending voting rights to overseas citizens, policy-makers must articulate a perspective on the relationship between citizenship, voting rights and territory explored in 2.2 above. This is the case regardless of which policy rationale(s) is primarily behind the proposal. This has not, to date, been clearly articulated by the Irish Government beyond stating that the Constitutional Convention recommended the policy, that other states have adopted it, and that it is in keeping with Ireland's policy to reach out to the global Irish (Box 2).<sup>58</sup>

Further, where a decision is made in principle to extend the franchise, the perspective taken on the relationship between citizenship and territory is central to the technical decisions which shape the form and process of external voting systems (including the criteria on which the vote is extended to overseas citizens, and voting and registration systems and processes).<sup>59</sup>

In general, the franchise can be extended in an **expansive or a qualified way** depending on:

- 1) **Electorate:** whether the franchise is extended to all or certain categories of overseas citizens e.g. only to citizens who have resided in the State; or only to citizens who have resided in the State recently (e.g. in the last 5, 10, 15, 20 years;
- 2) Institutions: whether votes of resident and overseas citizens carry the same weight;
- 3) **How the ballot is cast**: where rights are extended the ballot can be cast in person (in the State), in person (in the State of residence), or by post or by internet, with the latter two options placing the State more towards the expansive end of a spectrum;
- 4) **Registration process**: if registration is cumbersome the regime may be seen as qualified or restrictive in that overseas voters are not facilitated in registering and/or voting.

Factors at (1) and (2) directly determine the extent to which a regime is expansive or qualified by establishing the size of the external voter constituency and in what way its votes count for the outcome of an election. The size of the overseas constituency is also influenced by citizenship laws such as whether or not dual citizenship is permitted.

Factors at (3) and (4) indirectly affect how expansive the franchise is and are often discussed in the context of voter facilitation measures; allowing voters to vote by post or internet is frequently presented as a way to facilitate voters and maximise turnout in elections by reducing the amount of circumstantial non-voting. While postal voting can present challenges to the integrity of the electoral process (discussed in Section 5 below), allowing remote voting enables overseas voters who do not live near diplomatic missions/consular posts or other designated polling stations abroad and/or who cannot travel there to cast a vote. This places postal voting towards the expansive end of a spectrum. Further, where registration is straight-forward or automatic (e.g. where the state compiles a list of citizens overseas who must register as such when they leave the state), circumstantial barriers to voting are reduced.

Figure 2 below depicts the two extremes along a spectrum of expansive to restrictive regimes. The most expansive regime extends the vote to all citizens overseas, a vote which carries equal weight

<sup>59</sup> Collyer (2014) 'A geography of extra-territorial citizenship: explanations of external voting' *Migration Studies* Vol.2 no.1 pp. 55-72 p.62.

<sup>&</sup>lt;sup>58</sup> Appendix 3 sets out the recommendations of the Constitutional Convention in detail.

<sup>&</sup>lt;sup>60</sup> Oireachtas L&RS (2016) <u>L&RS Note: Voter Turnout in Ireland: measurement, trends and implications</u>

and which is counted in the same way as that of resident citizens; permits dual citizenship, permits voting by post or internet and presents few barriers to registration. At the restrictive or qualified end, a regime aims to identify and only enfranchise citizens with a stake in the home state (usually defined by years since the citizen emigrated), weights votes to reflect that an overseas citizens may have less of a stake in the outcome; provides for in-person voting at diplomatic representation/consular posts only and requires regular registration for inclusion on the overseas register. States may have expansive practices on some variables and restrictive ones on others (e.g. enfranchise all citizens and include few measures to facilitate voters).

#### Figure 2: A spectrum from most expansive to most qualified voting regimes for overseas citizens

- Citizens (with qualifications e.g. who lived in the State within a set number of years);
- Dual citizenship not permitted;
- Overseas voters elect to reserved seats (parliamentary elections) or votes weighted in favour of resident citizens (Presidential);
- In person voting only at set number of polling stations on one day;
- Must register for each election and a set period well in advance.

# Qualified Expansive

- All citizens (regardless of when they emigrated and including second generation);
- Dual citizenship permitted
- No weight attached to votes (resident and overseas votes are counted the same);
- Voting by post (internet) is permitted;
- Advance voting is permitted (over many days);
- Registration is automatic/close-to automatic.

Source: L&RS (2019)

The policy choices made on these four variables – **electorate**, **institutions** (**how vote is counted**), **the ballot and registration processes** – determine to a large extent the implications of extending the franchise for representative democracy and for the integrity of the electoral system. The implications of the same policy options in one state may differ from its implications in another depending on the size of the population of overseas citizens vis-à-vis the resident population, the electoral system, and other factors discussed below. Yet other motivations are frequently taken into account, and can dominate, when making these policy choices e.g. a desire to be inclusive and to reach out to all of the diaspora; a desire to minimise costs and complications with implementation, a desire to treat overseas citizens as other EU States do (see section 2.1).

Section 4 explains how overseas voting is implemented in EU Member states which have extended the franchise for Presidential elections, and examines the extent to which features of a qualified or an expansive regime dominate. Section 5 considers the implications of the different policy options for democratic representation and electoral integrity in Ireland.

# Box 2: Which of these policy rationales are found in the Irish case?

The analysis presented in section 2.1 finds economic, cultural, human-rights (normative) and political motivations behind the extension of the franchise to overseas citizens, as well as highlighting that in many (though not all cases) an overseas franchise was implemented to support a transition to democracy, and in some even as a signal of a commitment to democracy. All five policy rationales/goals identified in section 2.1 have been drawn on by the Irish Government to explain its policy (with the exception of the third).

Looking at the **first and second rationales**, one of the (then) Taoiseach's three rationales for the policy announced in 2017 was that 'the proposal is consistent with the Government's policy of outreach and engagement with the 'global Irish. The Options Paper published by the Departments<sup>61</sup> presents "the inclusive policy of engagement with the global Irish that has been taken by successive Governments" as "a key part of the policy framework" when considering how to implement the proposal. The creation of "cultural connections as well as of opportunities for investment and jobs," is presented as one of the many reasons to embrace the diaspora in Ireland's Diaspora Policy Document. Each of The Global Irish Economic Forum, convened by the Government (2011-2015), brought together members of a Global Irish Network to exchange ideas on economic recovery, job creation and the restoration of Ireland's reputation. There is a focus on diaspora philanthropy e.g. the Ireland Funds. *ConnectIreland*, which implemented the *Succeed in Ireland* initiative, mobilised the global Irish to help identify companies seeking to expand into Europe or looking for a European base. A review of diaspora policy published in June 2018<sup>63</sup> shows a new economic focus on helping citizens who emigrated for economic reasons to return

Regarding the **third goal – that the policy may be electorally advantageous for the party proposing it -** all political parties express support in principle for this policy. It is not publicly apparent that any one party believes that it will be advantaged electorally; the candidate-focused nature of Presidential elections perhaps explains this (see Section 5). Research undertaken for the Constitutional Convention by Dr John Garry (Queens University) suggested that Irish citizens residing in Northern Ireland who would be likely to vote would be more likely to vote for a Sinn Féin than any other candidate. It did not include any survey evidence directly focused on this question rather it drew from existing survey data.<sup>64</sup>

On the fourth and fifth goals, conformity with other states (a democratic norm) is used almost unquestionably as a rationale by the Government and other parties.

Restoring lost political rights to make amends for past harm (e.g. forced emigration for economic reasons) is an implicit part of the rationale for extending voting rights to Irish citizens overseas. Restoring lost political rights is also implicitly behind the proposal to enfranchise Irish citizens in Northern Ireland, <sup>65</sup> a proposal which has similarities with the extension of the franchise to citizens residing on the other sides of borders after the collapse of communism in Europe. The Irish context is the amendments made to the Constitution following a referendum on the Good Friday Agreement (1998). The Agreement concerns the relationship between all communities on the island including those who do not take up Irish citizenship.

<sup>64</sup> John Garry (2013), ntation published in Convention on the Constitution (Nov 2013) Fifth Report .

Department of Housing, Planning and Local Government and Department of Foreign Affairs and Trade
 (March 2017) Voting at Presidential Elections by citizens residing outside the State: Options Paper
 Department of Foreign Affairs and Trade (2015) Global Irish Facilitating Diaspora Engagement.

<sup>&</sup>lt;sup>63</sup> Department of Foreign Affairs, (2018) 'Review of Diaspora Policy .

<sup>&</sup>lt;sup>65</sup> See Taoiseach Leo Varadkar's in Belfast in February 2019 'Northern Irish residents should have vote in Irish Presidential elections' Belfast Telegraph 13 February 2019

# 4. Overseas voters and presidential elections: the trends in EU Member States

Of the 14 EU Member States that hold direct elections for the Presidency, eleven enfranchise overseas citizens (with Ireland, Slovakia and Cyprus the exceptions). The data on population, and information on whether and how overseas citizens are enfranchised, is set out in Tables 1 and 2 below (and described in Appendix 3).

Looking at the factors which determine the extent to which an overseas voting regime is expansive or qualified (Figure 2 p.13), only one of the eleven states which enfranchise overseas citizens restricts the franchise on the basis of when the citizen emigrated (temporal requirement). In Portugal, overseas citizens must establish that they have 'effective ties' with the State to be entitled to vote which means that they must (a) have lived in an EU country or in a Portuguese-speaking country for not more than 15 years; (b) have lived in any other country for not more than ten years; or (c) have been to Portugal and stayed there at least 30 days in the previous five years, and be able to prove that they can speak Portuguese. <sup>66</sup> In all other states the franchise is extended to all citizens residing abroad.

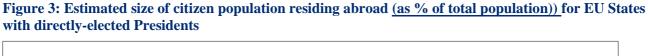
Data on variables in Figure 2 – electorate including citizenship laws, institutions, the ballot and registration processes is set out in Tables 1 and 2 below (and Appendix 3). An analysis of this information finds that factors and processes which can have the effect of narrowing the franchise apply in many states, and apply more so for presidential than for parliamentary elections in these states. And in general, the greater the size of the diaspora as a proportion of the total population (Figure 3), the less expansive – or more qualified - the regime appears to be (on Figure 2).

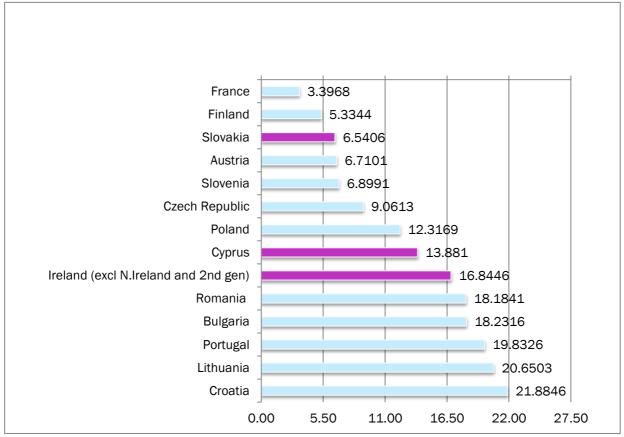
The right to vote by post or electronic means in presidential elections, a feature of a more expansive regime (Figure 2), is available for overseas citizens in just three of the 11 States - Austria, Lithuania and Slovenia. Dual citizenship is not permitted in any of these three States. This means that a citizen overseas must relinquish citizenship if he/she takes up citizenship in his/her host state, a factor that one would expect to reduce the number of second-generation citizens or overseas citizens who have permanently emigrated. And of these three States, only Lithuania has a significantly large diaspora (approximately 20% the size of its resident population (Figure 3).

As noted above, in person' voting is more secure but it can present barriers which indirectly narrow the franchise (placing a state towards the restrictive end of the spectrum). In eight of the eleven states, overseas voters must vote 'in person' at diplomatic missions/consular posts (DM/CP) or in polling stations at other set locations abroad (Bulgaria, Croatia, Czech Republic, Finland, France, Poland, Portugal and Romania). The criteria on which to base the location and number of polling stations outside of DM/CP tends to be set out in legislation and in agreement with the host country. These criteria affect the extent to which the regime is expansive or restrictive and can be controversial. For example, as noted above when the <u>Bulgarian Electoral Code</u> was amended to reduce the number of polling stations abroad for the 2016 Presidential

<sup>&</sup>lt;sup>66</sup> Organic Law 5/2005 of 8 September 2005 introduced criteria for establishing 'effective ties' for the right to vote in Presidential elections (ACE). (art. 1(1) and (2), arts.1-A and 1-B). Emigrants with dual nationality residing abroad do not have the right to vote (art. 2(2)), as well as Portuguese citizens who have been entitled to the statute of equality of rights in Portuguese speaking countries (art. 3(1), following the reciprocity clause in art. 15(3) of the Constitution which permits the existence of quasi-citizenship status. See Carvalais Isabel (2010) 'Citizenship policy-making in EU Mediterranean States' EUDO Citizenship Observatory (Robert Schuman Foundation)

Election, it was seen as disadvantageous to the minority diaspora residing in Turkey. For Romanian overseas citizens, restrictions on the number of polling stations abroad in the 2014 elections led to the closure of polling stations while citizens queued outside and ultimately to the resignation of the Foreign Minister. <sup>67</sup>





Source: calculated by L&RS using data from UN Population Database. States shaded in pink <u>do not</u> enfranchise overseas voters<sup>68</sup>

Low turnout of overseas voters in Finland is linked to difficulty travelling to polling stations<sup>69</sup>, even though these barriers are partially addressed by providing for 'advance voting' over a number of days. Also with a view to helping turnout, Portuguese overseas citizens have a three-day window during which to cast their 'in-person' vote.

Significantly six of the eight States with 'in person' voting only for Presidential elections allow postal voting in parliamentary elections (Bulgaria, France, Poland, Portugal, Romania, and Finland will allow postal voting from 2019). This may be because the potential for the overseas vote to decisively influence the result is greater in presidential than in parliamentary elections. In

<sup>68</sup> For details on the data in this figure, which were gleaned mostly from the UN Population Database, see Appendix 3 of this Note.

<sup>&</sup>lt;sup>67</sup> Barbieru M (2015) 'Accuracy Data of the Presidential Voting Outcomes to an Inferential Bias of the New Romanian Electoral Code and Electronic Voting 2014 (2015)' <u>RSP (Revista de Stiinte Politice. Revue des Sciences Politiques) peer-reviewed journal of University of Craoiva</u> No.45

<sup>&</sup>lt;sup>69</sup> Peltoniemi Johanna (2018), 'On the borderlines of Voting: Finnish emigrants' transnational identities and political participation' PhD Thesis Tampere University, Finland. Peltoniemi has found that the difficulty of reaching a voting place is the most common reason for not voting. She also finds that the longer emigrants are away the less interest they have in voting as ties loosen.

three of these states (Romania, France and Portugal) overseas voters elect Members to a set number of reserved seats in parliament.

Table 4 sets out the registration requirements in each of the 11 states and shows that with the exception of Slovenia and Finland, the registration process for overseas citizens is best described as 'active' i.e. overseas citizens must take steps to register on an overseas voting register according to set criteria. Even in Slovenia and Finland, where a register of overseas citizens is automatically compiled, its accuracy depends on citizens registering their emigration. It is beyond the scope of this *Spotlight* to compare the relative ease of registration from state-to-state and to compare the extent to which embassies/consulate services try to promote voting to the community of overseas citizens, a number of comments can be made.

This comparative analysis of how EU Member States enfranchise overseas citizens in presidential elections finds that many states grant voting rights to overseas citizens yet narrow the franchise through the implementation process. This returns us to the question as to what best explains this phenomenon. It would appear to be best explained by political actors' aims to balance the symbolic value of extending voting rights to overseas citizens without restriction with the risks it may pose to the democratic process.

Section 5 examines these risks in detail along with an analysis of the policy options facing the Houses of the Oireachtas.

Table 1: Voting rights in Presidential Elections for overseas citizens (for all EU Member States which hold direct elections for the Presidency)

Formal and informal factors						
EU State (listed by size of diaspora)	Citizen population residing abroad (as % of total population) <sup>i</sup>	Overseas voters enfranchised (Y/N)	Temporal restriction	(1) In Person at DM/CP and/or set number of other locations (2) By post/online	Dual citizenship permitted	Parliamentary Elections (In Person or by post)
Croatia	21.88	Υ	N	In person	N	In Person
Lithuania	20.65	Υ	N	In person or by post	Υ	In Person or by post
Portugal	19.83	Υ	Υ	In person	Υ	In Person or by post
Bulgaria	18.23	Υ	N	In person	N	In person or by post
Romania	18.18	Υ	N	In person	Υ	In Person or by post
Ireland (excluding citizens in N.Ireland)	16.84	N	Υ	n/a	Y	n/a
Cyprus	13.88	N	Υ	n/a	N	n/a
Poland	12.32	Υ	N	In person	Υ	In Person or by post
Czech Republic	9.06	Υ	N	In person	Y	In person
Slovenia	6.90	Υ	N	In person and by post	N	In person and by post
Austria	6.71	Υ	N	Postal only (advance postal voting)	N	Postal only (advance postal voting)
Slovakia	6.54	N	Υ	n/a	Υ	Yes.
Finland	5.33	Υ	N	In person (advance voting)	Υ	In person (advance voting) By post to be allowed in 2019 election
France	3.40	Υ	N	In person	Υ	In person and by post

Source: Sources and methodology for all data and information in Table 1 is described in Appendix 3.

Table 2: Registration requirements for overseas citizens in Presidential Elections in EU Member States (sources set out in Appendix 3)

State (listed by size of diaspora vis-à-vis total resident population)	Registration process for overseas citizens
Croatia	Active registration: must register with the Diplomatic Mission and consulates (for each election).
Lithuania	Active registration: Must register for each election and choose whether to vote at the diplomatic mission or by post
Portugal	Active registration: Must apply for inclusion on the permanent register no later than 60 days before election.
Bulgaria	Active registration: Must apply in-person or by post using a set form to a diplomatic mission, or electronically to the Central Electoral Commission, at least 25 days before election day. CEC checks all entries and 20 days before election communicates lists to the DM/CP
Romania	Active registration: Overseas voters must apply by written application to a set form for inclusion on the register. Or they may turn up at DM/CP on election day with specific identification and be placed on supplementary register
Ireland	n/a
Cyprus	n/a
Poland	Active registration: must register at consulate with valid Polish passport – however, may register up to 3 days before election.
Czech Republic	Active registration by written request (with valid identification and proof of permanent residence abroad according to set requirements) onto a special electoral register administered by DM/CP <i>no later than 40 days</i> before the elections date. The form can be usually downloaded from the website.
Slovenia	Passive/active: electoral registers are compiled automatically using the Central Population Register which includes a Register of Emigrated Slovenians (provided they register their emigration). Emigrated Slovenians are automatically notified by Foreign Ministry when an election is called and advised that they may vote at the DM/CP or communicate their intention to vote by post to the State Electoral Commission.
Austria	Active, in that overseas citizens must register as an expatriate in an Austrian municipality. After this, they remain on the register for ten years but must renew this registration every 10 years to stay on it.
Slovakia	n/a
Finland	Passive: the Population Register Centre compiles a computer register of everyone entitled to vote (voting register) at the latest 46 days before election day. Citizens register on an overseas population register on emigration.
France	Active: Citizens on the register of French established abroad are automatically entered on the consular electoral roll. Registration is then online or in situ. Citizens may also apply to be entered on the consular electoral list without appearing on the register of French established abroad, by contacting their consulate or embassy directly within a set deadline before an election.

# **5.** Policy options and the implications for democratic representation and electoral integrity (Ireland)

Weak commitment to the implementation of the franchise for overseas citizens observed by political scientists (Section 2), and in L&RS analysis of the situation in EU States (Section 4), may be best explained by policy makers' aims to balance the symbolic value of extending voting rights without restriction, with the challenges this may pose to the integrity of the democratic and electoral process. These challenges were identified in Section 2 and primarily centred on:

- Whether citizens, who are comparatively unaffected by the outcome, should have an equal say in determining it, which leads to questions about the appropriate electoral impact of external votes vis-à-vis in country votes and whether or not they should have the same weight (5.1);
- Concern about the transparency and integrity of the electoral process where it is taking place in dispersed areas around the globe, including a concern that practical issues around the organisation of elections are prioritised over the integrity of the electoral process (5.2).

These challenges are examined in Sections 5.1 and 5.2 below along with the policy options which may best address them.

# 5. 1 Political impact of overseas vote vis-à-vis resident votes

Overseas voters can have decisive impacts on electoral outcomes. Empirical studies of the effect of overseas votes on electoral outcomes demonstrate the decisive impact of the overseas vote on the outcome of Presidential elections on some occasions in both single-constituency two-round electoral system (used in all EU States which elect their President except Ireland) and in the US electoral-college systems (Box 3).

### Box 3: Some empirical studies on the effect of the external citizens' vote on outcomes

#### Romanian Presidential elections (2009 and 2014)

All other EU States that directly-elect a president, including Romania, use the **two-round system**. The two-round-system has two separate polling days; in the first poll, voters chose one of many candidates. In the second round, which generally takes place a few weeks later, voters chose one of the two candidates who won most votes in round 1. It is generally possible to register in between rounds.

Following an empirical analysis of the data, Burean concluded that the votes of the Romanian diaspora in the 2009 Presidential election had a partisan impact, favouring the democratic-Liberal and Liberal parties and that this impact was beneficial, if not determining, for President Traian Basescu in his campaign for re-election. The election was won by 70,048 votes (in the run-off (i.e. second) round). Burean used electoral data to show that in the run-off round the incumbent President would not have been re-elected without the diaspora vote. Of the 146,876 diaspora votes which were validly cast. Basescu won the majority in 73.3% of the 90 countries in which polling took place. Of the countries in

<sup>&</sup>lt;sup>70</sup> Burean Toma (2011) cited above

<sup>&</sup>lt;sup>71</sup> See Varga Attila (2011) '<u>The Right to Vote of Romanian Citizens living abroad'</u> presented at "The Right to vote of citizens beyond any country's borders' International Conference (University of Szeded and Hungarian Academy of Sciences p.196.

<sup>&</sup>lt;sup>72</sup> Varga (2011)

which he did not secure a majority of the vote, only four had more than 100 votes cast. Burean 2011,20) also found statistically significant data suggesting that the setting in which Romanians live abroad seems to have affected their vote preferences (the strongest association was found between the GDP per capita of the residing state and voting preference).<sup>73</sup>

The diaspora vote has also been found to have had a decisive impact in the 2014 Presidential elections in Romania, with controversy over the Government's perceived strategy to reduce turnout amongst the diaspora dominating the campaign in between the first and the run-off rounds. Iohannis, the candidate who won 54.43% of the total vote in the run-off round, had won 30.37% of the popular vote in the first round compared to the (then) Prime Minister, Ponta, who won 40.44%. While the victory was by more votes than the total number of diaspora votes, Iohannis won 89% of the diaspora votes cast.<sup>74</sup>

# New Zealand 1918-2015 (parliamentary elections only)

New Zealand does not have a directly-elected President. Research which examined a century of overseas voting impacts in parliamentary elections in New Zealand identifies three types of political impact: swings, interregnums and feedback effects. Swings are where overseas votes, counted after ordinary votes, change election results overnight and this was found to have happened in 1919, 1943 and in 2008. Interregnums are when the wait for the return of the overseas votes plays a role in coalition negotiations and this occurred in 1993, 1996 and in 2005. Feedback effects occur when the appearance of an overseas vote impact increased the perceived value of these votes, encouraging campaigning abroad and raising overseas turnouts. Feedbacks encourage parties to step up their overseas campaigning in subsequent elections. Gamlen argues that such swings happen infrequently and tend to concern issues where non-resident voters have a direct stake in the outcome. Interregnums and feedback effects tend to occur because the logistics of organising the overseas vote means that these results come last i.e. their effect is more evident.

## **USA Presidential elections**

The USA uses an electoral college system to elect the President. Voters cast a vote for their preferred candidate, votes are counted by state, and the candidate who wins the most votes in a state is awarded the set number of seats in an 'electoral college' which are assigned to that state (based on a formula that takes into account the size and population of each state). The winner is the candidate with the most seats in the 'electoral college.' In Presidential elections, US citizens abroad may cast a vote in their home state. The most dramatic and visible impact of ex-pat voters on the result was in the 2000 Presidential election where the ex-pat vote in Florida gave George W. Bush a narrow lead over Al Gore which gave the State of Florida, and hence the Presidency, to George W.Bush. Parties in the USA have been described as 'global' organisations, reaching out to ex-pats across the globe. <sup>76</sup>

<sup>74</sup> Barbieru M (2015) 'Accuracy Data of the Presidential Voting Outcomes to an Inferential Bias of the New Romanian Electoral Code and Electronic Voting 2014 (2015)' <u>RSP (Revista de Stiinte Politice. Revue des Sciences Politiques) peer-reviewed journal of University of Craoiva</u> No.45

<sup>&</sup>lt;sup>73</sup> Burean Toma (2011) p.20

<sup>&</sup>lt;sup>75</sup> Gamlen Alan (2015) 'The impacts of extra-territorial voting: swings, interregnums and feedback effects in New Zealand elections from 1914 to 2011' *Political Geography* Vol.44 pp.1-8

<sup>&</sup>lt;sup>76</sup> Sexton and Andelic (c2016) 'America's Overseas Voters: how they could decide the US Presidency in 2016' *Rothermere American Institute, University of Oxford* 

The chance that the overseas vote will have a determining influence on outcome increases the larger the diaspora is in proportion to the general population, the higher the turnout of overseas voters, and the closer the electoral contest tends to be (which depends in part on the electoral system). Where the size of the enfranchised diaspora is large - measured as a proportion of the resident population - the votes of overseas citizens could, in theory, dominate the domestic vote. <sup>77</sup> Some electoral systems are more susceptible to influence by small numbers of voters than others. The election of a single candidate to the presidency by one national constituency<sup>78</sup> - whether by PR STV or the two-round system - is among the more susceptible (Box 4).

# Box 4: Comparing PR STV and the Two-Round System used to elect Presidents in EU countries

There are some similarities between Ireland's PR STV in a single national constituency electoral system (Alternative Vote) and the two-round electoral system used to elect the President in other EU States. In both, a president is elected by a single national constituency and in both voters have an opportunity to vote for more than one candidate. In the two-round system this opportunity comes in the run-off (second round) when voters chose between the top two candidates (irrespective of their previous vote). In PR STV the opportunity to cast a vote for more than one candidates lies in the vote transfer which takes place after each count (i.e. if a voter's first-preference candidate is eliminated, the voter's second preference vote is counted and next preference until a candidate is elected).

#### What are the implications of this analysis for Irish Presidential elections?

The potential size of the electorate if there were an extension of the franchise without restriction in Ireland is estimated by the Department of Foreign Affairs and Trade to be 3.6 million (see Appendix 1). As per the introduction to this *Spotlight* this figure includes the 1.87 million people born in Northern Ireland who have a right to citizenship as well as all second-generation Irish citizens (Appendix 1). Overseas citizens who have lived in the State include an estimated 0.82 million (this figure excluding those who are citizens by virtue of being born in Northern Ireland and second-generation Irish citizens). While small compared to 3.6 million, 0.82 million is still a substantial proportion of the total population and of the 3.4 million electorate in Presidential elections.

As noted above, the Alternative Vote (PR STV in one constituency) is susceptible to influence by small numbers of voters. The closeness of the contest – the difference between the top two candidates in terms of votes and percentages in Irish Presidential elections – is given in Table 3. The closeness varies, with 10,717 or 1% of the overall vote separating the candidates in 1966 (lowest) and 378,900 (23.2%) separating the candidates in 2011. The 2018 election saw the widest gap between the first and second candidates at nearly 480,000 votes.

<sup>&</sup>lt;sup>77</sup> Sahin-Mencutek and Murat Erdogan (2015) 'The Implementation of Voting from Abroad: evidence from 2014 Turkish Presidential Election' *International Migration* vol.54(3) p175

<sup>&</sup>lt;sup>78</sup> This is noted by Erben et al (2016) who advocate careful consideration of the political implications.

Table 3: Irish Presidential Elections and closeness of the contest

Year	Difference	Difference (in	Candidate 1	Candidate 2		
	the top two candidates (% wise)	votes) between first and second candidate after second+ rounds			Total valid poll	Electorate
1945	10%	111,740	453,425	565,165	1,086,338	1,803,463
1959	12.6%	120,467	538,003	417,536	955,539	1,678,450
1966	1%	10,717	558,861	548,144	1,107,005	1,709,161
1973	4%	48,096	635,867	587,771	1,223,638	1,977,817
1990	5.6%	86,557	817,830	731,273	1,574,651	2,471,308
1997	17.4%	208,743	706,259	497,516	1,269,836	2,739,529
2011	23.2%	378,990	1,007,104	628,114	1,771,762	3,191,157
2018 <sup>79</sup>	32.1%	479,839	**822,566	342,727	1,492,338	3,401,681

Source: Coakley and Rafter (2014) The Irish Presidency Kildare: Irish Academic Press pp. 210-235. For 2018, Department of Housing, Planning and Local Government (2018)

Irish Presidential elections have tended to be candidate-focused (rather than policy/party-focused) since the 1990s and campaigns are found to have a significant effect on the outcome – more so than in General Elections. In the 2011 Presidential election, events which took place during the campaign had a decisive effect on the final outcome. In the 2018 election, campaign events saw a rapid increase in support for one candidate over a ten-day period. While two separate opinion polls in the run-up to the election, one published ten days before polling day, recorded that Peter Casey had the support of 2% of the electorate, Casey polled 23% of first preference votes.

Given the personalised nature of the contest, and the effect the campaign tends to have on the outcome, an extension of the franchise overseas is likely to change the type of expenditure and conduct of election campaigns. While campaign expenditure by presidential candidates is capped at €750,000, the Government's Inter-Departmental Working Group on the Security of the Electoral Process (2018) noted that there is no restriction on foreign-based persons or organisations from using their own financial resources either within, or outside of the State, to support a particular outcome at an election,<sup>84</sup> a reality highlighted by the Commission on Standards in Public Office.

<sup>82</sup> Sunday Times (16 October 2018) poll conducted by Behaviour and Attitudes and *Irish Times* (12 October 2018) Ipsos/MRBI poll. Both reported by RTE (20 O tober .

<sup>&</sup>lt;sup>79</sup> Note that Michael D.Higgins won 55% of the popular vote and there was only one count.

<sup>&</sup>lt;sup>80</sup> O'Malley Eoin (2012) 'Explaining the 2011 Irish Presidential Election: Culture, Valence, Loyalty or Punishment?' *Irish Political Studies* Vol.27(4) pp.635-655

<sup>&</sup>lt;sup>81</sup> O'Malley (2012) cited above.

<sup>83</sup> Irish elections.org [retrieved 23 January 2019]

<sup>&</sup>lt;sup>84</sup> Interdepartmental Working Group on the Security of the Electoral process and dis-information which published its *First Report* (June 2018).

Further, it is likely that online political advertising, which has yet to be regulated, would play a central role in a global electoral campaign.<sup>85</sup>

Looking at Table 3, the votes of a tiny proportion of the full estimate of overseas citizens (3.6 million) could clearly determine an outcome to an Irish Presidential election. That the overseas vote could swing a presidential election, even with a qualified franchise (e.g. only the estimated 0.82 million who have lived in the State) or a low registration rate/turnout, is also not in doubt.

The crucial question for policy makers before proposing such a policy **is whether this possibility is acceptable to resident citizens and to their perception of what constitutes the political community.** The limited opinion poll data available on the issue (set out in <a href="Appendix 2">Appendix 2</a>) suggests that there is support for a qualified, rather than for a full, expansion of the 'political community' to include overseas citizens. Reliable opinion poll data on attitudes towards extending voting rights to those eligible to citizenship by virtue of being born in Northern Ireland is not available.

If this risk to the nature of representative democracy posed by the size of the overseas population is deemed to be unacceptable by the resident population, are there solutions which balance the risk to democratic integrity with the gains to be made from extending the franchise to overseas citizens, in particular to those who have a stake in the country? Three possible solutions, which are reflected in the policy options set out in Figure 2, are examined below along with a further solution which proposes that the risks are reduced due to ceremonial nature of the Office of the Presidency.

# 5.1.1 Is the near certainly of low turnout a solution to these risks?

Data gathered by L&RS on turnout amongst overseas voters in presidential elections of EU States shows that the rate of registration by overseas citizens is low and, as a consequence, turnout as a proportion of all those who are entitled to vote is low (Table 4).

Table 4: Registration rate and turnout (EU States that elect President and enfranchise citizens abroad

Country and year of data	Voters on the overseas electoral register as a proportion of estimated overseas citizens	% of registered overseas voters who used the vote (turnout)
Czech Republic (2018)	10%	73% (first round) 81% (second round).
Croatia (2014)	10%	54%.
Finland (2018)	Automatic registration (all overseas citizens)	13.30%
France	4.1%	No figure was obtained
Slovenia (2017)	78%	5%
Portugal (2001, 2005)	8.5% (2001) 10% (2005)	8.3% (2001) 10.7% (2005)
Lithuania (2014)	4.5%	84%
Austria (2016)	10%	53% (first round) 77% (second round)
Poland (2015)	10.6% (first round) 8% (second round)	87% (average turnout over both rounds)

Source: Data by L&RS through ECPRD Network and UN Population Database. Detail in Appendix 3

<sup>&</sup>lt;sup>85</sup> The Online Advertising and Social Media Transparency Bill 2017 PMB aims to address this issue. In response, the Government established the Interdepartmental Working Group (see above)

The Options Paper published by the Departments (2017) highlights low turnout amongst enfranchised overseas citizens in national elections in other states (e.g. Australia, New Zealand, Canada, UK) and, on the basis of these trends, it is suggested that there is a low-to-remote risk of the estimated 3.6 million Irish citizens overseas 'swamping' the 3.2 million (3.4 million by October 2018) electorate of resident voters.<sup>86</sup>

There are two problems with this assessment. First, it does not recognise that Ireland's situation is unique - there are 1.87 million people who are entitled to Irish citizenship on the island who do not live in the State (Appendix 1). When these potential citizens are included, Ireland has the largest diaspora of all EU States which directly elect their President (Figure 4).

Croatia 21.88 Lithuania 20.65 Portugal 19.83 Bulgaria 18.23 Romania 18.18 Ireland (incl NI) 56.10 Cyprus 13.88 Poland 12.32 Czech Republic 9.06 Slovenia 6.90 Austria 6.71 Slovakia 6.54 Finland 5.33 France 3.40 0.00 10.00 20.00 30.00 40.00 50.00 60.00

Figure 4: Estimated size of citizen population abroad as a % of total resident population (where Ireland includes those eligible for citizenship residing in Northern Ireland)

Source: Data calculated by L&RS using data from UN Population Database (see Appendix 3)

Secondly, it is a questionable approach to policy-making to introduce a policy for symbolic reasons and to hope that overseas voters will not use their vote extensively. Section 4 demonstrates that this approach has been implicitly, or explicitly, adopted in some EU Member States with controversial results.

There are two other possible solutions; the first aims to extend the franchise to 'stakeholder' citizens; the second proposes an institutional solution which places different weights on the external and resident votes. The latter is more applicable to parliamentary than presidential elections. These are considered at 5.1.3 and 5.1.4.

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<sup>&</sup>lt;sup>86</sup> Departments *Options Paper* (March 2017)

# 5.1.2 Office of the Presidency is ceremonial and symbolic

There is a view that by applying the extension of the franchise to presidential, rather than general elections, the risks to representative democracy are reduced or eliminated because the Office of the President is seen as ceremonial or symbolic. The Office has no role in the government-formation process, cannot initiate or veto legislation, has no power over the budget, does not select or have veto power over the appointees to any public positions and has no direct role in foreign policy.

However, the Office has specific constitutional powers which set it aside from ordinary politics making the president the 'guardian of the Constitution,' along with an increasingly significant representative and cultural role. While the office is described by political scientist Robert Elgie as 'directly-elected but weak', <sup>87</sup> using an index to assess the power of presidential offices Elgie places Ireland at 0.18 (Table 5) which is similar to many of the EU states examined in Section 4.

**Table 5: Mean standard presidential power scores** 

Score on power
index**
0.44
0.39
0.33
0.33
0.32
0.29
0.25
0.18
0.17
0.17
0.15
0.14
0.13
0.10

Source: Elgie Robert (2014)<sup>88</sup>

\*\* 1 is the most powerful; 0 the least powerful. 0.79 was the strongest score for a Presidency; the strongest Presidency in a European country was France at 0.44. Presidential power was only measured in states where the prime minister and cabinet are responsible to the legislature. For this reason, presidential systems like the USA were not included.

Articles 12, 13, 14, 26 and 27 of the Constitution together outline the powers and the role of the President. The most important **constitutional powers** of the Presidency as articulated by political

Elgie Robert (2012) The President of Ireland in comparative perspective Irish Political Studies 27:4 501-21
 Elgie Robert (2013) The President in comparative Perspective in Coakley and Rafter (2014) The Irish Presidency Kildare: Irish Academic Press p.23

scientist, Professor Michael Gallagher are in Table 6.<sup>89</sup> He notes that all cases, other than the first listed in Table 6, require prior consultation with the Council of State.<sup>90</sup>

**Table 6: Significant powers of the Presidency** 

Article	Power				
Article 13.2.1	Timing of elections is at the discretion of the Taoiseach of the day who has the power to 'give advice' to the President as to the dissolution of the Dáil. If this advice comes from a Taoiseach 'who has ceased to retain the support of a majority in Dáil Eireann' (e.g. has lost a vote of confidence) the President may refuse to grant a dissolution of the Dáil.				
Articles 13.3 and 26	Bills, once passed by the Houses, go to the President for promulgation by signature. In the case of most bills (except those containing a proposal to amend the Constitution, money bills or bills deemed urgent), the President has the right not to sign the bill but to instead refer it to the Supreme Court for a decision on whether, in part or in whole, it is Constitutional. Once the Supreme Court has made its ruling, the President has no further discretion. Also, if a referred bill is upheld as constitutional by the Supreme Court, its constitutionality may not be again challenged.				
Article 27	A majority of Senators and one-third of the Dáil may request that the President does not sign a particular bill but instead to ascertain the will of the people on the matter. If the President accedes to this request, the President will only sign this particular bill:				
	I) If it has been approved by the people in a referendum within 18 months OR				
	II) If following a general election, a new Dáil passes a resolution approving the bill.				
Article 13.2.3	The President may convene a meeting of either House, or both Houses, of the Oireachtas				
Article 13.7	The President may communicate by message or address with the Houses of the Oireachtas, or the nation, at any time, though every such message or address must have received the approval of the government.				
Article 22	The President has a role in certain disputes between the Dáil and Seanad and if the Seanad challenges the Dáil's definition of a particular bill as a 'money bill' the President must decide whether to accede to the Seanad's request to establish a joint committee to decide the matter. This situation has not arisen.				

As Head of State and the only leader directly elected by all citizens, the president has **representative and symbolic power**. The Office of the President describes the office's representative role as:

- Receiving foreign Heads of State on visits to Ireland
- Making official state visits abroad (including for example leading trade missions like the recent trade mission to China)
- · Promoting Irish interests abroad

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<sup>&</sup>lt;sup>89</sup> Gallagher Michael (2012) 'The political role of the President' *Irish Political Studies* and Coakley and Rafter, edrts (2013) cited above .

<sup>&</sup>lt;sup>90</sup> Under Article 31 of the Constitution, the Council of State comprises the Taoiseach, the Chief Justice and all former Taoisigh and Former Chief Justices, former Presidents, the Tánaiste, the Ceann Comhairle of the Dáil and the Cathaoirleach of the Seanad, the Attorney General and up to seven individuals chosen by the President. The President must listen to the views of each Member (the Council is not obliged to give a collective opinion) but he/she is not bound by the advice or opinions expressed.

- Strengthening links with the Irish diaspora
- Addressing international conferences and meeting people in a wide range of settings
- Dedicating his/her ability to the service of the people of Ireland (as per the President's oath of allegiance)
- At home, attending and speaking at a wide range of events and engagements with particular emphasis on valuing the contribution of local government and self-help groups and in promoting reconciliation throughout the island.<sup>91</sup>

Presidents, from Douglas Hyde to President Higgins, have been described as 'cultural signifiers of the nation.'92 Both Mary Robinson and Mary McAleese sought to maximise the President's representational role, carefully choosing to attend public events and speak publicly on the core issues that defined their Presidencies.<sup>93</sup> For example, Mary Robinson used the symbolic power of the office to recognise, support and validate her vision of Ireland as 'tolerant, open and inclusive', Mary McAleese to build bridges between communities and promote reconciliation.<sup>94</sup> Both established a symbolic relationship with Queen Elizabeth II, which was continued by President Higgins.

#### 5.1.3 Temporal limits on the right to vote for overseas citizens

One solution is to extend the franchise to emigrants who have lived in the State as adults *and* who have recently emigrated. This would be based on the assumption that, as these citizens are the most likely to return and their return may be affected by the electoral outcome, it is these citizens overseas who have most stake in the result of an election in the home state (as per stakeholder theory set out in Section 2).

Temporal qualifications are not applied in other EU Member States for presidential elections, with the exception of Portugal where the time limit depends on where the emigrant resides (see Section 4). Analysis by L&RS presented in Section 4 above has found that other practices which may have the effect of restricting the franchise are in place in the majority of EU States which allow overseas voting in presidential elections. Temporal limits are applied for parliamentary elections in a number of EU Member States including Denmark, Germany and the UK<sup>95</sup>– none of which hold direct elections to a presidency.

While there are administrative challenges to the implementation of temporal qualifications, in particular there is a need for a system to register a date of emigration, this approach can ensure that the vote is extended to 'stakeholder' citizens (although there will always be some exceptions). If this approach were taken in Ireland, second-generation Irish citizens residing overseas would be excluded from the franchise as would long-time emigrants (depending on the precise temporal restriction applied).

<sup>94</sup> Galligan Yvonne, opcit p.132

<sup>&</sup>lt;sup>91</sup> Aras an Uachtarain, Role of the President [accessed 4 February 2015].

<sup>&</sup>lt;sup>92</sup> Galligan Yvonne (2012) 'Activist Presidents and Gender Politics' 1990-2011 in Coakley and Rafter (2012) opcit. p.145.

<sup>93</sup> Galligan Yvonne, opcit p.134

<sup>&</sup>lt;sup>95</sup>The minority-Conservative UK Government (2017-) has committed to ending the 15-year rule by 2022 and introducing a vote for life for overseas citizens. Its stated reason is so as to increase turnout amongst overseas voters. See House of Commons Library Standard Note (December 2018) Overseas Voters.

The 1.87 million people entitled to Irish citizenship by virtue of being born in Northern Ireland would be excluded if temporal limits were based on when the citizen left the State. If, on the other hand, the limit were based on when the citizen left the island, they would be unaffected by temporal limits. If the former were the case, an alternative form of representation could be considered for citizens born in Northern Ireland (see 5.1.3 below).

The Constitutional Convention favoured placing some conditions on the extension of the franchise. The clearest recommendation in the Convention's Report was that the Constitution should be amended to allow for the extension of voting rights to Irish citizens living abroad who have lived in the State (53%, Figure 5 and Appendix 2). <sup>96</sup> On the other hand, 36% supported the extension of the franchise without restriction. The limited available public opinion recorded on the matter is broadly in line with the Convention (see Appendix 2).



Figure 5: Recommendations of the Convention on the Constitution

Source: data from Convention on the Constitution, Fifth Report (2013) See Appendix 2

There was also general support from the Constitutional Convention for the extension of voting rights to Irish citizens living in Northern Ireland (73%). However, there was some contradiction here as 53% also believed that to be eligible for an overseas vote, a citizen should have lived in the State. This suggests that the two overseas electorates were perceived to be distinct by members of the Convention. This is discussed in Section 5.1.3 along with the option of creating reserved seats in the Seanad to represent those entitled to citizenship in Northern Ireland. More detail on the Convention and opinion poll data presented at it, and conducted since, is in Appendix 2

#### 5.1.4 Reserved seats (parliamentary elections) or weighted vote (presidential elections)

Gamlan, author of research on overseas voting in New Zealand (Box 3), argues that the risk of overseas voters swamping resident voters depends on the voting system used, rather than on the votes themselves. Institutional solutions, which serve to balance this risk with the legitimate, and distinctive, right of overseas citizens to the franchise, are possible.

A solution which is applicable to Presidential elections, the focus of the Government's current proposal, is to apply the logic of reserved seats (see below) to Presidential elections. While this solution has not been tried in practice to L&RS knowledge, political geographer and writer on the

<sup>&</sup>lt;sup>96</sup> Fifth Report of the Constitutional Convention (2013) cited above.

issue of overseas voters, Collyer, argues that it is possible in theory to count overseas votes differently in presidential elections using an electoral-college system. In practice, this would mean that overseas votes would be counted and allocated to candidates according to a formula designed to give resident vote greater weight. He argues that it is growing in popularity as an idea and that by altering the ratio between electors and elected representatives to favour territorially-based voters, it can be used to address a number of the objections raised to external voting.<sup>97</sup> This solution may, however, be less welcomed by overseas voters and could risk undermining the symbolic value of the policy.

In practice, reserved seats have been used for overseas voting with respect to parliamentary elections - assigning a fixed number of seats in parliament to represent overseas citizens. Reserved seats in parliament endorses the right of overseas citizens to representation, yet weights this representation to reflect the fact that their stake in the election is generally less than that of resident citizens. Where reserved seats are created, the size of the diaspora vis-à-vis the resident population is irrelevant as the number of seats elected by the overseas constituency is static.

This solution - reserved seats - has been adopted in Portugal, France, Romania and Croatia whose parliaments have reserved seats to represent the overseas constituency. Interestingly, while three of these four states also allow overseas voters a vote in presidential elections, for presidential elections voting must be in person in embassies/diplomatic missions abroad (or polling stations especially established by them and in accordance with law) while increasingly a postal vote is permitted for parliamentary elections (France, Portugal and Romania).

The application of reserved seats as a solution in Ireland would mean the creation of a set number of either Dáil, or more likely Seanad, seats in General or Seanad elections reserved to represent Irish citizens overseas. A decision would have to be made as to whether:

- One set of reserved seats would be created:
- Two distinct sets of reserved seats would be created to reflect the different overseas constituencies – one international and another to represent citizens of Northern Ireland;
- And if there were a set of reserved seats to represent a Northern Ireland constituency would it be weighted to ensure representation from all communities (in line with how the institutions of the Good Friday Agreement work).

While the most recent recommendations for Seanad reform (Box 5) proposed the inclusion of overseas voters in the Seanad electorate, neither reports propose that a set number of reserved seats be created to represent overseas voters in the Seanad; rather all votes - resident citizens and overseas citizens - would carry equal weight. As such, the political implications of these proposals set out for Presidential elections above, and the possible implications for the integrity of the electoral process which are analysed below, also apply to the proposals for Seanad reform.

<sup>&</sup>lt;sup>97</sup> Collyer (2014) pp.63-4

#### Box 5: Proposals for Seanad Reform and the overseas electorate

The Report of the Working Group on Seanad Reform (April 2015), and the subsequent report of the Implementation Group on Seanad Reform (December 2018), recommend that the franchise in Seanad elections be expanded to all Irish citizens –citizens resident in the State, to people residing in Northern Ireland eligible for Irish citizenship, and to Irish citizens overseas who are passport holders. The Reports recommend that this electorate would elect candidates to either 36 (2015) or 34 (2018) of the 60 Seanad seats, with the remaining candidates elected by the existing electorate (Members of the Houses and councillors) or nominated by the Taoiseach (11).

Unlike the case of presidential elections, the Seanad election would not involve one single nation-wide-constituency but five panels over which the overseas vote would be dispersed. There is nothing in the current proposals to prevent overseas voters from inadvertently, or purposefully, concentrating votes in specific panels (as voters chose one panel). Further, as it is proposed to use an active registration process – eligible voters, both resident and abroad, self-register for a vote in Seanad elections and a register would be incrementally drawn up - it is possible that more citizens residing overseas would register and elect the Seanad than resident voters. <sup>98</sup>

# 5.2 Method of voting and integrity of the electoral process

An extension of the franchise to overseas citizens also has implications for the integrity of the electoral process i.e. the electorate's trust that the process is fair and equitable, that votes are honestly cast by the voters who are entitled to the vote and that votes cast are accurately counted. Guaranteeing electoral integrity is the central consideration of electoral administration. Electoral integrity is more difficult to guarantee when voters are scattered across different parts of the world<sup>99</sup> and out-of-country operations are much more susceptible to fraud and perceptions of fraud than in-country voting largely because of the challenges geography presents e.g. it is more difficult to supervise and harder to ensure independent observation by party agents.<sup>100</sup>

As per Section 3 (policy options), voting by overseas citizens may be 'in person' in diplomatic missions/consular posts, 'in person' in polling stations set up outside of DM/CP with the agreement of the host state, or by way of post or internet (or a mix of in person and postal).

'In person' voting provides the greatest protection against fraud<sup>101</sup> for a number of reasons:

- It guarantees the secrecy of the ballot (as it takes place in a controlled environment with neutral observers present to enforce the secrecy of the ballot),
- It significantly reduces opportunity for impersonation casting someone else's vote (especially if ID must be shown); and
- There is less risk that a voter can be canvassed by campaigners while voting.

Yet 'in person' voting overseas can present challenges to electoral administration and barriers to which may prevent overseas citizens from using their voting rights – they may live very far away from a DM/CP or one-off polling station.

<sup>&</sup>lt;sup>98</sup> The Report recommends against using the existing Dáil register of citizens ordinarily resident in the State to compile the register of ordinarily-resident citizens. .

<sup>&</sup>lt;sup>99</sup> Lafleur Jean-Michel (2015) 'The enfranchisement of citizens abroad: variations and explanations' *Democratisation* Vol. 22(5) pp.840-860 p. 845.

<sup>&</sup>lt;sup>100</sup> Erben, Goldsmith, Shujaat (2012) 'Out-of-Country-Voting' *IFES White Paper, International Foundation for Electoral Systems* p. 4.

<sup>&</sup>lt;sup>101</sup> Erben, Goldsmith, Shujaat (2012) cited above

Giving a postal vote to all overseas voters is seen as a solution to the logistical challenges associated with organising 'in person' voting for overseas citizens, along with the perceived challenges 'in person' voting can present to turnout. While acknowledging the risks which postal voting on a wide scale can present to electoral integrity, the Options Paper published by the Departments appears to favour the adoption of a postal vote over 'in person' voting for these very practical reasons. <sup>102</sup> Yet it is important that practical and operational reasons, and matters related to cost, are not given greater weight than the integrity of the electoral process.

Postal voting, in particular the widespread availability of postal voting, presents a number of challenges to electoral integrity:

- First, as the vote is cast in an un-controlled environment, there is no guarantee that a ballot has been cast in secret (i.e. without coercion or undue influence);<sup>103</sup>
- Secondly, it is harder to guarantee that the person who votes is the person with the right to vote and is therefore more susceptible to the electoral offence of impersonation;<sup>104</sup>
- Thirdly, when campaigners (i.e. parties and groups who are contesting the election) act as agents in the electoral process - canvassing and/or facilitating electors to use their postal vote - the process is corruptible.

These risks are magnified when postal voting is widespread (i.e. available to all voters).

The more widespread availability of the postal vote in the UK since 2001 is a highly contested reform. According to Richard Mawrey QC, who tries cases of electoral fraud in the UK, postal voting has enabled fraud to be carried out and in one case on an 'industrial scale.' He argues that the cases of electoral fraud which end up in the Courts are not the only occurrences as court cases are very expensive to bring.<sup>106</sup> On the other hand, the UK Electoral Commission argues that the impact of restricting the postal vote on turnout would not be proportionate to the potential it creates for fraud, in particular with the new identity checks enabled by the introduction of individual electoral registration.<sup>107</sup>

There is no solution to the first risk identified above (that the ballot is not cast in secret). It is possible to reduce, though not to eliminate, the risks of impersonation by cross-checking the signatures or identification numbers (better) on all postal votes cast with signatures and ID numbers on the register. With the introduction of individual registration in the UK, it has become

<sup>&</sup>lt;sup>102</sup> Departments of Housing, Planning and Local Government and Foreign Affairs and Trade (2017) pp.33-4 L&RS discussion with political scientist Dr Theresa Reidy (NUI Cork). Malay Michael (2018) 'The Secret ballot in Australia: what does it really mean and how secret is it really? IPSA World Conference. Malay points to the fundamental importance of the secret ballot to free and fair elections and points to article 25 of the International Covenant on Civil and Political Rights 1966 and the 1994 Declaration on Criteria for Free and Fair Elections (IPU).

<sup>&</sup>lt;sup>104</sup> Reidy T (2019) cited above, Malay Michael (2018), Erben et al (2012) argue that postal voting is 'a very insecure voting methodology' and that 'there is no guarantee that the ballot has been completed by the registered voter.'

<sup>&</sup>lt;sup>105</sup> Kelly Norm (2012) *Directions in Australian Electoral Reform*' Australia University Press (ANU0 pp.131-143) https://press.anu.edu.au/publications/directions-australian-electoral-reform

<sup>&</sup>lt;sup>106</sup> BBC Radio 4 <u>Today Programme</u> 11 March 2014. Democratic Audit published a rebuttal to Richard Mawrey

Democratic Audit (2014) <u>Postal voting and electoral fraud: a reply to Ricahard Mawrey QC</u>

107 UK Electoral Commission '<u>Postal and Proxy Voting Pilot Schemes</u>' May 2018 and BBC Radio 4 <u>Today Programme</u> 11 March 2014.

possible for the electoral authorities to cross-check ID numbers of postal voters with the register. It is also time-consuming for electoral administrators.

The evidence that the availability of postal voting for voters' convenience actually does enhance turnout in general is mixed. The trade-off between convenience and secrecy in experiences with e-voting, and general concerns related to the experience in the USA, was discussed at length by a panel at the International Political Science Association (2018). With respect to the overseas vote in Presidential elections, the postal vote is available in only three of the 11 EU Members States which give overseas voters a vote in direct elections to the Presidency. While the numbers of cases is very small, it is not the case that turnout amongst overseas voters is notably higher in these cases (Austria and Slovenia) (Table 3). The convenience actually does enhance turnout in the case that turnout amongst overseas via extension extension to the overseas voters are cases (Austria and Slovenia) (Table 3).

Perhaps because of the risks that a widespread use of the postal vote can present, and the nature of Presidential elections (whereby a small number of votes can have a significant effect on the outcome – see section 5.1. above), only three of the 14 EU Member States who directly elect the President enfranchise overseas citizens to vote by post. Of these, only Lithuania has a large diaspora (measured as a % of its resident population). When all Irish citizens overseas are counted, Ireland's diaspora is significantly larger (Figure 4).

# 5.2.1 Advance voting in person

One solution to this debate about enhancing turnout by convening voters, while maintaining electoral integrity, is to provide for **advance in-person voting over a number of days** to allow overseas citizens to cast their vote over a number of days in advance of, and up to, election day. This approach guarantees the secrecy of the ballot, reduces the opportunity for impersonation yet gives overseas citizens a longer time-frame to make it 'in person' to the polling station thereby addressing some of the concerns about low turnout. Advance in-person voting is available for Presidential elections in Finland and in Portugal voters have a three-day window to vote (see Table 1 and Appendix 3).

<sup>109</sup> See International Political Science Association World Congress (IPSA) Panel (July 24 2018) '<u>Electoral integrity and the quest for secret voting</u>.' Paper presented by Malay Michael (2018) 'The Secret ballot in Australia: what does it really mean and how secret is it really?'

<sup>&</sup>lt;sup>108</sup> Franklin et al (2004) cited in L&RS Note (2016) Turnout cited above, p,15.

<sup>&</sup>lt;sup>110</sup> It was not possible to obtain data on turnout of overseas citizens in Lithuanian presidential elections.

# 6. Conclusion

Analysis of the policy rationale behind the extensive adoption of overseas voting in parliamentary and presidential elections since the 1980s finds economic, cultural, human-rights (normative) and political motivations, as well as highlighting that in many (though not all cases) it was implemented to support a transition to democracy, and in some even as a signal of a commitment to democracy. Further, extending voting rights to citizens who reside abroad is seen as a way to ensure that the institutions of representative democracy adapt to the reality of an increasingly mobile global population.

Whether the policy is the appropriate response to the identified needs has been questioned by a number of analysts. Some argue that there are other, more appropriate ways to reach out to, include and capitalise on economic ties with the diaspora; that the policy is frequently driven by the political goals of its proponents, rather than by a genuine desire to give emigrant citizens a voice, and that it is implemented without consideration of other, perhaps un-intended consequences for representative democracy and electoral integrity. It is suggested that encouraging democratic states to extend the franchise to non-citizen residents may be a more effective way of addressing the dis-enfranchisement of some voters (an un-intended consequence of greater mobility) and that while enfranchising overseas voters may be an important part of a transition to democracy, in the long term if it is too expansive it can cause problems for the functioning of democracy.

This *Spotlight* has examined the challenges it can present to representative democracy and electoral integrity in general and in Ireland.

The challenge to the functioning of representative democracy centres on the possibility that citizens residing overseas would have an effect on outcome disproportionate to their stake in the result. This challenge is magnified where the size of the eligible overseas electorate as a proportion of the resident electorate is large and the electoral system is susceptible to influence by small numbers of voters.

Emigration, both historic and in the more recent past, as well as Irish citizenship laws and the unique situation on the island of Ireland, means that the Irish overseas citizen population is large vis-a-vis resident citizens and large when compared to that in other EU states (Figure 4). It is possible that a very expansive regime for enfranchising overseas citizens would pose risks to the functioning of representative democracy; risks which would be magnified by the single-national constituency which is used to elect a president.

The policy proposal, or rather the implementation of an overseas franchise, can also present challenges to the integrity of the electoral system. The analysis in this *Spotlight* has found that the postal vote, which is more vulnerable to fraudulent practices, is available in only three of the 11 EU States who enfranchise overseas citizens in presidential elections. That six of these states allow postal voting in parliamentary elections may be because the potential for the overseas vote to decisively influence the result is greater in presidential than in parliamentary elections. A very expansive regime (Figure 2) - whereby a postal vote is made available for practical reasons on a scale unprecedented in the history of Irish elections - may be unwise given the risks to the security of the electoral system already identified by the Government (June 2018).

Further, doubling the size of the electorate and substantially expanding its geographical base would have consequences for the dynamics of an election campaign. In the context of unregulated

online political advertising, and the difficulty in preventing an individual based abroad from using personal funds to support a candidate in an election campaign without officially joining its campaign, there is a risk that the dynamics would be changed in way that undermines representative democracy.

The analysis in this *Spotlight* suggests that when examining the Government's proposal, policy makers must balance the benefits of giving a representative voice to overseas citizens who have a stake in the State with these challenges that extending the franchise could pose to representative democracy and electoral integrity. It is arguable that the implications for the functioning of representative democracy and for electoral integrity should be the over-riding consideration for policy decisions on whether *and how* to extend the franchise to overseas citizens (above the practical implications of implementation). A number of ways to promote the inclusion of overseas citizens in the electoral process, while minimising the risks that the policy could pose to representative democracy and ensuring electoral integrity, are identified in this Spotlight and summarised below.

A qualified extension of the franchise for presidential elections would reduce the size of the overseas electorate vis-à-vis the resident electorate. This can be achieved by:

- 6.1 Extending the franchise to Irish overseas citizens *who have lived in the State* for presidential elections;
- 6.2 Extending the franchise to Irish overseas citizens *who have lived in the State in the last 15 years* (or another time limit) for presidential elections.

The Constitutional Convention favoured these options (6.1 and 6.2) over a full extension of the franchise to all Irish citizens residing abroad. However, there was contradiction in its deliberations in that the Convention also supported the extension of voting rights to Irish citizens who are citizens by virtue of being born on the island of Ireland (most of who by definition have not lived in the State). The qualified extension of the franchise - 6.1 and 6.2 - would exclude all people whose Irish citizenship is by virtue of being born in Northern Ireland.

Including this set of citizens would be achieved by extending the franchise to all Irish citizens who have *lived on the island of Ireland* or who have *lived on the island of Ireland in the last 15 years (or another time limit)*. However, this option would not address the risk as the number of overseas citizens with a right to vote would remain very high vis-à-vis the resident population.

In situations where there is a possibility that overseas citizens would dwarf the resident population, the **introduction of weighted representation** should be considered. While it is not impossible to apply weighed voting to a presidential election (via an electoral-college system), it is more commonly applied to parliamentary elections. In the Irish context, there are a number of possible opportunities to achieve the Government's policy objectives with this proposal through Seanad reform (which remains high on the agenda but has yet to be agreed and implemented):

- 6.3 Create a set of reserved seats in the Seanad (an additional panel) to exclusively represent all overseas citizens (those resident abroad and those who live in Northern Ireland as one single constituency);
- 6.4 Create a set of reserved seats in the Seanad (an additional panel) with half of seats reserved for those who are citizens by virtue of being born in Northern Ireland and half for other citizens overseas;

6.5 Create a set of reserved seats to represent Irish citizens in Northern Ireland only alongside the extension of the franchise for other overseas citizens at Presidential elections (along the lines outlined at 6.1 or 6.2). If this option were implemented, a clear decision would be made on the purpose of the Seanad representatives from Northern Ireland. Is it an extension of the franchise to overseas citizens, or an opportunity to create a voice for all communities in Northern Ireland, in the Upper House? If it is the latter, it would be developed in cooperation with the Northern Ireland Assembly.

Proposals 6.3, 6.4 or 6.5 would require an amendment to Article 18 of the Constitution and approval by referendum:

In the context of a combination of these solutions, and the introduction of advance 'in person' voting over a number of days (to give voters a change to turn up and to enable diplomatic missions to manage potentially large numbers of voters), democratic and electoral integrity may be best preserved.

### **Appendices**

### Appendix 1: Estimate of the population of Irish citizens overseas

No official records are kept of the exact number of, or purposes of, people leaving Ireland, nor is there any legal requirement for Irish citizens abroad to register with the Irish authorities. The Department of Foreign Affairs Irish Abroad Unit therefore makes estimates of the number of Irish citizens living overseas at a particular time.<sup>111</sup>

In 2017 (Table A), it estimated that there are approximately **3.601 million Irish citizens resident** outside the State who are citizens by virtue of being born on the island of Ireland, or as a result of a parent's Irish citizenship (where that citizenship is from being born on the island, or who have citizenship through the Foreign Births Registration process).<sup>112</sup>

Table A: Estimated numbers and breakdown of category of Irish citizens residing overseas

Residing state	Estimated numbers	Status			
Born in Ireland or Northern Ireland					
Northern Ireland	1,870,000	Born in Northern Ireland and with automatic right to citizenship			
Britain	382,000	Born in Ireland			
Britain	251,600	Born in Northern Ireland			
USA	127,000	Born in Ireland			
OECD (excluding Britain and USA)	255,000	Born in Ireland			
Rest of the world	57,000	Born in Ireland			
Born outside of Ireland (first-generation citizens)					
Britain	214,989	First generation children of people born in the Republic of Ireland			
Britain	141,600	First generation children of people born in Northern Ireland			
USA	71,475	First generation children of people born in Ireland			
USA	56,415	Undocumented Irish (50,000) and first generation children of undocumented Irish (16,415)			
OECD and rest of world	48,000	First generation children of people born in the State			
Foreign Births Registration <sup>113</sup>	115,777				

Source: Department of Foreign Affairs and Trade (2017) Data extracted from Table in paragraph 18. .

This 3.601 **figure includes the 1.87 million people born in Northern Ireland** who have an automatic entitlement to citizenship under the Good Friday Agreement.<sup>114</sup> Of this 3.601 million

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<sup>&</sup>lt;sup>111</sup> Department of Foreign Affairs (2017), <u>Irish Emigration Patterns and Citizens Abroad</u>, parag. 5.

<sup>&</sup>lt;sup>112</sup> Department of Foreign Affairs (2017) cited above Sections 16-18.

Foreign Births Registration (the Foreign Births Register which is held by the Department of Foreign Affairs and Trade is the official count of citizens born abroad who have claimed citizenship through a grandparent born in Ireland or a parent who was an Irish citizen at the time of the person's birth).

figure, approximately 648,256 are descendants (i.e. are citizens by virtue of descent and not by virtue of being born on the island of Ireland).

Reconciling these figures with the estimate of the number of Irish citizens overseas used in the comparative study in Section 4 of this paper (0.82 million- see appendix 3), the 0.82 estimate includes Irish citizens residing abroad who were born in the State (the 382,000 in Britain, 127,000 in the USA, 255,000 in the rest of the OECD and 57,000 in the rest of the world which together add up to 821,000). It excludes the 1.87 million people born and residing in Northern Ireland; 251,600 Irish citizens residing in Britain who were born in Northern Ireland as well as Irish citizens born outside of the island of Ireland residing anywhere. The latter are grouped together in the third part of Table 1 below (first generation citizens). The UN Population data is described in more detail in Appendix 3.

<sup>&</sup>lt;sup>114</sup> The Department notes that this is a 'maximalist' interpretation.

#### Appendix 2

# Convention on the Constitution (details of its decisions) and recent opinion poll data

### **Analysis of the Constitutional Convention votes**<sup>115</sup>

78% of the Constitutional Convention's delegates supported the motion that citizens living outside the State should have the right to vote in Presidential elections in principle.

In a vote on a further motion, **53%** favoured extending voting rights to overseas citizens *provided* that they meet certain conditions relating to prior residence in the Republic of Ireland. This group comprised two groups: 27% favoured enfranchising citizens who have lived in the Republic of Ireland *as adults* and who have left for a period of time and 26% enfranchising citizens who have lived in the Republic of Ireland with no further requirement. **36%** of delegates supported the unrestricted extension of the franchise to all Irish citizens resident outside the island of Ireland (irrespective of the citizen's prior residence in the State).

In a further vote, 38% opposed qualifying the right with a time limit based on how long a citizen has lived outside of the State. 61% favoured applying temporal restrictions (14% said 5 years or less, 17% ten years, 20% fifteen years, 6% said 20 years and 4% 25 years (Figure A).

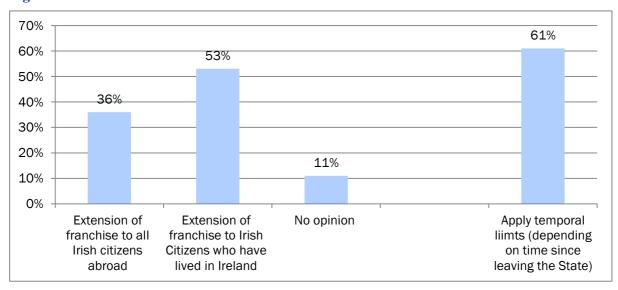


Figure A: Constitutional Convention recommendations

#### Survey data on attitudes towards this proposal

The ÉMIGRÉ project led by Piaras MacEinri of University College Cork and funded by the Irish Research Council included questions on attitudes to this proposal in a general survey on attitudes to, and experiences of, emigration. The survey – conducted in 2013 - was a door-to-door household survey based on a representative population sample drawn from the CSO's small area statistics (2011 census). It found broadly similar support levels for the proposal on extending voting rights in Presidential elections to emigrants to that expressed by the

 $^{115}$  The analysis is on data from the Convention on the Constitution (November 2013)  $\underline{\text{Fifth Report}}$ .

Glynn I, Tomás Kelly and Piaras MacÉinrí (2013) <u>Irish emigration in an age of austerity</u> Irish Research Council Émigré Project [accessed 08/01/2019]. See pages 96-7 for survey questions on this proposal and see Chapter 3 for methodology for household survey.

delegates to the Convention. 40% of those polled supported extending voting rights in Presidential elections; 39% supported extending it for a limited period after a citizen leaves Ireland; 17% did not favour extending voting rights and 4% did not know. The survey did not look for attitudes on extending the vote to people living in Northern Ireland who have an automatic right to citizenship.

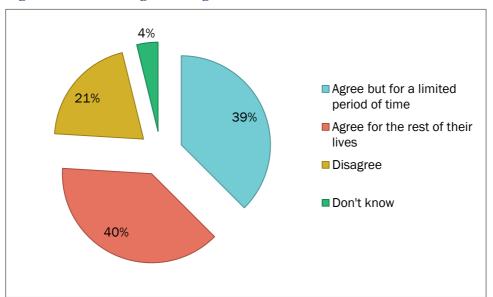


Figure B: Should emigrants be given a vote in Irish Presidential elections

Source: Émigré Project Glynn I, Tomás Kelly and Piaras MacÉinrí (2013)

#### **Survey of Irish emigrants**

A global survey conducted in August and September 2013 through the Irish Embassy Network was undertaken by *Other Voices* and the results were presented to the Constitutional Convention. This survey targeted a specific group of relatively recent Irish emigrants and had almost 2,500 responses. 97% of those polled had Irish passports and over 30% had left Ireland between 2000-2009 and 25% since 2010 (i.e. 55% had left since 2000). The majority had left Ireland (60%) between ages of 20 and 29.

Amongst this group of emigrants, there was over-whelming support for the extension of voting rights: 80% agreed that the right to vote should depend on citizenship and not residence and over 89% agreed emigrant citizens should be able to vote in Presidential elections. On further analysis, opinion amongst this group of stakeholders follows a similar trend to that of the Convention and the household survey reported above. While there is overall support for the proposal in principle, 43% of the group supported an unrestricted right to vote (irrespective of time since one has resided in Ireland) with 42% supporting the right but 'for a limited period.' Further, over 50% agreed with the statement that 'the votes of emigrant citizens should be taken into consideration but not outweigh those of resident Irish citizens.'

<sup>&</sup>lt;sup>117</sup> The result of this survey appears in the Constitutional Convention'

## Flash survey undertaken for Claire Byrne Live/the Journal.ie (Amarach Research) – on extension of right to vote to Irish citizens in Northern Ireland

A survey of over 1,000 adults with smart phones was undertaken for Claire Byrne Live/the Jounal.ie by Amarach Research in September 2018. There are questions over the reliability of this data as it is unclear if it was representative sample and how the sample of people was identified. L&RS contacted Amarach Research to discuss the methodology but received no response. Bearing in mind the caveat on reliability, **62%** of respondents were against the proposal to extend the franchise in Presidential elections to Irish citizens in Northern Ireland with **27%** in favour and **11%** saying they didn't know. There was little difference depending on class, age or gender. No questions were asked about extending the franchise to other Irish citizens overseas.

<sup>118</sup> Reported in the Journal (29 September 2018) 'Most people are against Irish citizens in the North voting for the President '[accessed 31 October 2018]. The survey was conducted on 1,000 adults with smart phones. Data on responses supplied to L&RS by Journal.ie

# Appendix 3: Sources and method for data in Section 4 on EU States which directly elect the President

Much of the analysis in this *Spotlight*, in particular in Section 4, draws on the data gathered by L&RS and set out in Tables 1, 2 and 5 above. Below the sources and calculations for each of the variables are described in detail. For Table 5 sources are detailed in footnotes.

# Table 1: Voting rights in Presidential Elections for overseas citizens (for all EU Member States which hold direct elections for the Presidency)

#### Citizens abroad as a proportion of the total population (column 2 Table 1)

The data in Table 1, Column 2, which was used to generate Figure 3 in Section 4 of this paper is on the estimated number of citizens residing abroad from each of the 14 EU Member States. It was calculated by expressing the estimated total migrant stock from each state as a proportion of the total resident population of that State. The figure is intended to give a broad picture of the potential size of the diaspora and note that both figures – the total population and the estimated numbers of citizens residing abroad – include children (who do not have the right to vote). The year 2017 was used as the best available data for migrant stock was for 2017. Sources for the data are as follows:

#### Total population of each State

The Worldometers website, which draws on databases from official agencies primarily the UN Statistics Division and partners. See <a href="here">here</a> for full list of sources. See <a href="here">here</a> (Worldometer, Population by Country) for 2019 population of each State. Click on the State to access population figures from 1950-2017 from which the 2017 figure was gleaned.

### Estimated numbers of citizens residing overseas (from each of the 14 EU States)

Citizens residing overseas may be classified as migrants. <sup>119</sup> A migrant is defined as a person who changes their country of usual residence. This can be more precisely defined or operationalised for data-gathering purposes as:

- a) Foreign-born residents: someone whose country of birth is different to their country of residence;
- b) Foreign population: residents whose nationality or citizenship is different to their country of residence; or
- c) Someone who changes their country of usual residence for a period of at least a year, so that the country of destination becomes the country of usual residence.

There is no single source of data for citizens of EU Member States living abroad (in other EU States *and* third countries), rather disparate sources which cover the main destination countries.

The best single source data for all 14 States available is from the United Nations Population Department estimates of international migrant stock by country of origin and destination. The UN Population Department bases its estimates on official statistics from each State on the 'foreign-born' residents or the 'foreign population' (residents who are citizens of other countries (i.e. using

<sup>120</sup> UN Population Division, Department of Economic and Social Affairs (2017) UN Migrant Stock by origin and by destination. Table 1: Total Migrant Stock at mid-year by origin and by major area, region, country or area of destination 1990-2017 Data is available for 1990, 1995, 2000, 2005, 2010, 2015 and 2017

<sup>&</sup>lt;sup>119</sup> See House of Commons Library Briefing Paper, August 2018 'Migration Statistics' p.4.

(a) and (b) above. For example, in the case of Finland the estimated number of citizens residing abroad is the estimated number of people born in Finland who reside in other States. Where this is not available, or is incomplete, it is supplemented with residents in other States who are citizens of Finland. The main source of data for the third definition (c above) is survey data. To use it to estimate the overseas population of a State, survey data (e.g. passenger surveys) in all major destination states would be necessary.

Outlining its methodology, the UN Population Department states that:

'in estimating the international migrant stock, international migrants have been equated with the foreign-born population whenever this information is available, which is the case in most countries or areas. In most countries lacking data on place of birth, information on the country of citizenship of those enumerated was available, and was used as the basis for the identification of international migrants, thus effectively equating, in these cases, international migrants with foreign citizens.'121

There are acknowledged shortcomings with both methods discussed by the UN Population Department. Applied to Ireland, for example, where international migrants are equated with 'foreign citizens' (i.e. foreign-born) the figure includes people who were born in Ireland who reside abroad. This figure would not include people born abroad who have automatic right to Irish citizenship which means that second-generation Irish citizens who reside abroad are not included in this figure. Where citizenship' is used as a criterion for defining international migrants, Irish citizens who have naturalized in their country of residence would be excluded from the stock of international (dual citizens would be excluded). 122

The estimated figure for international migrants from Ireland in Table 1, Section 5 of this *Spotlight* is considerably lower than what one would expect when compared with estimate from the Department of Foreign Affairs. This can be explained by the fact that would not include second-generation Irish citizens and may not include those residing abroad who have acquired the citizenship of their country of residence (i.e. who have dual citizenship).

To cross-check this data, L&RS asked the Parliamentary Service in the 13 other Parliaments for official estimates of the numbers of its citizens residing abroad. Where the figures differed this is noted and explained in Table B below (cross-check), data from UN data was used for Figures 3 and 4 in Section 4 it was compiled for comparative purposes and, where possible, used the same methodology. Where the estimates differ, we have noted it in Table A below but found that it did not change the overall ranking of the State for Figure 3 (overseas citizens as a proportion of total population).

These general shortcomings are noted in the United Nations Population Department .. We have applied the shortcomings to the Irish case.

<sup>&</sup>lt;sup>121</sup> UN Population Division (2017) <u>Documentation 'Trends in International Migrant Stock 2017 edition'</u> [accessed 6 November 2018] pp.3-4.

Table A Calculating citizens residing abroad as a proportion of total population

Table A Calculating citizens residing abroad as a proportion of total population						
EU State	Citizens residing abroad (2017)	Total population (2017)	Citizens abroad as % of total population	Cross check (citizens residing abroad) <sup>123</sup>		
Austria	586,161	8,735,453	6.7	580,000		
Bulgaria	1,291,630	7,084,571	18.2			
Croatia	916,824	4,189,353	21.9			
Cyprus	163,734	1,179,551	13.9			
Czech Republic	962,153	10,618,303	9.1	Ministry of Foreign Affaires estimates number with Czech origin is cca 2 – 2,5 million. Estimated number with the Czech passport) residing abroad 200 000 – 250 000.		
Finland	294,631	5,523,231	5.3	300,000		
France	2,207,213	64,979,548	3.4	2-2.5 million		
Ireland	802,084	4,761,657	16.8			
Lithuania	596,856	2,890,297	20.7	<b>346 026</b> citizens of voting age residing abroad (Resident's Register as of September 2018), i.e. those who declared leaving the Republic of Lithuania for a period longer than 6 months.		
Poland	4,701,465	38,170,712	12.3	At the end of 2017, the official Statistic Office estimated 2 540 000 people temporarily abroad (over 3 months). Ministry of Foreign Affairs estimated that there were 18-20 million Poles and people of Polish descent living all over the world. The UN figure would include Poles who have resided abroad for long periods.		
Portugal	2,266,735	11,429,336	19.8	2,306,321 Portuguese reside abroad (2015) Observatório da Emigração		
Romania	3,578,504	19,679,306	18.2	No response		
Slovakia	356,310	5,447,662	6.5	200,000-300,000 estimate		
Slovenia	143,500	2,079,976	6.9	136,000 permanently abroad and 25,000 temporarily living abroad		

#### Overseas citizens enfranchised for Presidential elections (Column 3, Table 1)

Data on EU Member States in which the population directly elect the President is from IDEA database. Data on whether and how overseas citizens are enfranchised is from surveys conducted with parliamentary officials through the European Centre for Parliamentary Research and Documentation (ECPRD Requests 3131, 3075, 2743). OSCE Country Reports on Presidential elections, IPU, and supplemented by other sources where necessary.

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<sup>&</sup>lt;sup>123</sup> ECPRD Survey of Parliaments, each of which was requested to contact their official statistics agency or Ministry of Foreign Affairs for this information. Not all Parliaments responded hence there are some gaps. The cross-check improves confidence in the data. Where they differ e.g. Lithuania the figure provided by the Parliament included citizens of voting age and who declared leaving Lithuania. The only clear difference was Czech Republic and the figure provided by Parliament related only to Czechs abroad who are passport holders.

#### Formal and informal restrictions (Columns 4-6, Table 1)

Data on temporal restrictions, details on method of voting (postal, in-person – including at what locations) and on registration and other requirements is from ECPRD surveys, direct contact with ECPRD correspondents for particular information and Ministry of Foreign Affairs websites/embassy websites where cross-checking was required.

Data on dual citizenship is from the Global database on modes of acquisition of citizenship GLOBALCIT cited in, and re-produced in, the European Parliament Briefing PE625.116 July 2018.

#### Method of voting for overseas voters in parliamentary elections (Column 7, Table 1)

ECPRD surveys cross checked, where necessary, with OSCE Reports. Turnout of registered voters and rough proportion of possible voters registered

# Table 2: Registration requirements for overseas citizens in Presidential Elections in EU Member States

Information is from surveys conducted with parliamentary officials through the European Centre for Parliamentary Research and Documentation (ECPRD Requests 3131, 3075, 2743) and was supplemented, where necessary, with OSCE election observation reports and websites of Ministries of Foreign Affairs.

#### Table 5: Estimated registration rate and turnout rate for some EU Member States

Table 5: Estimated registration rate and turnout rate for some EU Member States

State (election year)	Voters on the overseas electoral register as a proportion of estimated overseas citizens	% of registered overseas voters who used the vote (turnout)	
Czech Republic (2018)	10% <sup>124</sup>	73% (first round)	
		81% (second round).	
Croatia (2014)	10% <sup>125</sup>	54%.	
Finland (2018)	Automatic registration	13.30% <sup>126</sup>	
France	4.1% <sup>127</sup>	No figure was obtained	
Slovenia (2017)	78% <sup>128</sup>	5%	
Portugal (2001, 2005)	8.5% (2001)	8.3% (2001)	
	10% (2005) <sup>129</sup>	10.7% (2005) <sup>130</sup>	
Lithuania (2014)	4.5% <sup>131</sup>	84% <sup>132</sup>	
Austria (2016)	10% <sup>133</sup>	53% (first round)	
		77% (second round)	
Poland	10.6% (first round) <sup>134</sup>	87% (average turnout over both rounds)	
2015	8% (second round)		

Source: This data was only available for some states and details are in the footnotes. The UN Population Database was used to estimate the total possible population of overseas voters when calculating the figure in column 2.

<sup>&</sup>lt;sup>124</sup> The number of overseas voters registered for the second round of the last Presidential election (26,640) as a proportion of the estimated number of overseas pass-port holders registered to vote

<sup>10%</sup> of overseas citizens who are on the official register of Croatian citizens residing abroad applied to be on the electoral register for the last parliamentary election (2016). The figure for Presidential election in 2014 was not provided. The register for 2016 was used as an approximate of number of overseas citizens on the register to calculate turnout in 2014 Presidential election (in which 37,203 cast a vote).

<sup>&</sup>lt;sup>126</sup> 13.3% (24,368) of 251,201 voters on the register used the vote)

<sup>&</sup>lt;sup>127</sup> 821,519 of the estimated 2-2.5 million citizens overseas are registered (approximately 4.1%) We use the lower 2 million figure as a proportion will be under 18 years of age.

<sup>&</sup>lt;sup>128</sup> 92,600 were on the electoral register of an estimated 143,500 residing abroad of which approx. 25,000 are on a separate register for 'temporarily abroad (and who cast their vote in their constituency of usual residence). 143,500 minus this 25,000 leaves 118,500 permanently residing abroad of which 92,600 (the number on the electoral register) is 78%. 4,800 of 92,600 cast a vote.

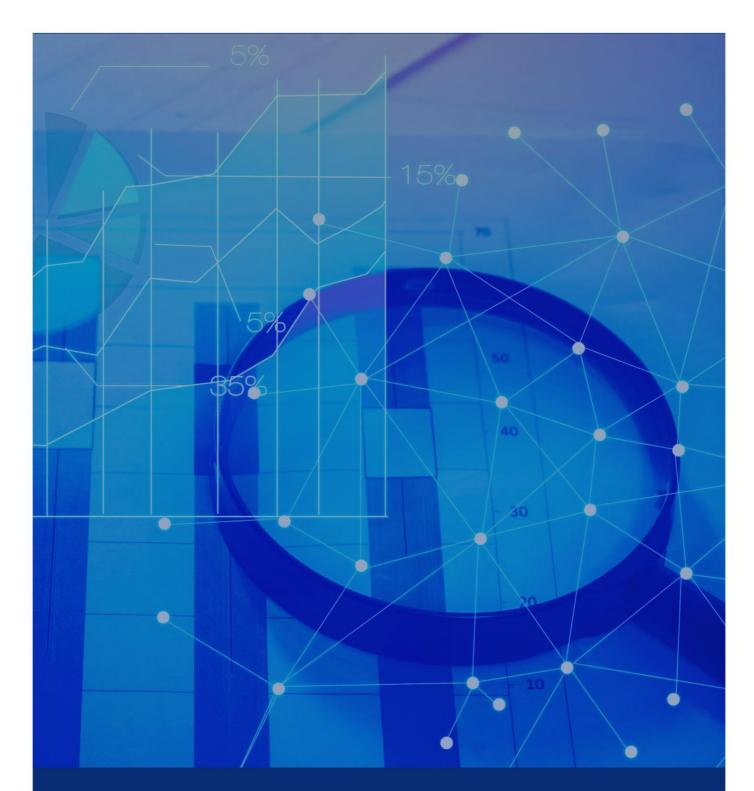
Estimated total population of Portuguese emigrants was 2,174,444 (2000) and 1,936,066 (2005). Observatório da Emigração Emigration observatory. See here for Table. Numbers registered for Presidential election were 185,223 (2001) and 187,109 (2005) IDEA Handbook (2007) pp.83-7.

<sup>&</sup>lt;sup>130</sup> It was not possible to obtain figures from the Portuguese Parliament. Data from <u>IDEA Handbook</u> (2007)

<sup>131 15,744</sup> of an estimated 346,026 citizens of voting age residing overseas.

<sup>132 13.241</sup> votes cast of 15,744

<sup>&</sup>lt;sup>133</sup> Second round of 2016 Presidential election (56,539 voters registered to vote of an estimated 580,000 Austrian citizens (of all ages) residing abroad. The registration rate in the first round was 7.5% (39,079) <sup>134</sup> 253,665 registered to vote on overseas register, which is over 10% of the 2,397,000 estimated to be overseas citizens of voting age in 2015 (figure given by Polish Parliament). We use this figure as the total migrant stock (Fig 3 and Table 1 and Appendix 3) which includes citizens overseas of all ages.



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