



Office for Democratic Institutions and Human Rights

ELECTIONS TO THE EUROPEAN PARLIAMENT

4 - 7 June 2009

OSCE/ODIHR EXPERT GROUP REPORT

11 – 30 May 2009



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I. EXECUTIVE SUMMARY

Following invitations from the 27 Member States of the European Union (EU) to observe the 4-7 June 2009 elections to the European Parliament (EP), the OSCE/ODIHR deployed an expert group to 15 EU Member States from 11 to 30 May 2009. The scale and nature of these elections – essentially 27 separate national elections to a supra-national body - dictated the need for an innovative activity beyond the existing OSCE/ODIHR methodology.

The elections to the EP were the largest-ever single electoral event in the OSCE area. 736 members of parliament (MEPs) were elected by approximately 375 million people in 27 countries. The Lisbon Treaty, not yet in force, foresees that the EP will be composed of 751 parliamentarians. This created the most peculiar situation since the Member States that are entitled to additional seats under that Treaty had or will have to adopt specific measures in order to allow additional MEPs to take up their seats if and when the Lisbon Treaty enters into force. In fact the current legislature may count 754 members since the Lisbon Treaty provides that the number of elected representatives will be decreased by three in one Member State. However, these three officials elected in June will remain in office until the end of their term in 2014.

Although common EU principles and individual rights related to elections exist, the EP elections are characterized by a considerable diversity of national rules, procedures, and practices. In addition, the political dimension of EP elections is dominated by national political actors and dynamics. The EP has sought to harmonize frameworks and practices for decades, but the Member States have thus far resisted further integration in this respect. The debate about the EP's electoral framework is likely to continue during the next legislature.

The complexities of these elections, the overall declining turnout, the limited interest among much of the electorate, and the specificities of national election legislation underlined the continued need for further harmonizing and improving some aspects of the legal and administrative frameworks both at EU and national levels. However, a high level of public confidence in the electoral process and national electoral management bodies was highlighted in all Member States visited.

The OSCE/ODIHR expert group considered issues similar to those identified in the 2004 OSCE/ODIHR Pre-Election Overview.¹ Most recommendations contained in the 2004 report remain to be addressed. With this report, the OSCE/ODIHR raises a number of additional issues and offers EU institutions and the Member States suggestions for addressing them.

¹ OSCE/ODIHR Pre-Election Overview, 3 June 2004, www.osce.org/odihr-elections/14463.html.

Some issues include:

- A lack of harmonization of candidacy requirements throughout the EU;
- A lack of provisions in some Member States allowing individual candidates to run in EP elections in line with OSCE commitments;
- A lack of provisions in some Member States on voting rights, particularly for prisoners and for EU residents who do not hold citizenship of any State;
- A lack of possibility to appeal to a court decision regarding election results in some Member States; and
- A lack of provisions in some Member States to ensure adequate access and co-operation for domestic and international observers, in line with OSCE commitments.

Some recommendations include:

- reviewing some of the current practices for awareness-raising campaigns on EP elections with the view to increase effectiveness and avoid possible perceptions of partisanship;
- ensuring that national campaign legislation adequately addresses the activities of European-level political parties;
- unifying the dates of the EP elections in order to ensure that the publication of results respects both the need for transparency and the need to avoid potential influence on the results in other Member States;
- improving the process of exchange of information on registered voters so as to protect the equality of the vote and avoid possible multiple voting; and
- amending legislation where necessary to provide for an independent media monitoring mechanism to assess whether media provisions are respected during the campaign period.

The OSCE/ODIHR stands ready to discuss the suggestions contained in this report further with the EU institutions and/or with individual EU Member States.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following invitations from the 27 Member States of the European Union (EU) to observe the 4-7 June 2009 elections to the European Parliament (EP), the OSCE/ODIHR deployed an expert group to 15 EU Member States from 11 to 30 May 2009. The OSCE/ODIHR expert group, headed by Mr. Vadim Zhdanovich, consisted of 23 experts from 19 OSCE participating States. Experts were both contracted by OSCE/ODIHR and seconded by OSCE participating States.

In preparing for a potential OSCE/ODIHR election activity in connection with the EP elections, the OSCE/ODIHR conducted an Exploratory Mission to Brussels from 30 March to 2 April 2009.² Its purpose was to gather information on changes to EU rules governing EP elections since the 2004 EP elections, when the OSCE/ODIHR issued a Pre-Election Overview, as well as to acquire an understanding of the main trans-European issues that might serve as points of focus for an OSCE/ODIHR activity. The Exploratory Mission concluded that the scale and nature of this electoral exercise,

² OSCE/ODIHR Exploratory Mission Report, 23 April 2009, www.osce.org/odihr/37314.html.

unique to the OSCE area, dictated the need for an innovative activity beyond the existing OSCE/ODIHR methodology.

The OSCE/ODIHR identified 15 States to be visited based on the following criteria: geographical diversity, balanced representation of large and small Member States in terms of registered voters, and balanced representation of Member States that have more recently joined the EU and those that have been members for longer. Other factors were also taken into consideration, such as whether concurrent elections were held on the same day and whether the OSCE/ODIHR had previously conducted an election observation activity in the EU Member States in question.

The OSCE/ODIHR split the expert group into five teams of approximately four experts, with each team visiting three Member States ahead of election days. This option appeared to be the most realistic and feasible within the given constraints, and allowed for the most meaningful approach to trans-European electoral matters.

The OSCE/ODIHR deployed teams to the following Member States: 11-17 May – **Czech Republic, Greece, Latvia, Lithuania, Poland**; 18-24 May – **Denmark, Malta, Romania, Slovenia, Spain**; 25-30 May – **Austria, Germany, Ireland, Luxembourg, Sweden**. While the OSCE/ODIHR had previously observed or assessed elections in a number of the States visited, eight participating States hosted an OSCE/ODIHR team of electoral experts for the first time.³ The OSCE/ODIHR expresses its appreciation to the authorities of the Member States, including their permanent missions to the OSCE in Vienna for their co-operation and assistance.

The experts focused on trans-European issues such as procedures for registering foreign EU nationals as voters or candidates, legal provisions regarding the election of additional Members of the European Parliament (MEPs) stipulated in the Lisbon Treaty yet to enter into force, the campaign activities of European political parties, the timing of the publication of results, factors influencing voter turnout and the provision of voter information by EU institutions and Member States. In addition, they considered national election campaigns, national rules and structures within the respective electoral systems as regards, *inter alia*, the distribution of seats, preferential voting, vacant seats, franchise, constituencies and polling day procedures and regulations. The examples included in this report were collected during the expert visits to the 15 Member States and are used to illustrate different electoral practices among EU Member States. They do not, however, constitute an exhaustive compilation of widely diverse practices used in the 27 EU Member States.

III. ROLE AND POWERS OF THE EUROPEAN PARLIAMENT

The EP's role and powers reflect its status as a supra-national body, and there are significant differences compared with the legislatures of States. Nevertheless, they have evolved to such an extent that the EP must nowadays be considered a legislature. EU legislation prevails over national law, and many EU rules directly affect the everyday lives of EU citizens. Even though the EP elections are administered by the EU Member

³ Austria, Denmark, Germany, Greece, Luxembourg, Malta, Slovenia, and Sweden.

States and not by an EU institution, elections to this body should meet the same standards as elections to any national parliament.

The role and powers of the EP in co-authoring legislation with the EU Council of Ministers has grown significantly in the last 20 years. This was intended to reduce some of what many had referred to as the EU's "democratic deficit". The Treaties of Maastricht (1992), Amsterdam (1998) and Nice (2001) significantly strengthened the position of the EP. The Lisbon Treaty, which has yet to be ratified by all Member States, would further expand the powers of the already elected EP to become an even more prominent co-legislator of the EU.⁴

Many features of the EP make it a *sui generis* institution. For instance, it works in three different locations⁵ (Strasbourg – its seat, Brussels and Luxembourg); it uses 23 official languages; and, unlike national parliaments, no government is formed on the basis of a majority in the EP. Election results therefore do not lead to any change in government. In its main task of debating and adopting new EU legislation, it shares legislative powers with the EU Council of Ministers. The EP also has significant powers with regard to the appointment and dismissal of the European Commission (EC). It elects the President of the EC, approves the Commissioners, and monitors the EC, a role that the Lisbon Treaty would further strengthen. Procedures for appointing the President of the EC and other commissioners begin after each EP election.⁶

The EP also has a number of important powers concerning appointments to the European Central Bank, the Court of Auditors, the Ombudsman, and EU Agencies. It also holds responsibilities as regards the EU budget.

NUMBER OF MEMBERS IN THE EUROPEAN PARLIAMENT

In line with the 2001 Treaty of Nice and the Accession Treaties for Romania and Bulgaria, 736 members were elected to the EP in June 2009.⁷ Since the Lisbon Treaty⁸ foresees 751 seats in the EP, Member States that would have additional seats under this

⁴ However, the power to initiate legislation mainly remains with the EC. The EP has no formal right under the treaties to initiate legislation, except for the purpose of adopting a uniform electoral procedure for EP elections and the statute of its members. However, since the 1993 Maastricht Treaty, it can request the EC to submit proposals on matters on which it considers that EU action is required. It also frequently issues non-binding calls for legislative proposals.

⁵ The EP has its seat in Strasbourg, where 12 plenary sessions annually are held. The Committees meet in Brussels, where additional plenary sessions are also held. The Secretariat-General is based in Luxembourg, but operates mainly out of Brussels.

⁶ The EP amended its Rules of Procedure to institute confirmation hearings for all nominated Commissioners. The EP used its expanded powers in March 1999 to force the EC to step down, and in 2004 to bring about a change in one of the nominations.

⁷ The number of seats per Member State as established by the treaties is shown in Annex 1.

⁸ In 2007, Member States signed the Treaty of Lisbon, which replaces the earlier Constitutional Treaty, which itself had emerged out of a Constitutional Convention (2002-2003). At the time of writing, the Treaty of Lisbon has yet to be ratified. Following its rejection by Irish voters in a referendum, the fate of the Treaty was cast into doubt in 2008. The Czech and Polish Presidents have yet to sign the ratification documents. On 30 June, the German Constitutional Court issued a decision on the constitutionality of the Lisbon Treaty. It said that in principle, the new Treaty is compatible with the German Basic Law, but instructed the German Parliament to adopt additional legislation that would strengthen the democratically elected national parliament's role in EU legislative processes (see: www.bundesverfassungsgericht.de).

Treaty⁹ had to or will have to adopt specific measures or provisions in order to allow additional MEPs to take up their seats if and when the Lisbon Treaty enters into force. Some interlocutors suggested to the OSCE/ODIHR Exploratory Mission that the 18 additional MEPs might not be able to exercise full voting rights until a protocol revising the treaty in force is ratified.

In contrast, under the Lisbon Treaty, the number of MEPs allocated to Germany will decrease from 99 to 96. The three extra MEPs will however be able to remain in office until the end of their term in 2014. Germany contended that all 99 German MEPs should keep their full voting rights until their mandate expires in 2014, a position supported by the EP administration. However, representatives of some EU Member States have expressed doubts regarding the full status of the three seats. Any possible limitation of rights is nonetheless not described in any official documents.

Most OSCE/ODIHR interlocutors affirmed that the identification of the additional elected MEPs poses no particular difficulty. Given that the proportional representation voting systems applied in all Member States, establishing who the additional MEPs will be can be accomplished on the basis of applying the relevant formulas to the higher number of seats.

In Austria, the OSCE/ODIHR expert team was told that a Constitutional Act was passed in anticipation of the two-seat increase, permitting the Austrian Federal Election Board to allocate the seats on the basis of the results of the 2009 EP elections. In Malta, the President announced on 8 May that the unelected candidate with the largest number of votes will be declared Malta's sixth MEP, once the Lisbon Treaty comes into force.

The Latvian Central Election Commission (CEC) told the OSCE/ODIHR expert team that it had the relevant authority to allocate the extra seat to the next highest ranking candidate based on the results from the 2009 elections. In Spain, the next four candidates on the lists will receive the additional mandates. This is feasible because Spain is a single constituency, allowing the Spanish CEC to identify the next four highest-ranking candidates.

However, in Poland, Slovenia and Sweden, no provisions had been made by law or regulation as to how to determine which candidate may be awarded the additional seat.

IV. POLITICAL BACKGROUND

The elections to the EP are characterized by 27 distinct political environments, cultures and traditions. Although many of the political challenges are similar among the EU Member States, and their interests converge to a large degree, the effect that overarching issues such as the world financial/economic crisis, climate change, global trade and development have on national political dynamics is different from one country to the other. This makes it difficult for political parties on the European level (see the sub-chapter B) to identify campaign themes of equal interest to all Member States and

⁹ Under the treaty, the number of MEPs would increase for 12 Member States. Spain acquires four additional seats; France, Sweden and Austria gain two MEPs each; while the UK, Italy, Poland, the Netherlands, Bulgaria, Latvia, Slovenia and Malta each gain one MEP.

thereby also to create a feeling among the electorate that the EP elections are about the EU as a whole rather than a question of defending national interests.¹⁰

These were also the first EP elections after the referenda in France and Netherlands in 2005 that rejected the Treaty on a European Constitution and after the 2008 referendum in Ireland, which resulted in a rejection of the Treaty of Lisbon.

In some Member States, these elections were seen as a test run for national elections to be held soon thereafter. Examples are the forthcoming parliamentary elections in Germany in September and the presidential election in Romania in November. Moreover, some Member States also held local, regional or even national elections or referenda simultaneously with the EP elections. This may have the advantage of increasing turnout but risks blurring the stakes of the campaign and increasing the tendency of national and local issues overshadowing the European issues. Such overlaps complicate technical aspects of the elections, including the need for multiple voter lists, campaign finance rules, and media regulation.

Luxembourg held general elections simultaneously with the EP elections, as it has since 1979.¹¹ In Germany, seven of 16 *Länder* held local elections, and in Italy, 62 provinces and 30 cities also held elections. In Belgium, the regional parliaments were elected. Latvia, Malta, Ireland and parts of the UK also held local elections. In Lithuania, the EP election campaign was overshadowed by the contest for the President of the Republic, who was elected in the first round two weeks before the EP elections. As a result the major parties had already spent much of their campaign resources.¹² Denmark, on the same day as EP elections were held, organized a referendum on a constitutional change regarding succession to the throne.

While major competitors in the EP elections were established, political parties associated with European political parties, independent candidates and single-issue lists were also seen in many Member States. The most successful and prominent of such groups was the Swedish Pirate Party, which garnered 7.13 per cent of the vote and won a seat.¹³ In Slovenia, a list campaigned on patients' rights but did not win any seats. Although widely discussed in the media, Libertas – the party which emerged from the Irish “No” campaign in the 2008 referendum – did not attract significant support.¹⁴

None of the Political Groups in the EP or European political parties openly campaigned for the post of President of the EC. The European Peoples Party (EPP) limited itself to recommending a second term for incumbent José Manuel Durão Barroso, and the Socialist Group (PSE/PES) was not able to agree on an alternative candidate.¹⁵ This

¹⁰ For instance, the global economic crisis has not affected all 27 Member States in the same manner. While some Member States have seen significant reductions of GDP, others have experienced modest growth.

¹¹ In order to boost the visibility of the EP elections this time, all but one party agreed to field different candidates for the national and EP elections. To date, high-profile national politicians have led the EP lists in Luxembourg but have rarely taken up their EP seats when elected.

¹² This may have been a determining factor in the very low turnout at the EP elections in Lithuania.

¹³ The Pirate Party advocates reforming copyright law, abolishing the patent system and respecting the right to privacy, especially concerning electronic communication.

¹⁴ One candidate allied with Libertas obtained a seat in France.

¹⁵ Only shortly before the elections, PES President Poul Nyrup Rasmussen publicly appealed for an alternative.

may have led many voters to consider the identity of the next president of the EC to be a foregone conclusion. On 16 September, Mr. Barroso was re-elected President of the EC for a second term.

The ways in which parties compiled their candidate lists also differed both within and between countries. In many cases, internal democratic processes took place, such as party congresses or voting by members or delegates. In some cases, the lists were decided by the party leadership.

A. POLITICAL GROUPS IN THE EP

With more than 200 individual political parties represented in the EP, MEPs form Political Groups consisting of representatives of national political parties with a similar political profile. The EP's internal rules make it easier for Political Groups than for individual national parties or individual MEPs to pursue their work, thereby creating an incentive for national political parties to join a Political Group. The Political Groups are of central importance in the EP's work. They play a decisive role in choosing the President, Vice-Presidents and committee chairs, set the parliamentary agenda, choose the rapporteurs, and decide on the allocation of speaking time. They have their own staff, and receive considerable funds.¹⁶ However, Political Groups as such do not campaign. In fact, the rules (as approved by the EP Bureau in 2003) regarding the appropriations from the EP budget to the Political Groups rule out the use of their budgets for campaigning.

After the 2009 EP elections, new rules regarding the establishment of a Political Group require the support of at least 25 MEPs from at least seven Member States.¹⁷

B. EUROPEAN LEVEL POLITICAL PARTIES

These were the first EP elections after the formation of political parties at the European level. These pan-European parties (hereafter "Euro-parties") received formal status with the adoption of EU Council Regulation 2004/2003 (amended in 2007). They are entities distinct from the EP Political Groups. Euro-parties receive funding of about 10 million Euros per year from the EU general budget, allocated via the EP. The support is proportional to the number of their associated MEPs in the EP, so there is therefore a close link between Political Groups and Euro-parties.

The Euro-parties are currently the European People's Party (EPP), the Party of European Socialists (PES), the European Liberal Democrats and Reformers (ELDR),

¹⁶ Richard Corbett, Francis Jacobs and Michael Shackelton, *The European Parliament*, 7th edition. The EP annually allocates around 50 million Euros directly to the Political Groups. However, the continued existence of a group with members from at least a fifth of the Member States which has fallen below the threshold is possible. This compromise was found to allow the UEN and the IND/DEM groups to carry on. In the outgoing EP with its 785 MEPs, seven Groups were represented: The EPP-ED: Group of the European People's Party (Christian Democrats) and European Democrats (288); PES: Group of the Party of European Socialists (217); ALDE: Group of the Alliance of Liberals and Democrats for Europe (100); UEN: Union for Europe of the Nations Group (44); Greens/EFA: Group of the Greens/European Free Alliance (43); GUE/NGL: Confederation Group of the European United Left/Nordic Green Left (41); IND/DEM: Independence/Democracy Group (22) and 30 non-attached MEPs.

the European Democratic Party (EDP), the European Green Party, the European Free Alliance (EFA), the Party of the European Left and the EUDemocrats (EUD) – Alliance for a Europe of Democracies.

Because EP support to the Euro-parties is allocated on a calendar year basis in combination with the obligation to disclose how the funding has been used, new Euro-parties may apply for funding for 2010, while some old ones may discontinue their existence once they have accounted for the financial support received for 2009.¹⁸

Euro-parties are allowed to use EU budget funds to finance their own campaign activities for EP elections.¹⁹ Regulation 2004/2003 forbids that these funds constitute direct or indirect financing of other parties and particularly of national parties (including their member parties) or candidates. For the 2009 EP elections, the Euro-parties agreed on 21 August 2008 to a Code of Conduct governing the practice of campaigning for European Political Parties. Subsequently, on 8 October 2008, the EP Bureau took note of this Code of Conduct and decided to regard it as binding on all European Political Parties.

Contributions to Euro-parties from national political parties or from natural persons (who must be members of such beneficiary parties) are permissible but cannot exceed 40 per cent of the Euro-party's annual budget. Regulation 2004/2003 does not contain any limitation on how the Euro-parties use the portion of their budgets that does not originate from the EU budget. Donations from the budgets of the EP Groups are not permissible.

According to the Directorate-General for Communication of the EP, any complaints related to the Euro-parties' respect of Regulation 2004/2003 should be addressed to the EP. Should the EP find that a Euro-party has not respected the rules governing the use of its subsidy allotment from the EP, it can decrease the final allotted subsidy by an amount corresponding to the funds used in violation of the rules. Should there be fundamental breaches of the Regulation, the EP may terminate the funding of the Euro-party in question altogether.

National laws on campaigning and campaign financing are also of relevance and may at times further restrict the way in which Euro-parties are allowed to conduct campaign activities in a Member State (see chapter below about campaign financing and the case of Latvia). Like any other EU regulation, Regulation 2004/2003 supersedes national legislation and is valid in all Member States as such (i.e. it does not need to be transposed into national legislation).

The Euro-parties still lack the appropriate logistical and financial means to run an EU-wide election campaign. It should also be noted that national parties often choose to run their own campaign without associating themselves with Euro-parties, often due to the national political competition being perceived as more important. Some national parties may also not wish to fully support all the positions of the Euro-party with which they would normally associate themselves. The Euro-parties essentially work as service

¹⁸ Financial reports on the use of 2009 grants have to be submitted by 15 May 2010.

¹⁹ Regulation 2004/2003 specifies that such expenditure shall include administrative expenditure and expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications.

providers for national parties (e.g. by encouraging the use of common symbols and manifestos).²⁰ Campaigning by Euro-parties was not visible in any Member State visited by the OSCE/ODIHR.

C. TURNOUT

Turnout at EP elections has been declining since 1979. The 2009 election saw a confirmation of this trend, even though the rate of decline has somewhat slowed down, and a closer look at individual countries reveals a more nuanced picture. In 10 Member States the turnout actually increased in 2009, while it stayed more or less the same in another five, and fell in 12 Member States.²¹ The biggest changes were in Estonia, where turnout rose from 26.83 per cent to 43.9 per cent, and in Lithuania, where it fell from 48.38 per cent to 20.98 per cent. In 11 Member States turnout was lower than 40 per cent.²² Where voting is compulsory, the turnout was generally higher, but not always, as the following figures display: Belgium (90 per cent), Cyprus²³ (59.4 per cent), Luxembourg²⁴ (91 per cent) and Greece (52 per cent). The overall EU-wide turnout was 43 per cent.

The low turnout rates have been interpreted by many as an expression of opposition or indifference to the EU and its key institutions. A number of parties across the continent campaign on an anti-EU message, which offers voters dissatisfied with European integration as such a means to elect representatives who share their views. The large number of abstainers can therefore not simply be explained in terms of opposition to the EU. On the whole, regular EU-wide opinion polls confirm that a majority of citizens in most Member States consider the membership of their country in the EU to be desirable. However, the complexity of EU level politics and its regulations does not facilitate citizens' understanding of the political process. The EU and its Member States have not yet been able to bridge this awareness and interest gap, although considerable resources have been spent in an attempt to address it over the course of many years.

The 2009 EC Euro-barometer public opinion surveys showed that the level of awareness of the elections had increased compared to a year earlier, but the level of interest had not.²⁵ Practically half of EU citizens wanted to see the EP play a more important role while only one sixth stated the contrary.²⁶ Another Euro-barometer survey measured that the EP ranks highest among EU institutions, with 51 per cent of EU citizens inclined to trust it.²⁷

²⁰ Common manifestos are rather vague, as national member parties (often more than one per country) distinguish themselves with their own programmes.

²¹ Turnout increased in Austria, Bulgaria, Denmark, Estonia, Finland, Latvia, Poland, Slovakia, Spain, and Sweden, while it remained more or less equal to 2004 in Belgium, Czech Republic, Germany, Luxembourg and Slovenia.

²² Turnout was lower than 40 per cent in Bulgaria, Czech Republic, Hungary, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, and the United Kingdom.

²³ In Cyprus and in Greece, there is no penalty for failing to vote.

²⁴ Voters aged above 75 are exempted.

²⁵ In one year, the awareness of the date had doubled to 32 per cent. However, 44 per cent said they were interested in the European elections, while 53 per cent said they were not. It is noteworthy that these figures are similar to the eventual overall turnout rate.

²⁶ The differences between Member States were quite substantial in this regard, however.

²⁷ Eurobarometer 70, December 2008, page 43.

It has been suggested that a reformed electoral system may reverse the downward trend in participation and lead to more interest by voters in EP elections. While some steps could be taken to strengthen the link between the voter and the elected representative,²⁸ electoral reform alone will probably not suffice to overcome the structural and political factors which negatively affect turnout.

D. AWARENESS AND INTEREST RAISING ACTIVITIES AIMED AT INCREASING TURNOUT

For the first time, the EP, in co-operation with other EU institutions, conducted a common public information campaign for the EP elections, including a single logo, slogan and set of advertisements. Starting on 17 March 2009, the EP information campaign used posters, Internet banners and billboards, as well as outdoor installations, to encourage citizens to vote. The common slogan for the campaign, for which a budget of EUR 18 million had been allocated, was “*It’s your choice!*”. The same ten posters and materials were translated into all 23 official languages (as well as additional regional languages) and were used across the EU Member States. EP information offices in each Member State were instructed to select and use the four out of the ten themes most pertinent to that particular Member State. The local EP Information Offices in each Member State could also focus on specific themes more tuned to their national audience.

Central features of the campaign were the prominent installation of 36 video boxes (“choice boxes”),²⁹ online videos, TV and radio spots (many of which were aired for free by broadcasters). Internet-based outreach to younger voters included the use of social networks, as well as photo and video applications. However, apart from the choice box and posters, the EP’s information campaign was not very visible in several Member States visited by the OSCE/ODIHR experts. The EP downgraded its voter information and awareness activities in the weeks immediately before the vote, in order to avoid any perceptions of partiality in the political contest.

The campaign’s aim was to show that between 2004 and 2009, the EP made important decisions that influence the daily lives of EU citizens. By underlining the importance of the EP, the campaign sought to emphasize the relevance of the election. The goal set by the EP itself, to break the downward trend in turnout, was not met.

There are no guidelines as regards the participation of outgoing MEPs and candidates in awareness-raising events, but according to the EP Directorate General for Communication, it is self-evident that candidates for the EP have no role to play in EP awareness-raising events. EP Information Offices are free to organize events involving sitting MEPs based on the principle of equal treatment of political groups, but only up until the beginning of the official election campaigns organized by political parties in the Member States.

²⁸ For example, in Poland the allocation of seats in the EP depends on the turnout in a specific constituency. Political parties emphasized to voters that abstention meant their interests would remain under-represented in the EU.

²⁹ Containers with video recording equipment were placed in public squares to invite EU citizens to express their wishes for Europe as a video message. A selection of these recordings was played on screens outside the boxes and in Brussels via the EP’s TV channel, EuroparlTV.

To this end, the EP Information Office in Romania organized a series of public meetings with Romanian MEPs around the country from February to May 2009. The intention was to present the EP's personal face to the Romanian public, and to promote a better understanding of the MEPs' work. It may, however, have simply appeared to provide a free campaign platform for a select few invited MEPs. In Luxembourg and Slovenia, a similar method was used to bring MEPs closer to the voters.³⁰ Such opportunities for direct contact between citizens and their representatives may have a much more positive effect than the use of high-tech installations.

The role of governments in many Member States was more modest with regard to turnout promotion. While in some Member States the EP and EC offices worked closely with national institutions to promote awareness and turnout, national authorities in other Member States were more reluctant to engage in such co-operation. For example, the Latvian government does not appear to have taken any specific action to raise voter awareness. In Denmark, the government did not conduct any EU-information campaign at all; the EC and the EP were the only two institutions involved in such activities. However, the government did advertise the possibility of early voting and launched a late and controversial campaign to promote participation in the referendum.³¹

EU institutions and Member States could consider conducting voter information about the EP elections on a continuous basis, not only immediately before the next EP elections. Furthermore, the EP may consider continuing its own awareness raising activities until immediately before election days as long as there is no risk of perceptions of partisanship or politicization. The involvement of MEPs running for re-election, or their parties, in awareness raising events during or shortly before the campaign for EP elections could be perceived as selective and as providing unfair campaign opportunities for these MEPs and their political parties.

V. LEGAL FRAMEWORK

The legal framework for the elections to the EP is formed by a combination of only a few key documents and principles on the EU level, and national legal provisions on the level of each Member State. National legal provisions must be in line with the relevant EU law but must otherwise specify the procedures to be followed in EP elections, in accordance with the constitutional requirements and traditions of each Member State. Thus, the majority of rules governing the elections are still national rules. Thus, in combination with the election campaigns focusing more on national questions than on pan-European issues (see Chapter VII), the EP elections can still in essence be considered as 27 separate elections to a supra-national body.

The EU itself has no constitution. Its institutions are governed by primary EU law, which is laid down in treaties between the EU Member States. Every accession of a new Member State is also based on a treaty. The treaties are the legal basis for the existence of the EU's institutions, including the EP, and regulate their functioning and the relationships between them. The treaties include a number of provisions relevant for the

³⁰ www.europaforum.public.lu/fr/actualites/2009/02/europe-comptoir/index.html.

³¹ In Denmark, the Government is not permitted to campaign for a "yes" or "no" during a referendum. The Government was criticized in the media for allegedly expressing a bias towards a "yes" vote in its turnout promotion campaign.

EP elections, such as the number of seats per Member State, and the rights of EU citizens.

The founding treaties of the EU in the 1950s laid down that the EP should be elected via a uniform procedure and gave the EP the right to work out proposals in this regard. The decision on such a procedure should, however, be taken unanimously by the EU Council of Ministers, thus giving each Member State a veto right on this issue. For many years, the EP tried to work out such a proposal, but none was successful until 1976, when the Member States finally agreed on the Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage. This Act paved the way for the first direct elections in 1979. The Act was last amended in 2002,³² (after the treaties had been revised in Amsterdam in 1997), to provide that the rules for conducting EP elections in EU Member States no longer needed to be uniform, but could also be “in accordance with principles common to all Member States”.

The 1976 Act, as amended in 2002, establishes electoral rules common to all 27 Member States but is limited in scope. Apart from introducing universal suffrage for the EP elections, the Act stipulates (a) the requirement that elections be held under a proportional system and (b) the incompatibility between the elected office of MEP and certain specified positions, mostly in other EU institutions. It explicitly allows the Single Transferable Vote (STV) system and preferential voting, multiple electoral constituencies,³³ and sets a maximum threshold of five per cent. It prohibits dual mandates – i.e. the same person holding a seat in the EP and in a national parliament simultaneously (dual mandates were gradually phased out until the 2009 elections) – and it lists a number of incompatibilities for MEPs, and lets national law apply to the withdrawal of mandates and the filling of vacancies.

Another key EU legal text for EP elections is Directive 93/109/EC of the Council of 6 December 1993 (secondary legislation), which lays down detailed arrangements for the exercise of the right to vote and to stand as a candidate in EP elections for EU citizens residing in a Member State of which they are not nationals. It was adopted on the basis of the Treaty of Maastricht of 1993, which introduced the concept of EU citizenship.

According to the 1993 Directive, EU citizens who are eligible voters in their Member State of origin are automatically eligible to vote in the EP elections in any other Member State as long as they are resident in the Member State they intend to vote in. They must also register as voters for the EP elections by the relevant deadline. Article 39 of the Charter of Fundamental Rights of the EU (2000) confirms that every EU citizen has the right to vote and to stand as a candidate at EP elections in the Member State in which s/he resides, under the same conditions as nationals of that State, and that MEPs shall be elected by direct universal suffrage in a free and secret ballot. In accordance with the 1993 Directive, no voter is allowed to vote in more than one Member State. The Member States should exchange voter list information before EP elections in order to avoid double voting.

³² Council Decision 76/787/ECSC, EEC, Euratom (OJ L 278, 8.10.1976, p. 1), as amended by Council Decision 93/81 (OJ L 33, 9.2.1993, p. 15) and by Council Decision 2002/772/EC, Euratom (OJ L 283, 21.10.2002, p. 1).

³³ Member States are allowed to subdivide the country into constituencies “without generally affecting the proportional nature of the voting system”.

The Maastricht Treaty also introduced the concept of European political parties. The Treaty of Nice of 2000 provided for the adoption of a European Party Statute to give such parties legal personality, provide for their transparency and the openness of their accounts, and give them access to funding. On this basis, the EP and the Council adopted Regulation 2004/2003 on the Regulations Governing Political Parties at European Level and the Rules Regarding their Funding, which has since been amended by Regulation 1524/2007 of the EP and the Council (18 December 2007).

In addition to these sources of EU law, the Charter of Fundamental Rights of the EU, which was signed and proclaimed on 7 December 2000 in Nice, and the EP's Rules of Procedure also form part of the relevant body of EU norms governing the EP elections.

The 2004/2003 Regulation, as amended in 2007, provides that to gain recognition as a European Party and thereby access to funding from the EP, Euro-parties must be represented in at least one quarter of the Member States, in the EP, or in the national parliaments or regional assemblies; alternatively it must have received at least three per cent of the votes cast at the most recent EP elections in at least one quarter of the Member States. A European Party must also respect the principles of the EU (i.e. liberty, democracy, human rights, rule of law), but does not have to support the EU as such.³⁴

Apart from these basic EU level rules, the EP elections are held according to national legislation and are administered by national institutions. In most countries, there are some provisions for the EP elections in the respective Constitutions, and most have separate pieces of legislation which are applied in conjunction with the general electoral rules governing national and local elections.

The EP has the right to propose changes to the 1976 Act (2002) and has been trying to develop the rules governing the EP elections since its beginnings. Practically every legislative period sees the presentation of a report by an MEP on proposed amendments to the common legal framework.

In this context, a draft report by MEP Andrew Duff proposes to strengthen the European dimension of EP elections through far-reaching amendments to the 1976 Act (2002). The proposals include, *inter alia*, the introduction of transnational candidate lists (i.e. having a share of MEPs elected from a single trans-European constituency), the creation of an EU level election authority, the harmonization of the minimum age of electors and candidates, and changes to the timing of the elections.³⁵

This draft report is expected to be considered by the newly elected EP. Any changes to the rules and structure for EP elections would take effect by the 2014 EP elections at the earliest. According to EU law, changes to the number of seats in the EP per Member State, or the introduction of a transnational list, would require amendments to the consolidated EU Treaty, either following a revision of the treaty itself or in connection with an accession treaty for any new Member State.

³⁴ For more on European political parties, see section B of Chapter IV above.

³⁵ EP Committee on Constitutional Affairs, Draft Report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 (2007/2207(INI)), Rapporteur: Andrew Duff, 15 October 2008.

A. ELECTORAL SYSTEM

There are differences among Member States as regards the electoral system (proportional list or STV), the existence and level of thresholds, the methods for distributing seats (formulas), the possibility to cast preferential votes (open, semi-open or closed lists), franchise, candidature, nomination of candidates, constituencies, polling days and times, and allocation of vacant seats. Prior to the 2009 elections, the EP published a study on the various systems used by Member States.³⁶

Eleven Member States have closed lists and 16 Member States (and Northern Ireland) have open or semi-open lists. Open lists are implemented in different ways. For example, Luxembourg has chosen a very liberal model in which each voter has as many votes as there are seats. These votes can be distributed, also across party lines, with a maximum of two votes for each candidate (*panachage*). In Sweden, voters may also add new names on blank ballots (i.e. write-in ballots are used).

Differences also exist between different models of using preferential votes. In Denmark, parties can choose whether they want to list their candidates in a particular order, or just list all candidates alphabetically. Preferential votes determine the ranking of the elected candidates. In Austria, preferential votes only have an effect if they exceed the number of votes needed to win one seat. Below that threshold, preferential votes have no bearing on whose candidates are elected. In Sweden, votes for individual candidates on a list can have the effect of overriding the order on the list if a candidate receives at least five per cent of the total number of votes cast for his/her party or list. The candidate receiving the highest number of votes can then be placed first on the list.

There is considerable variation between Member States regarding thresholds, which may vary from none at all to a maximum of five per cent. In some Member States the threshold is applied at national level, in others at constituency level.

In Romania, the electoral law actually favours independent candidates, as they are not subject to the threshold requirement of five per cent that only applies to parties. Independent candidates merely have to achieve the coefficient for a single seat to be elected.³⁷ The signature requirement is also lower for independent candidates than for parties.

There is a variety of models used by EU Member States for dividing their territories into constituencies for EP elections. In most of the Member States, the whole country forms a single constituency. Four Member States (Belgium, France, Ireland and the United Kingdom) have divided their national territory into a number of regional constituencies. Constituencies of merely administrative interest or distributive relevance within the party lists exist in Belgium (4), Germany (16, only for the CDU/CSU), Italy (5), Poland (13) and in the Netherlands (19).

³⁶ The study *The European Elections: EU Legislation, National Provisions and Civic Participation*, was written by Mr. Wilhelm Lehmann and published by the EP Directorate-General for Internal Policies, Policy Department C – Citizens' Rights and Constitutional Affairs, EP, February 2009. Similar information is available in the Duff report mentioned above.

³⁷ This provision allowed Elena Basescu, daughter of the current President of Romania, to be elected as an independent candidate into the EP, with 4.22 per cent of the vote.

For the EP elections, Ireland has four constituencies with three seats each, and Malta has a single constituency with five seats. Both use the STV system. Northern Ireland has used the STV system since 1979 (as distinct from the system used in the rest of the UK).

For EP elections Poland is divided into 13 constituencies, with each allowing for separate party lists. The distribution of the seats is decided by votes counted in the country as whole by proportional representation using the D'Hondt method, with the requirement of a minimum of 5 per cent support for each party. Seats are then distributed in the 13 constituencies by the winning list using the Hare-Niemeyer allocation method.

For EP elections in Germany, a party can either propose a national candidate list or register a candidate list in each *Land* separately, or in one or some *Länder* only. In other words, the system has geographical constituencies for those parties choosing that option and is a one-constituency system for those parties choosing that option. The seat distribution is done in one or two steps, depending on whether the lists are for the national or state level: First, the seats are distributed to the parties (where all the votes for the state lists are added up for parties choosing state lists) according to the party results at national level. Then, for the parties with several state lists, the seats won at national level are distributed to state lists in proportion to their share of the party's votes. This method preserves the overall nation-wide proportionality even for those parties choosing to be represented from state lists. Out of the 32 parties nominating lists for the 2009 elections, 30 parties chose to only present their respective national list. Only the CDU and the Bavarian CSU opted for the other system.

Spain uses a nationwide constituency system. Parties based in the regions (the Basque Country, Catalonia, Galicia) have claimed that the single constituency system favours the big parties. They advocate regional constituencies instead. In practice, such regional parties compete in EP elections through coalitions/alliances, which often manage to obtain seats.³⁸

The way in which an EU Member State is or is not divided into multiple constituencies – as well as the applicable thresholds – has a significant effect on the final election result in each Member State. Distribution formulas and open or closed lists have lesser influence on the outcome.

B. UNIVERSAL AND EQUAL SUFFRAGE: FRANCHISE AND CANDIDACY RIGHTS

Neither the EU Treaties of Rome nor the 1976 Act (2002) define expressly and precisely who is to be entitled to the right to vote and to stand as a candidate in elections to the EP. The 1993 Directive allows Member States to define their 'electoral territory' (see section D below) as the territory in which in accordance with its electoral law, members of the EP are elected by the people of that Member State. It is for Member States to define the persons entitled to vote and stand as candidate for the EP elections. In this context, they must, however, respect EU law and, in particular, the principle of equal treatment, which is a central EU principle. As long as this is respected, EU law is

³⁸ *CpE - Coalición por Europa*, a coalition of regional parties got two seats with 5.12 per cent. The *IU-ICV-EUIA-BA* (a coalition of Left parties) obtained two seats with 3.73 per cent. A coalition of regional and green parties, *EdP-V - Europa de los Pueblos-Los Verdes*, won one seat.

not opposed to Member States granting the right to vote and to stand as a candidate in EP elections to certain persons who have close links to an EU Member State and are residing in it, even though they may not be citizens of that Member State. The main example is citizens of Commonwealth countries who are resident in the UK.

The eligibility age limits for candidates vary considerably: Austria, Denmark, Finland, Germany, Hungary, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Spain and Sweden – 18; Belgium, Bulgaria, Czech Republic, Estonia, Ireland, Latvia, Lithuania, Poland, Slovakia and UK – 21; France and Romania – 23; Cyprus, Greece and Italy – 25. The minimum age for the right to vote is 18 years of age in 26 Member States, and 16 years of age in Austria.

One of the most remarkable features of the EP election is the possibility for EU citizens (i.e. all citizens of EU Member States) to vote and stand as candidates in Member States in which they reside, even if that Member State is different from their Member State of nationality, and under the same conditions as citizens of that country.³⁹ The conditions applying to non-nationals, including those relating to period and proof of residence, should be identical to those applying to nationals of the Member States concerned. Such voters are defined as “Community voters”.

Community voters can exercise their right to vote either in the Member State of residence or in the Member State of which they are nationals. Voters are not allowed to vote more than once in the same EP election. The 1993 Directive also prohibits a person from standing as a candidate in more than one Member State in the same election.

Community voters exercise their right to vote in the Member State of residence if they have expressed a wish to do so. In other words, they are not automatically inscribed in the voter register of the Member State of residence unless they have explicitly so requested.⁴⁰ By contrast, most Member States inscribe their resident nationals automatically in the voter register. In Greece, once a Community voter is registered, s/he remains so for future elections. If voting is compulsory in the Member State of residence (as it is in Belgium, Cyprus, Luxembourg and Greece), Community voters who have expressed a wish to do so and are listed in the voter register are obliged to vote.

Derogations from these general rules are allowed where Community voters form more than 20 per cent of the total electorate and must be based on the criterion of period of residence. Member State concerned may also lay down specific provisions concerning the composition of lists of candidates. In practice, this only applies to Luxembourg,

³⁹ In order to further facilitate political participation by EU citizens, the Commission has encouraged Member States to offer to non-national resident EU citizens the possibility of becoming members of political parties under the same conditions as those that apply to their nationals.

⁴⁰ Community voters who have been entered on the electoral roll shall remain thereon, under the same conditions as voters who are nationals, until such time as they request to be removed or until such time as they are removed automatically because they no longer satisfy the requirements for exercising the right to vote. In Denmark, Community voters receive a written notification, sent to their last address with an invitation to re-register for each EP election. If these letters are returned to sender, the person is presumed to be no longer resident in Denmark and not included in the register. In this way, the efforts to contact Community voters resident in Denmark help to improve the accuracy of the civil registry.

where the number of EU citizens with other than the Luxembourgish nationality makes up some 40 per cent of the population. The residency requirement was reduced for the 2009 elections from five to two years, and the requirement for standing as candidates was five years. EU citizens from other Member States than Luxembourg cannot make up more than one third of the candidates on each list.⁴¹

According to *Eurostat* estimates, the total number of EU citizens residing in a Member State other than their own is around 8.7 million (or 2 per cent of the total EU population). In 2004, the EC published a Working Paper that estimated the number of Community voters in the (then) 25 Member States at 6,480,000.⁴² However, in practice, only between 10 per cent and 20 per cent opt for voting in their country of residence. Others opt to vote in their home countries, if they are entitled to do so, through postal voting, voting at the diplomatic representations or other means. Not all Member States allow their citizens to vote from abroad, and the requirements (duration of stay abroad, etc.) vary significantly from one Member State to another.⁴³

In order to have his/her name entered on the voter list, a Community voter needs to produce a formal declaration stating: (a) nationality and address in the electoral territory of the Member State of residence; (b) the locality or constituency in the home Member State's voter list, where applicable; and (c) that s/he will exercise the right to vote in the Member State of residence only. The Member State of residence may also require a Community voter to: (a) state in this declaration that s/he has not been deprived of the right to vote in his/her home Member State; (b) produce a valid identity document, and (c) indicate the date from which s/he has been resident in that or another Member State.

Non-EU citizens do not have the right to vote in EP elections, with the exception of nearly a million Commonwealth citizens from 52 countries registered in the UK who can vote on the same basis as UK citizens.⁴⁴ Latvia has a large number of persons without citizenship of any State, known as "non-citizens."⁴⁵ Some 18 per cent of the population of Latvia were in this category at the end of 2008.⁴⁶ The largest group amongst these are ethnic Russians. As these persons are not EU citizens, they cannot vote in EP elections. Latvia does not afford such persons voting rights at any level of elections, a situation that has previously been assessed as a continuing democratic deficit.⁴⁷

⁴¹ Most candidate lists in Luxembourg have included at least one foreign EU citizen.

⁴² EC Working Paper, EP Elections in 2004, Number of Community Voters under Directive 93/103/EC in the 2004 EP Elections, 23 March 2004 (JAIC.3/SAS/2004-01).

⁴³ For more on the right to vote from abroad, see below under out-of-country voting.

⁴⁴ See the UK's Electoral Commission's website www.aboutmyvote.co.uk. The Member States Cyprus and Malta are also Commonwealth countries.

⁴⁵ Only persons who were citizens before 17 June 1940, and their descendants, received automatic citizenship upon the re-establishment of independence in 1991. Most non-citizens are eligible to become citizens by following a naturalization process.

⁴⁶ Website of the Ministry of Foreign Affairs, www.mfa.gov.lv/en/policy/4641/4642/4651/. In Estonia, which was not visited by an OSCE/ODIHR expert team in the context of the EP elections, "persons with undetermined citizenship" comprise over seven percent of the population (www.vm.ee/estonia/kat_399/pea_172/4518.html). Estonian legislation gives resident non-citizens the right to vote in local elections.

⁴⁷ See the Final Report from the OSCE/ODIHR Limited Election Observation Mission for the 7 October 2006 Parliamentary Elections in Latvia at www.osce.org/odihr-elections/14486.html.

OSCE commitments and other international standards on voting rights in national level elections refer only to citizens, and States have no obligation to grant voting rights in such elections to persons who are not citizens of the State. However, the fact that the EP is a supra-national body, and the fact that each Member State extends suffrage rights to citizens of other Member States - and one Member State even to citizens of States outside the EU - indicates that the EP elections are not entirely national in character, despite being conducted on a national basis. In this context, the possibility of granting voting rights for EP elections to long-term EU residents without the citizenship of any EU Member State could be considered as an issue for EU consideration, rather than only as a responsibility of individual Member State.

Some Member States also condition voting rights to length of residence. To vote in the EP elections in Germany, German and other EU citizens must have had a place of residence or normally resided in a Member State for at least three months. In the Czech Republic, Czech and other EU citizens must be on the population register for a minimum of 45 days in order to be registered as voters or candidates. In Malta, voters and candidates must be registered residents, and have been resident in Malta for at least six months in total in the eighteen months preceding registration.⁴⁸

Another franchise-related issue is that of enabling prisoners to exercise their voting rights if they have not been formally deprived of these in a court of law. This is regulated differently in each Member State, as there are no common EU rules in this regard. A number of countries allow prisoners to vote by post, but not all do so. Latvia, for instance, amended its EP Election Law to enfranchise persons serving prison sentences, reflecting a judgment of the European Court of Human Rights in a case involving another Member State.⁴⁹

In addition to case law of the European Court of Human Rights, the European Commission for Democracy Through Law (Venice Commission) of the Council of Europe recommends that the deprivation of the right to vote for prisoners should be subject to a series of cumulative conditions, including that the criminal conviction be for a serious offence and that the deprivation of political rights be expressly imposed by a court of law. It also states that “the proportionality principle must be observed”.⁵⁰ The UN Human Rights Committee also states that “if conviction for an offense is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.”⁵¹

The main EU-level rule is that EU citizens can stand as candidates for EP elections in a Member State other than their own, but there are some limitations. EU citizens who reside in another Member State and who have been deprived of their right to stand as a candidate through an individual criminal or civil law decision are also precluded from

⁴⁸ Maltese citizens working abroad in Malta’s public service are exempt from the length of residency requirement. The law also provides that voters and candidates cannot be bankrupt, mentally incapacitated, or serving a prison sentence of more than one year.

⁴⁹ European Court of Human Rights, *Hirst v. United Kingdom* (Application N° 74025/01), Judgment on 30 March 2004.

⁵⁰ See the Venice Commission’s “Code of Good Practice in Electoral Matters”, 23 May 2003, Paragraph I.1.d, at [www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.asp)

⁵¹ See General Comment No. 25 adopted by the UN Human Rights Committee on 12 July 1996, under Article, paragraph 4, of the International Covenant on Civil and Political Rights (1966).

standing as a candidate in the Member State of residence.⁵² Some Member States therefore require foreign EU citizens who wish to stand as a candidate in EP elections to produce an attestation from the administrative authorities of their home Member State certifying that they have not been deprived of the right to stand as a candidate or that no such disqualification is known to those authorities. Other Member States are satisfied with a formal declaration by the candidate.

Although in practice this relates to only a very small number of candidates (62 candidates in 1999, 57 in 2004; the official number for 2009 has not yet been established), the administrative burden of proof that is placed upon individuals may be considered as too restrictive in some cases.⁵³ Notably, where candidates who are nationals of the given Member State are not obliged to present similar proof that their rights have not been restricted, such a requirement could in effect create different conditions for EU citizens of other Member State.

For example, in Germany, 17 EU citizens from eight other Member States stood as candidates. In Denmark, one Swedish candidate ran. In the Czech Republic, four foreign EU citizens were registered as candidates. In Latvia, one Italian citizen and incumbent MEP ran as a candidate on a Latvian party list, having established residence in Latvia only just before the registration of the candidate list.

Consideration should be given to ensuring harmonization of eligibility requirements for candidates in EP elections.

To ensure equality of the vote, the EU could consider adopting minimum standards on voting rights for EP elections. Such a review could include consideration of voting rights for EU residents not holding citizenship of any State.

EU Member States should review their legislation regarding voting rights for prisoners and other persons deprived of liberty in line with case law of the European Court of Human Rights, and with the principles identified by the Venice Commission and the UN Human Rights Council.

C. CANDIDATE LISTS AND INDEPENDENT CANDIDATES

Candidate requirements in the EP elections differ significantly from one Member State to the other. Legal and administrative rules about candidacy range from practically non-existent to significant. In some cases, the rules make it very difficult for new political organizations' candidates to compete successfully. While some Member States allow the candidacy of individuals as independent candidates, others do not. Article 7.5 of the OSCE Copenhagen Document also provides that individuals should have the possibility of seeking political or public office. Requirements for presenting candidacy lists include support from MEPs/MPs, financial deposits, and/or signatures by voters.

⁵² Directive 93/109/EC.

⁵³ In Lithuania, two candidates were removed from their respective lists because they failed to provide proof to the CEC that they had not been sentenced in any EU Member States in the last 10 years.

In Slovenia, an electoral list needs the support of four MPs or at least 1,000 signatures. Coalitions need six MPs or 1,500 signatures. Independent candidates do not have the option of MP support but need at least 3,000 signatures. In Romania, political parties, political alliances and organizations of citizens belonging to national minorities have to submit 200,000 supporters' signatures, while independent candidates must present 100,000.

In Austria, candidates must obtain the signatures of three MPs, one MEP, or 2,600 registered voters. Registered parties must pay 3,600 Euros to finance the costs of printing the ballots by the government. In Malta, candidates can be nominated by political entities or be self-nominated; each candidate must submit supporting signatures of at least four voters.⁵⁴ To present a candidate list in Spain, political parties or coalitions must obtain in their support 15,000 signatures of voters or of 50 elected representatives at any legislative level. Only parties and coalitions can submit candidate nominations.

In Denmark, the parties and movements that have seats in either the national parliament or the EP do not need to collect signatures. Other parties need to collect 78,000 supporting declarations from voters (equivalent to 2 per cent of the total number of votes cast in the last national parliamentary elections) in order to run.⁵⁵ Many interlocutors stated that this makes it difficult for new parties to participate in EP elections in Denmark. There is no possibility for independent candidates to register.

In Sweden, the election system is very inclusive with respect to standing as a candidate, but only political parties obtaining at least 1 per cent of the vote in one of the last two nationwide elections, including EP elections, are automatically eligible to register candidates and have their ballot papers printed and distributed by the state. Parties receiving less than 2.5 per cent in the last two elections, as well as new political parties and independent movements, do not receive government funding and have to be self-financed. They also have to distribute their ballot papers to postal voters and polling stations. The new Pirate Party made complaints in this regard, claiming unfair treatment by election authorities.⁵⁶

The Swedish system gives every voter an opportunity to nominate any candidate and to vote for him/her on election day. Before the election, 24 lists of candidates were officially registered, which included the well-established older parties, smaller and newer parties, as well as lists formed specifically for these elections. Some parties registered their names and lists of candidates so as to ensure counting of write-in ballots towards their party and to prevent others from using the party name.

In Luxembourg, any party, organization or individual can propose a candidate list, provided that it is supported by at least one MP or MEP, or by 250 signatures. Individual candidacies are possible.

⁵⁴ A deposit of 90 Euros, returned if the candidate receives at least 10 per cent of votes cast, is required for registration.

⁵⁵ The Venice Commission in its Code of Good Practice in Electoral Matters (Opinion 190/2002, CDL-AD (2002)23 rev, page 6, paragraph 1.3. ii provides that legislation should not require collection of supporting signatures of more than one per cent of the voters in the constituency concerned.

⁵⁶ It was also suggested that in some polling stations, ballot papers of certain parties have even been hidden or placed in another part of the room, or sometimes directly discarded.

In Ireland, which uses the STV system, candidates were listed on the ballot in alphabetical order, with party affiliation noted. Of the 44 candidates, 14 were registered as independents (one was elected). Self-nominees must submit either 60 supporting signatures or a 1,800-Euro deposit.

In some EU Member States, however, it is not possible for independent candidates to run for a seat in the EP election. In the Czech Republic, Denmark, Greece, Estonia, the Netherlands, Germany, Spain and Sweden, only parties and/or coalitions of associated parties can submit candidate lists. The Lithuanian Central Election Commission decided not to register an NGO candidate list because it was not a political party as required by law. The NGO appealed the decision to the High Administrative Court, which sent a request to the Constitutional Court seeking an opinion on the constitutionality of the provision of the Law on Elections to the EP, which allows only political parties to submit candidate lists.

In EU Member States where individuals do not enjoy the right to run as candidates in European Parliament elections, the Member States could consider amending their legislation to allow them to do so, in accordance with paragraph 7.5 of the 1990 OSCE Copenhagen document.⁵⁷

D. ELECTORAL TERRITORY

The EU Treaties confer Rights of EU citizens directly on individual citizens. EU citizenship is defined as citizenship of any Member State of the EU. However, there are some exceptions, where Member States decided to exempt some of the territories under their jurisdiction from the applicability of EU law (fully or partially). The arrangements are usually listed in protocols to the various countries' accession Treaties.

According to the Act of Accession of Cyprus of 2003, the application of EU laws is suspended "in those areas... in which the Government of the Republic of Cyprus does not exercise effective control". EP elections were therefore not held in these areas.⁵⁸

EP elections also took place in those parts of EU Member States that form part in full of their country's territory, but are located in different parts of the globe.⁵⁹

Seventeen other overseas countries and territories have a special relationship with one of the Member States. Among the EU Member States visited by the OSCE/ODIHR experts, this applies to Denmark. Although belonging to Denmark, the autonomous Greenland and the Faeroe islands are not part of the European Community (due to a

⁵⁷ "...the participating States will... respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination".

⁵⁸ As the OSCE/ODIHR stated in its 2004 Pre-Electoral Overview, this presents an obstacle for the members of the Turkish Cypriot community living in the northern part of the island to exercise their right to vote. In addition, only parties registered in the Republic of Cyprus, where the government exercises effective control, are able to present candidates for the elections.

⁵⁹ In addition to Portugal's Azores and Madeira, and Spain's Canary Islands, Ceuta and Melilla, this is the case for one of France's eight constituencies, with three seats assigned, which is formed by its Overseas Departments and Collectivities (formerly known as Territories). They are part of the French state and the EU. Elections took place on 6 June, a day earlier than in mainland France.

special protocol). Danish (or other EU) citizens who are registered in either Greenland or the Faeroes⁶⁰ were not able to vote in the EP election.⁶¹ Danish voters did however participate in the succession referendum there. If a person moves from there to mainland Denmark or another Member State, s/he becomes eligible for the EP elections.

If and when ratified, the provisions of the Lisbon Treaty could affect the issue of electoral territories, especially in light of recent jurisprudence, as it stipulates that “every national of a Member State shall be a citizen of the Union.”

E. OUT-OF-COUNTRY VOTING

Where Member State’s election legislation allows it, millions of EU citizens also voted by mail or at embassies from outside the EU. Some countries allow out-of-country voting only within a certain number of years from the time when the voter has registered out of his/her Member State of origin,⁶² or for state officials. Some Member States allow out-of-country voting only within the EU (Belgium, Denmark, Greece, Italy, Poland and Portugal), while others allow all nationals resident in foreign countries to vote (Austria, Finland, Germany, the Netherlands, Slovenia, Spain and Sweden), albeit under certain conditions. The Czech Republic, Malta and Romania do not provide for out-of-country voting.

Swedish citizens living abroad are entitled to vote by post from anywhere in the world, as long as they register their address abroad with the embassies or the Tax Office.⁶³ Special voting documents, including blank ballots that can be filled in by the voter, are mailed to such voters no earlier than 45 days and no later than one day before the election. Postal and advance ballots may continue to be received and counted for three days after the election.

Austrian and Slovenian voters living abroad can vote at their embassies or by mail.⁶⁴ Spanish voters abroad can either vote at the consulate or by mail.⁶⁵ Postal ballots must arrive no later than three days after polling day, when they are counted, but must be postmarked on or before polling day. German citizens can vote from abroad if they fulfil a number of criteria.⁶⁶

Greece opened 97 polling stations EU-wide to allow its 36,500 citizens in other EU Member States to vote. All postal ballots had to be postmarked by 7 June and received by 15 June to be counted. Polish nationals in EU Member States could register locally at

⁶⁰ The Protocol to the Danish accession Treaty says that Danish nationals residing in the Faeroe Islands are not to be considered as nationals of a Member State within the meaning of the treaties.

⁶¹ The Danish EP election law says that EP elections do not take place in Greenland and the Faeroes.

⁶² UK citizens can be registered only if they have resided in the UK within the previous 15 years.

⁶³ In Sweden, 7,088.045 voters were eligible, including 137,842 Swedes registered abroad (almost 2 per cent).

⁶⁴ Austrians living abroad can also deliver their postal vote to their embassies or consulates.

⁶⁵ In Spain, 1,254.724 voters were registered as voters abroad (3.7 per cent of the total).

⁶⁶ To have the right to use out-of-country voting, German citizens must have lived in Germany for a continuous minimum period of three months at any time since 1949, or in any Member State for three months before the EP election. In addition, they had to submit an application form at their last municipality of residence in Germany by 17 May.

Polish embassies abroad up to five days before the election and vote at any one of 180 designated sites around the globe. In Denmark, voters registered in another Member State were able to vote by postal vote, but they had to register separately with the Municipality of Copenhagen.

In Ireland, out-of-country voting is only possible for diplomats and military personnel. There is no out-of-country or by-mail voting for Maltese citizens living abroad; however, the Maltese government subsidizes flights to Malta for eligible voters at election time. There is no out-of-country voting for EP elections for Czech citizens abroad.

F. CAMPAIGN REGULATIONS AND CAMPAIGN AND PARTY FINANCING

1. General EU and Member States Campaign Regulations

The relevant rules relate to the campaign as such (time limits and campaign silence periods), campaign and party financing generally, the role of European or foreign political parties, the use of foreign funds, and financial oversight and auditing procedures, as well as to media regulations (see separate section VIII below). In a number of Member States there have been public debates about the adequacy of the existing frameworks, and reform is underway in some of them.

There are no EU rules concerning candidates or politicians campaigning for themselves or their party in another Member State. In a number of Member States, political parties reached out to large expatriate communities, such as Spanish voters in Germany or Polish voters in the UK and Ireland. The OSCE/ODIHR expert group did not learn of any restrictions regarding the use of languages in campaigning.

The principle of equitable campaign conditions is a cornerstone in most Member States' legislation, even though it is not always explicit. For example in Germany, the national election laws do not include regulations on the campaign. However, where a public authority provides facilities or other public services for use by one party, equal treatment must be accorded to all parties. This is, for example, being used to give a fair distribution of free airtime for advertisements in public TV.

The rules on campaign silence periods also refer to the publication of polls in some countries. In Spain, the duration of electoral campaigns is limited by law to 15 days, ending on the Friday before Election Day at midnight, with a one-day silence period. Greece has a two-day silence period during which no campaigning can take place and no surveys can be published. Ireland has a 24-hour campaign silence period. In Malta, there is a media blackout on campaigning 48 hours prior to the election. In Spain, polling surveys cannot be published or broadcast two days before election day and until after the polls close. In Luxembourg it is not allowed to publish opinion polls one month before the election.

2. Campaign and Party Finance

In line with the 1976 Act (2002), the funding and limitation of election expenses for all parties and candidates at EP elections is governed in each Member State by national provisions. The Act says that each Member State may set a ceiling for candidates'

campaign expenses. There are a great variety of rules and procedures regarding campaigning, which differ in each Member State.

National rules on campaign and party financing for EP elections generally follow the framework used for national elections.

In Germany, the party and campaign funding and transparency rules are extensive. Political parties enjoy financial support from the Federal Government, based on funds received from other sources⁶⁷ and on the number of votes received. There are no limits on private donations, regardless of whether they come from domestic or EU donors, but above certain levels, registration or publication is mandatory.⁶⁸

In Ireland, the Electoral Act provides a detailed regulatory framework for donations, state financing and reimbursement of campaign expenses. Its independent Standards in Public Office Commission recently recommended to Parliament that transparency and accountability in campaign financing be improved, and electoral finance reform is expected in the near future.

In Romania, campaign finance is overseen by the Permanent Electoral Authority. The Law on Financing Political Parties and Campaigning prohibits funding from foreign sources, but support from EU-level political parties is allowed in kind, such as printed materials. In the Czech Republic, parties do not receive campaigning funding prior to the elections, but receive some funds based on results (less than one Euro per vote) if they reach a one per cent threshold.

In Poland, limitations are set for campaign expenditures. Each candidate list can spend up to PLN 0.30 per voter, which sets the ceiling of campaign expenditures at about 2 million Euros per candidate list, less than a third of the ceiling set for national elections. The use of foreign funds is strictly prohibited.

In Luxembourg, political parties were not legally recognized as such until a constitutional change in 2007. Additionally, a Law on Political Party Financing was introduced in December 2007. For the first time for these elections, parties received funds from the state in proportion to their representation and size.⁶⁹ Parties expressed satisfaction with this arrangement, since now they had much better means with which to conduct a campaign. Additionally, an older campaign financing provision allows parties to be reimbursed for the postal costs of one mailing per voter.

In Malta, the legal framework does not regulate the funding of political parties, and does not provide for any auditing of donations and expenditures (an important mechanism with which to ensure transparency and accountability). There is no public funding for campaigning.⁷⁰ The law requires that each candidate submit a detailed campaign

⁶⁷ Donations from other sources will increase, not decrease state funding.

⁶⁸ Any donor of more than 10,000 Euros must register his/her name and donations above 50,000 Euros must be made public.

⁶⁹ Donations from private persons are still possible, but there is a cap (1,500 Euros), all donations have to be declared, and all donations above 250 Euros must be made public.

⁷⁰ In addition to donations, the two major parties generate revenue from their media outlets and other business enterprises. In addition, they receive 120,000 Euros from public funds for "international work."

expense form to the Election Commission, and a maximum expenditure of 1,400 Euros is set for each candidate. However, in practice, the form is often not submitted, according to the Commission. The law does not provide for the auditing of the expense forms. The OSCE/ODIHR team was informed by various interlocutors that overspending is perceived as common.⁷¹ This practice is not discouraged, as the Election Commission does not refer these matters to the Attorney General as the body responsible for prosecuting those who fail to submit the expense form or those who overspend during the campaign. The Commission also does not undertake auditing of any campaign expense forms to ensure their veracity and compliance with the law.

In Denmark, campaign financing is not regulated at all, and the regulations related to campaigning, including in the media, are minimal. Also, Swedish legislation does not provide for any controls of the parties' campaign expenditures or sources of funding. There is an informal agreement between the major parties not to insist on disclosure of party finances.⁷² An overwhelming share of the campaign finances comes from budget subsidies received by all parties that have exceeded the 2.5 per cent threshold in one of the previous two elections. However, with the introduction of political TV advertisements, private funding of campaigns is likely to increase. While most party interlocutors appeared satisfied with the current system of no campaign contribution or expenditure disclosure requirements, some indicated that the system was ripe for change, including having disclosure requirements for funds received and spent in campaigns.

Since the early 1990s, Latvia has developed complex and detailed mechanisms governing party and campaign financing. The law specifically prohibits funding from foreign sources, and through a complex formula sets a limit of approximately 4,000 Euros on financing by third parties (i.e. any individual, organization or enterprise). Three incumbent MEPs attracted media attention for having received funds from their EP Group for certain political activities (media presence) before 6 May. The MEPs asserted that the funds were used for their ordinary representative purposes, and not for their campaign (to which strict rules apply). Funds received from EP political groups by Latvian candidates which are used during the campaign period appear to be at risk of contravening Latvian law, doubly so if the 4,000 Euros third party funding limit is breached.

Several interlocutors in Member States visited drew the OSCE/ODIHR teams' attention to the recently published reports by the Council of Europe/GRECO⁷³ on political party financing, which had resulted in criticism of some of the existing regulatory frameworks in EU Member States. The continued need for further development of rules and practice in this field was acknowledged to the OSCE/ODIHR within the context of the EP elections also.

⁷¹ Candidates merely submit a signed declaration stating that they have not spent more than the legal limit.

⁷² At the same time, the Social Democrats decided to make public sources of contributions exceeding 20.000 SEK (approximately 2.000 Euros).

⁷³ The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor States' compliance with anti-corruption standards. Its Third Evaluation Reporting cycle, currently ongoing, focuses on political and campaign funding. Evaluation reports are available at www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp.

3. Funding from Euro-Parties

Some mechanisms developed through EU Member States' national legislation for the control of political party and campaign finance do not anticipate a European dimension, and any funding from external European sources poses a challenge to the system which may need to be reviewed.

Similarly, the activities of Euro-parties are explicitly regulated in only a few Member States, due to the relatively recent introduction of such entities on a European level. As stated above, there are restrictions on the activities of Euro-parties in an EP electoral campaign, by EU regulation.⁷⁴ By 15 February 2011, the EP should publish a report on the application of this Regulation and the activities funded.

In order to ensure increased transparency and accountability, consideration should be given in all EU Member States to enacting a regulatory framework for the disclosure and auditing of party financing and expenditures, to be accompanied by an enforcement mechanism.

EU Member States should consider reviewing their campaign finance legislation to ensure that it takes into account the campaign activities of Euro-parties.

G. PUBLICATION OF RESULTS

The 1976 Act (2002) regulates that Member States may not "officially make public" the results of their count until after the close of polling in the Member States whose electors are the last to vote.

This means that official results must not be made public before 22.00 hours on Sunday, the fourth day of polling. There are, however, a number of difficulties in effectively implementing this provision.

The UK and the Netherlands both voted on Thursday, 4 June, the first day of polling. In the UK, elections to local councils were held simultaneously in many parts of the country. The votes cast for the EP were counted only on Friday and held under seal until Sunday evening.

In the Netherlands, however, the results become immediately known due to the public counting process. This is done in the presence of party officials and observers, and the media immediately announces the results that thus emerge. The electoral authorities maintain that they do not formally announce the official result until after the blackout period. Nevertheless, it is a fact that the Netherlands' results are widely known across Europe before the polling stations even open in 25 other countries. The EC, which monitors the implementation of the relevant provision, has publicly criticized this state of affairs and has demanded clarification from the Netherlands.

⁷⁴ Regulation (EC) No 1524/2007 of the EP and the Council of 18 December 2007 amending Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding.

Similar problems exist with regard to the announcement of results in other Member States where polling closes before Sunday night. In Latvia, which voted on 6 June, the CEC had issued instructions to electoral commissions and the media that no results were to be announced before 22.00 hours on Sunday, 7 June, but acknowledged that there were no restrictions as of the close of polling at 22.00 hours on 6 June on the publication of exit polls by the media and the announcement by others, such as the parties themselves, of information available to them from individual polling stations.

In Germany, polling stations announce and physically post the results as soon as they finish the count after polls close at 18.00 hours on Sunday. The electoral authorities hold that anything else would unacceptably limit the transparency of the process. The polling station results are, however, not published on the Internet or otherwise centrally (at state level) before 22.00 hours. There are no restrictions on exit polls.

Although voting in the Czech Republic closed at 14.00 hours on June 6, the counting of ballots started on 7 June at 22.00 hours after polls closed in all Member States. The sealed ballot boxes were kept inside the closed polling stations from Saturday afternoon until Sunday evening, or were stored by municipalities. In Luxembourg, polling stations closed at 14.00 hours on 7 June, but the preliminary election results were not to be published before 22.00 hours. Ballots for the national elections were counted first.

There continue to be differences in interpretation as to the exact meaning of “officially make public”. In this context, exit polls and preliminary results known by political parties with access to vote count protocols constitute a challenge. The possibility of harmonizing the date of the EP election day within the EU has been discussed in the EP.

It is suggested that further consideration be given by the EP and EU Member States to harmonizing the date of the EP election day, as this would address the challenges posed under the current system.

VI. ELECTION ADMINISTRATION

In many Member States, the responsibility for various aspects of election management is quite diversified and shared among different institutions, which are, however, mostly well-integrated and co-ordinated. The relevant bodies range from independent Election Commissions (with a variety of methods of appointing members), to Ministries of the Interior, Local Government Ministries, Regional and Local Governments, Supreme Courts, and other judicial authorities at different levels. Electoral management bodies and procedures for EP elections are usually similar or identical to those used for national elections.

This report cannot provide any comparison or overview of such different models. Despite the variety of systems used, there is a high degree of trust and confidence in the systems among voters and parties, and no particular complaints or suggestions were made in this regard to the OSCE/ODIHR experts. This notably includes countries where government ministries play a central role in conducting the election.

A. REGISTRATION OF COMMUNITY VOTERS AND INFORMATION EXCHANGE

One aspect of the administration of the EP elections that requires further strengthening is the exchange of information among Member States about registered Community voters. This is indispensable in order to prevent potential multiple voting, which is prohibited under Article 8 of the 1976 Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage. This has already been recognized by the EU institutions and the Member States as an area with many challenges and significant potential for further improvement.

Directive 93/109/EC foresees that Member States exchange the information required for the implementation of its provisions. To that end, the Member State of residence shall, on the basis of a formal declaration, supply the home Member State with information on its nationals entered on voter lists or standing as candidates, sufficiently in advance of polling day. The home Member State shall, in accordance with national legislation, take appropriate measures to ensure that its nationals do not vote more than once or stand as candidates in more than one Member State.⁷⁵ The rules for the registration of Community voters differ across Member States.

In 2006, the EC published a report taking stock of the EP elections of 2004 and evaluating the application of Directive 93/109/EC.⁷⁶ The 2006 report stated that “despite all efforts almost all Member States concluded that there were shortcomings in the operability of the information exchange system and its effectiveness was hampered by a number of difficulties.” It provided a number of proposals for an enhanced system; however, these were not adopted in time for the 2009 elections.

In the 2009 elections, this remained one of the most problematic areas of organizing the EP elections. In all 15 Member States visited, OSCE/ODIHR expert teams were informed that the process of information sharing and taking relevant action had been hampered by significant difficulties and complications. The EC, responsible for monitoring the implementation of the Directive, has been trying to assist Member States in bringing the relevant bodies together and facilitating the exchange of information.

In recent years, representatives of electoral authorities from all Member States met in Brussels to discuss ways to organize this exchange of information for the June 2009 elections. However, many interlocutors felt that too little was done too late to change any major components of the national legal and logistical arrangements in this regard.⁷⁷

The EC provided Member States with a “Guide for the Implementation of the Information Exchange Mechanism”, indicating what information should be collected,

⁷⁵ This excludes the issue of double or multiple citizenship, which is not addressed in the Directive. Under the current regulatory frameworks, it appears that voting twice or standing as candidate in two different Member States is impossible to prevent in the case of EU citizens who hold the nationality of more than one Member State. The EC has drawn attention to this problem being a potential source of double voting.

⁷⁶ Communication from the “European elections 2004” Commission. COM(2006) 790 final, Brussels, 12.12.2006.

⁷⁷ Over the past two years, about a dozen sessions were held in Brussels to solve these problems but no solutions were found. It was decided that in 2009 the system would remain the same; there was only one small change: that the information should be sent electronically.

how the information and records should be presented, and what format should be used for sending the information (including character sets). The information exchange was to take place by “sending e-mails or DVDs directly to the contact points and/or to the department responsible in the home Member State”. Information was to be sent as soon as it was available.

This process is not only complicated by the variety of national procedures for civil and voter registration, the spelling and transliteration of names (in three alphabets and a number of varieties in Latin script), but also by the fact that the reference dates and registration deadlines differ significantly across the EU.⁷⁸ The process is additionally hampered by the considerable mobility of many EU citizens. Finally, the information received from other Member States for voter verification was not always clear or sufficient.

Electoral authorities expressed frustration over the fact that some Member States were providing information on EU citizens only to the extent of giving the name and surname of a voter, which was not sufficient to ascertain the identity of the individual. Denmark, Slovenia and Sweden, for instance, use unique personal numbers to identify their citizens and foreign residents. The information provided by other Member States for the most part did not include this information.

Greece does not have an information exchange on voter registration data with other EU countries at all, the main reason being the difficulty in comparing data because of the different alphabets. Foreign EU citizens voting in Greece sign a statement that they will not also vote in their country of origin.

While the number of Community voters is still relatively small, the numbers have been growing, as has the overall interest of EU citizens to vote in their new country of residence. In Cyprus and Belgium the percentage is above five per cent; in Austria, Ireland and Spain above three per cent; in Denmark, France, Germany, Sweden and the UK above two per cent; and lower than two per cent in all other Member States.

The EC estimates that the registration of Community voters on voter lists has been steadily increasing over the past 15 years: 5.9 per cent in 1994, 9 per cent in 1999 and 11.9 per cent in 2004. EU-wide figures for the 2009 elections are not yet available. In Luxembourg, 17,340 EU citizens of other Member States were registered to vote, making up some 7.2 per cent of the electorate, which is the highest percentage of Community voters across the EU.⁷⁹ The Ministry of Foreign Affairs (MFA) is responsible for collecting information from the municipalities on Community voters, collating it by country and sending it on paper to the local embassies of the relevant countries, rather than to their respective home election commissions. The process experienced a number of problems. Some municipalities sent information very late (or to the wrong department in the Ministry), on the wrong template, or they entirely failed to send information. Only 79 per cent of all municipalities had sent information by the time of the OSCE/ODIHR expert visit (22 May) on 13,939 Community voters (80 per cent of those eventually registered) – long after the deadline and long after most EU Member States had closed their voter lists. The MFA stated that it did not receive

⁷⁸ The last dates to apply for registration ranged from 31 December 2008 to 31 May 2009.

⁷⁹ At the 2004 EP elections, this number was 11,715.

feedback from other Member States as to whether the information provided was taken into account.

In Denmark, 17.1 per cent of the 97,919 voting age EU foreign citizens registered for these elections, representing 0.41 per cent of the total electorate.⁸⁰ Regarding the information received on Danish citizens registered to vote in other Member States, the authorities were able to identify only about 80 per cent of those reported, due to incomplete or unclear information provided.

In Lithuania, 358 foreign EU citizens (out of a total of some 2,000) were registered as voters. In Ireland, approximately 40 per cent of 230,779 non-Irish EU citizens were registered as voters. In Slovenia, 67 Community voters were registered (of 2,700 foreign EU residents), and 687 Slovenians had registered to vote in other Member States. In Spain, 281,755 Community voters (of some 1,326,000 EU residents) were included in the voter lists. In Austria, where some 257,000 non-Austrian EU citizens reside, 30,414 Community voters were included in the voter lists. This was an increase of more than 26 per cent compared with the 2004 EU election.

In Sweden, 48,256 foreign EU residents (some 22 per cent of approximately 220,000) were registered as voters. As of 8 May, 3,136 Swedes had been deleted from the electoral rolls because they had registered to vote in other Member States. However, an additional 4,400 names of Swedes were received from other Member States, but due to insufficient matching information these voters could not be deleted from the electoral rolls.

In Romania, only 28 nationals of other Member States (of some 6,000) had registered as Community voters. Some 84,000 Romanian citizens had applied to vote in other Member States, including 49,000 in Spain and 27,000 in Italy. Of the 84,000, the authorities were able to identify 81,400.⁸¹ The list of Romanian citizens registered to vote in another Member State must be checked at all diplomatic posts where Romanians can also vote on polling day. In Poland, the National Election Commission reported that as of 12 May there were 313 Community voters registered (of a total number of at least 15,000).

When an EU citizen asked to be registered to vote in the Czech Republic, the respective municipal office that maintains the list of voters sent the information to the designated focal point in the other EU country to verify that the person is not on the voter list in that country. However, as in other Member States with similar mechanisms, this proved to be an ineffective method.⁸²

⁸⁰ The Ministry of Interior had sent some 97,000 letters with application forms to all registered EU citizens. It said that a large number had been undeliverable and 'returned to sender'.

⁸¹ The Permanent Election Authority notified the Member States sending details about Romanians having registered to vote in these other Member States when the citizen could not be identified due to incomplete personal details, but received no responses. Some notifications arrived from abroad too late to delete persons from Romanian voter lists.

⁸² There were problems in the 2004 and 2009 EP elections because the voter registration and list maintenance systems in the various member states are not harmonized. For instance, the Czech Republic received and made requests about foreign voters but voter identifications were often not possible because of a lack of complete voter identification data, a lack of data in the voter register, or problems with transposing between alphabets.

In Latvia, registered nationals of other Member States were automatically included in the voters register for the municipal elections. For EP elections they had to apply to be registered. The CEC wrote to some 8,000 resident non-Latvian EU citizens in one of 10 languages informing them of their right to vote, of whom only 249 applied and were registered. As of 12 May 2009, the CEC had received notifications on 1,119 Latvian citizens registering to vote in other Member States.⁸³

In Germany, Community voters are automatically included in the voter lists for EP elections if they were registered for the last elections and have kept their residence in Germany since then. The voter lists are drawn from the civil registers, which are the responsibility of the municipalities. There is a detailed system for civil registration and deregistration when a person changes residence. Municipal databases are separate and there is no national centralized voter register. Therefore automatic cross-checking to verify that each voter is registered in only one place is not possible. If foreign EU citizens wanted to vote in their home country, they had to submit a written application to deregister no later than 17 May. In Germany 3,371,249 resident non-German EU citizens had the right to vote.⁸⁴

In Malta, foreign EU citizens must request entry into a separate EU voter register.⁸⁵ Although there are some 19,000 non-Maltese EU citizens resident in Malta, only approximately 1,000 registered as Community voters. There was a public controversy regarding the EU voter register for the 2009 EP elections. In April 2009, the Election Commission deleted all voters from the EU voter register who had not reapplied for voter registration following a general advertisement.⁸⁶ This issue was raised by the Green Party⁸⁷ to the EP Office in Malta, which, after receiving no response from the Election Commission, contacted the Prime Minister noting that this practice was in contravention of Article 9(4) of the 1993 Directive. Upon legal advice from the Attorney General that the deletions were unlawful both under the Maltese EP Elections Act and the 1993 Directive, the Prime Minister requested the Election Commission to reinstate the voters. Following a court order, the voters were reinstated.

In 2006, the EC made a proposal to the Council which would have allowed cross-checking of voter lists between Member States after election day, and which would have put the responsibility for checking that there were no double entries unambiguously on the host Member State rather than on the Member State of origin.⁸⁸ However, this proposal was not adopted by the Council.

⁸³ The CEC informed the OSCE/ODIHR that cross-checking was often problematic and time consuming, because of difficulties in transposing names from different alphabets (the Latvian alphabet has additional unique letters), confusions over security mechanisms and passwords when transferring personal data between countries, and inadequate data supplied, particularly when dealing with countries without central registration systems, such as the UK. Where there was any doubt, citizens were not deleted from the Latvian register.

⁸⁴ Based on statistical information on foreigners living in Germany published by the Federal Elections Director at www.bundeswahlleiter.de.

⁸⁵ Unlike the regular voter register, the EU voter register in Malta was not continuously updated between the two EP elections.

⁸⁶ The Election Commission noted that its concern was that EU citizens on the existing list may have died or left Malta and remained on the voter register. According to interlocutors, the advertisement was not clear on the requirement for re-registration, and very few people did so.

⁸⁷ The Green Party believes that many of its supporters are non-Maltese EU citizens living in Malta and suspected that the deletions by the Election Commission were, in part, politically motivated.

⁸⁸ COM (2006) 791 final.

The exchange of information among EU Member States on Community voters is a challenge which will not be completely solved solely by bilateral exchanges of voter list information between EU Member States, as this would not identify Community voters registered in more than one EU Member State outside their EU Member State of origin. The current system also does not cover EU citizens who hold double or multiple citizenships and are registered in more than one Member State. Effective enforcement of a prohibition on double voting by persons holding dual citizenship was highlighted as an area of concern by authorities in Slovenia and Sweden.

Additional efforts should be made to improve the process of the exchange of information on registered voters among Member States. The exchange of information about Community voters should be extended beyond bilateral exchanges, and the data should be harmonized and sufficiently detailed to allow accurate identification of Community voters and prevent possible multiple voting.

B. INFORMING NON-NATIONAL COMMUNITY VOTERS

EU law also provides that Member States must inform Community nationals entitled to vote and stand as candidates in a timely manner and in an appropriate form of the conditions and detailed arrangements for the exercise of these electoral rights in that State. The EC has encouraged Member States to send personal letters to every foreign EU citizen with relevant information, in as many languages as possible, together with the registration form to be returned to the competent authorities.

In Lithuania, the electoral authorities sent personalized letters to all foreign EU citizens registered informing them of their rights, inviting them to register on the voter list and attaching an application form. In Denmark, this letter was sent in several languages. In Austria and Germany, the Ministry of Interior provided information for Community voters on its website in almost all official EU languages.

In Luxembourg, individual foreign EU residents had to present themselves in their respective municipalities and actively seek registration, even though Luxembourgish citizens were automatically included in the voter lists. Beginning in January 2009, the Government (in co-operation with EU institutions, municipalities and civic associations) conducted a campaign in order to inform foreign EU residents of their rights. Some interlocutors claimed that it was less effective than it could have been had the government made more effort to enfranchise its foreign EU residents.

VII. CAMPAIGN

EP elections have in the past been characterised by the fact that 27 different campaigns have taken place simultaneously, often focusing on national issues rather than the EP's record or work programme for the coming years. This is in particular the case where national or local elections have taken place at the same time. Even though there has never been a single common EU-wide election campaign, in recent years, cross-border campaigning has started to emerge, as has a European dimension to EP election campaigns, with incumbent MEPs, EC Members, key European political leaders, and the European Political Parties playing an increasingly visible role, not least due to the growth of the pan-European media and the Internet (see next section for details).

The national campaigns were centred on the national dynamics between governing parties and opposition, rather than between the Groups in the EP. National campaigns were also overshadowed in some cases by corruption scandals and controversies about the private lives of leading politicians. For example, the UK “expenses scandal” and defections from the Labour government; the controversy in Italy over the Prime Minister’s private life and his alleged use of public resources; and, in several countries, the appearance of shrill and provocative anti-establishment movements, including far-right, anti-integrationist parties with xenophobic tendencies and negative campaign styles (Austria, Czech Republic, Romania), which received significant attention.

In some countries, the campaign period was also shaped by lingering questions regarding the usefulness of EU membership itself, even though this was hardly relevant within the context of these elections. Accession to the EU has followed lengthy and difficult debates at the national level, and national referenda in some cases. Some of the controversies which surfaced in that context have still not been entirely overcome in all Member States. The EP elections, even though they serve an entirely different purpose, were affected by some of these legacies and continued doubts among many voters.

In several Member States, the campaign also included references to other non-EU countries, in particular the potential accession of Turkey to the EU. This included remarks about other Member States and their policies, and the subsequent posturing aimed at defending national identities, in particular in smaller Member States vis-à-vis bigger ones. In Slovenia, the accession of Croatia to the EU, especially in light of the border dispute, also played an important role in the campaign.

Where cross-border campaigning took place, the main motivation was not so much ideological in terms of leftist or rightist policies, nor were there any serious attempts to focus on EU level issues, but instead, efforts were made to reach out to co-nationals or those who speak the same language. According to media reports, the leader of the FIDESZ Party in Hungary campaigned together with the leader of the Hungarian Party of Slovakia in Hungary, and vowed to “protect the interests of the Hungarians in the Carpathian basin”. In Spain, the top candidates of the People’s Party (PP) and Spanish Socialist Worker’s Party (PSOE), as well as Basque parties campaigned actively in other France.

Where European rather than national issues were the subject of the campaign, the issues often focused on retaining national political control/oversight over EU decisions taken in “Brussels”. Politicians across the continent expressed concerns that national parliaments had become mere rubber stamps for decisions already made by the EU.

In Germany, the campaign of major national parties was dominated by party leaders’ personalities, not the MEP candidates. For instance, the personality of Federal Chancellor Angela Merkel in the media and campaign advertisements clearly stood out from the profile of the leading CDU candidate and President of the outgoing EP, Hans-Gert Pöttering.

In Romania and Poland, candidates competed with each other over who would be most capable of bringing EU structural funds to their country.⁸⁹

⁸⁹ In some Member States that recently joined the Union, the campaign also saw frequent commitments of candidates to seek maximum EU funds for the country.

It appears that the legislative process within the EU and the precise responsibilities of each of the EU institutions are perceived as distant and less clear by voters than the national decision-making structures in their own countries, resulting in a comparatively weak understanding among many voters as to the probability of campaign promises by MEP candidates being fulfilled or having an effect on their daily lives.

The intensity of the campaign varied across the Member States. In Greece, the campaign was seen as very low-key. In Poland, the campaign was seen as significantly less vibrant than for national presidential or parliamentary elections. In Malta, in contrast, the campaign environment was vibrant, with billboards, brochures, media advertising, organized debates, canvassing, and public rallies and meetings being most visible. Campaigning was conducted both on the party level and by individual candidates, including contests among the candidates within the same party, due to the STV system used. In Ireland, campaigning was carried out mainly on the candidate level, rather than at party level.

In Denmark, the traditional pro/anti EU debate had apparently decreased. The relationship to the EU has been described as being more pragmatic in recent years. The debate focused on other topics, including the possible accession of Turkey to the EU, immigration, and health policy reform. In Sweden, contrary to many other Member States, the campaign was more focused on EU than domestic issues. One interesting feature of the campaign was the fact that several lists featured both EU-critical and strongly pro-EU candidates on the same list.

The European institutions (EC, EP) as such did not engage in any campaigning. However, for the 2009 EP elections, four incumbent EC Members ran as candidates. The role of EC Members in national EP campaigns is not entirely clear, and has aspects of awareness raising and public information, but also raises issues of impartiality and independence from national interests and of the distinction between the EC Members role as Commissioners versus their role as EP candidates, as Commissioners are not expected to take instructions from Member States, but at the same time a MEP candidate necessarily needs to attract the votes of the electorate in the Member State in which s/he is running.

VIII. MEDIA

As with the electoral administration or the electoral campaign, the media landscape in the EU is very diverse and is characterized largely by the existence of national markets, with many of them also subdivided into linguistic or regional media environments. The same is true for media regulation during the EP elections, which is predominantly organized at the national level. There are only very few EU level media, which cater to only a small number of people. However, recent years have seen a growth of more pan-European communication, in particular through the Internet, and a cross-border media effect is common, especially where language communities reach beyond borders.

The EP elections generally received less media attention than national elections, and where they coincided, the latter almost completely overshadowed the former. This was confirmed to the OSCE/ODIHR expert teams by a number of journalists, editors and

publishers. This also means that the EU aspects of the EP elections are less intensively covered and well-known to the public.

One of the important aspects of the regulatory environment for an election is access to the media. This is handled rather differently in the various Member States, ranging from very little to very detailed and strict regulation. Print media tends to be less regulated, and tends to be more openly partial. Internet-based media is not regulated in most Member States.

Across the EU, it appears that small and new political parties, especially those that took very controversial and provocative positions, received a higher degree of media attention than more centrist or moderate parties.

In Germany, parties have access to media for their campaign spots under a principle of gradual equality, which applies to all public services offered to parties. The public television broadcasters ARD and ZDF chose to offer the parties the opportunity to transmit 90-second spots produced by the parties.⁹⁰ Political parties are not allowed to establish electronic media or to have shares in it. They may buy paid advertisements in private channels. Print media is free to decide how and to what extent the EP elections should be covered, and they do not need to give equitable coverage of the various parties.

In Slovenia, parties represented in the EP are treated separately from those outside. They receive 2/3 and 1/3 of the shares of public TV broadcast coverage respectively. There is no systematic monitoring mechanism. In Romania, broadcast time for electoral debates and information programmes is allocated under a strict mathematical formula of 4/5 of airtime divided equally among candidate lists of parties already represented in the EP, and 1/5 divided equally among the lists of parties or independent candidates not represented in the EP.

In Poland, a total of 15 hours of free air time on three public national TV channels, 10 hours on each of the regional public TV channels, and 20 hours on five public radio channels were divided equally among all lists. As observed in the 2007 elections by the OSCE/ODIHR, the current model of media oversight continues to be deficient since the National Broadcasting Council has no authority to suspend the broadcast of material that contains illegal content or violates the rights of third parties.

In Sweden, a private television station, TV4, for the duration of the EP election campaign offered significant discounts on their rates for political advertisements. Some parties declined to buy TV time, while for the first time, four parties of the governing coalition chose to engage in this new form of campaigning. Although the new practice may have had a positive impact on turnout, it will inevitably lead to increased campaign spending and thus favour those parties that have greater access to funds.

⁹⁰ The principle of gradual equality was implemented by the ARD by allocating eight spots to the party which got the most seats in the previous elections and then the number being reduced to six and four for parties with fewer seats, and two for those lists which are not yet represented in the EP. In ZDF, there were only two levels, four spots for those with seats in the EP and two for the rest. The parties are responsible for the spots' content.

In Austria, access of parties to the media is not regulated by the law. The limited provisions in the Federal Broadcasting Act deal with the requirements for objective and unbiased broadcast news coverage in general. The Austrian Broadcasting Corporation does not permit any paid political advertising, nor was there political advertising on privately-owned TV and radio channels. Instead, parliamentary parties were invited to participate in TV debates, while non-parliamentary parties were not invited.

In the Czech Republic, each registered party/movement/coalition has a right to receive free and equal air time on Czech Radio and Czech TV for campaign spots (14 hours in total). There was significant interest on the part of Czech media in the EP elections. Both TV and newspapers focused on the role and performance of the EP and MEPs and EU-level issues (rather than national ones) in their coverage.

In Luxembourg, virtually all national print media have strong, publicly recognized party affiliations. The single, privately owned TV and radio channel (RTL) airing in Luxembourgish has a contractual obligation towards the state to act as public service during elections. Therefore, RTL is bound to provide equal free time to all candidates' lists. The amount of time is not regulated and is agreed among the parties and coordinated by the Ministry of State's Information and Press Service. RTL also conducted five prime time TV debates on which it invited all the lists; one debate was for the EP elections, while the others were for the national parliamentary elections. Public radio also provided equal time to all lists.

In Malta, the media landscape is shaped by the fact that the two main political parties dominate ownership of the media outlets, with each owning a TV station, radio station, newspaper, and web portal. The Broadcasting Authority (BA) is responsible for regulating the broadcasting media and ensuring fairness and impartiality in broadcasting. Its four members are, in practice, chosen to represent two large parties. This composition is criticized by the smaller parties as inherently biased toward the two main parties and is a controversial issue in Malta.⁹¹ Under Malta's Broadcasting Law, political parties have a right to receive free air time and to participate in debates on the state-owned Public Broadcasting Service and radio station during the campaign period, according to a scheme established by the BA. Smaller parties were generally satisfied with the established scheme.

OSCE/ODIHR expert teams were informed of a number of complaints in several EU Member States relating to the independence and fairness of the media, in particular television. Due to the constraints of this particular exercise, it was not possible to independently confirm any of these allegations, as no media monitoring was conducted. But the number and consistency of such complaints indicates a need to look further into this issue, in order to ensure that there is equitable access, and that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.

European level media is not yet very developed, mainly due to language and cultural barriers. Nevertheless, apart from the national broadcast media, there is also transnational electronic media, which played an important role in informing voters

⁹¹ The Chairman of the BA is of the opinion that the composition should include members representing other political parties and interests.

about the EP elections. *Euronews*, a news channel which is widely available throughout the EU and broadcasts in eight languages, ran special programmes and an extensive website on the EP elections and made efforts to be impartial in its coverage.

A number of smaller but very focused outlets exist, and they provided in-depth European level coverage of the EP elections. Among the print media, the English language *European Voice* is one of the most established among such publications. In the pre-election period, European politicians used this weekly for campaign messages, which were then taken up by national media in turn.

A number of websites and publications focused on the performance and attendance of outgoing MEPs. Such tools make the work of MEPs more transparent and facilitate informed voter choices. For instance, *votewatch.eu* and *parlorama.eu* are independent websites set up to promote better debates and greater transparency in EU decision-making by providing easy access to, and analysis of, the political decisions and activities of the EP and the Council. They use the EP's own attendance, voting and activity data to give a full overview of MEP activities, broken down by nationality, national political party, and European party grouping. Other prominent web-forums included *euobserver.com* and *eudebate2009.com*. The use of EU-wide Voting Advice Applications (VAA), which are Internet tools designed to inform potential voters and other interested users about the political landscape in Europe ahead of the EP elections, was another innovation of the 2009 elections. *Votematch.eu* and the *EUProfiler.eu* were among these VAAs.⁹²

EU Member States could consider ensuring that their national laws on public media provide for an independent media monitoring mechanism, with specific responsibility for assessing whether media regulations are respected during the election campaign period.

IX. COMPLAINTS AND APPEALS

Each Member State determines the results of its EP elections and adjudicates any complaints or appeals. As with other aspects of the EP elections, rules differ in Member States as to which body certifies the final result. There are also differences regarding to which institutions voters or parties can appeal. Generally, courts play an important role as regards complaints and appeals, but in some cases, national parliaments take the final decision on complaints, which cannot be appealed (e.g. Luxembourg⁹³). The OSCE/ODIHR expert teams noted a high degree of trust and confidence in the complaints and appeals systems and did not hear any specific concerns regarding effective and timely redress to complaints.

In a number of Member States visited, the OSCE/ODIHR was told about EP election-related cases that had been referred to court. In Romania, for instance, five parties or independent candidates had taken to court refusals to register their candidatures. The

⁹² EU Profiler is an independent academic project funded by a consortium led by the Robert Schuman Centre for Advanced Studies (RCAS), part of the European University Institute (EUI).

⁹³ In Luxembourg, the only and final instance to validate results of elections (including EP elections) is the Chamber of Deputies. There has been a discussion in Luxembourg regarding whether a court should serve as an appeal instance instead.

Bucharest Court upheld the decisions in four instances, and overturned one decision, allowing the registration of the list.

The Constitution of Malta provides that the Constitutional Court can annul, in whole or in part, a national election on various grounds, on referral to court by the Election Commission or a voter. However, the OSCE/ODIHR was told that the applicability of this mechanism to EP elections is unclear.⁹⁴

The OSCE/ODIHR report on the 2002 Parliamentary elections in the Czech Republic included a number of recommendations for improvements to the framework for complaints and appeals, which have not apparently been addressed. These include, *inter alia*, special legal deadlines for the adjudication of election disputes and the opportunity to seek redress against infringements of broad electoral principles.

Notwithstanding the established legal basis for existing complaint procedures in EU Member States, mechanisms to provide for the resolving of electoral disputes and appeals regarding decisions on results should include the possibility of appeal to a court.

X. PARTICIPATION OF WOMEN

The number of women MEPs has been continuously rising since the EP was first elected in 1979, when women made up only 16 per cent of the EP. The number of women MEPs in the new parliament is 35 per cent, the highest percentage ever reached. A number of Member States have reached parity or almost parity in their representation at the EP. For the first time ever, women will outnumber men in a national delegation at the EP: in Finland, 62 per cent of the new MEPs are women, and in Sweden, 56 per cent. In addition, Bulgaria, Denmark, Estonia, France and the Netherlands have percentages of women MEPs above 44 per cent. Only from Malta there were no women MEPs elected.

The number of women, however, differs significantly among political groups. For the 2004-2009 legislative period, the Greens/EFA Group had the highest percentage of women (47.6 per cent), followed by the PES Group (41.2 per cent), the ALDE Group (40.4 per cent) and the EPP-ED Group (24.03 per cent). The updated figures for the coming EP have still to be established. The outgoing EP has itself called for quotas, noting the “positive effects of the use of electoral quotas on the representation of women.”⁹⁵ However, only a few Member States have legal provisions to promote the participation of women in the elections to the EP. Slovenian law specifies a 40 per cent quota for representation of each gender in the lists, with a specification that “at least one candidate of each gender is placed in the upper half of the list”. In Spain, the electoral law also provides for ratios of female and male candidates on the lists. However, in many other Member States, parties have internal quota regulations, which often aim for parity or a representation of at least 40 per cent for each gender.

⁹⁴ The Attorney General is of the opinion that this mechanism does not extend to EP elections, and that it was an oversight of Parliament not to make reference to these Constitutional provisions in the EP Elections Act.

⁹⁵ EP Resolution on “Equality between Women and Men – 2008” of 3 September 2008.

XI. ELECTION OBSERVATION

The OSCE/ODIHR expert teams were granted full co-operation and support by all authorities and institutions of the Member States visited. The OSCE/ODIHR expert teams did not observe election day proceedings in any of the Member States for these elections.





























In a number of EU Member States there are still no provisions allowing international and domestic non-party observers to follow the election process, including the observation of election day procedures, in accordance with OSCE commitments. For example, there is no provision for the observation of EP elections in Greece, except that accredited party observers are entitled to observe the voting and counting. The OSCE/ODIHR expert team which visited Greece was told that although no express legal provision is made for observation by domestic non-partisan and international observers, in practice the election administration allows such access to polling stations. In Malta, the law allows for party agents to observe the voting and counting process, but is silent on observation by domestic non-partisan and international observers and specifically prohibits any person from entering the polling station unless such person is authorized under the law. In the Czech Republic, although the national law is silent on the observation of voting, access for observers is provided for in practice. In response to an OSCE/ODIHR recommendation in 2002, the Czech State Election Commission adopted a permanent resolution in 2004 giving authority to the OSCE to observe the counting at polling stations.⁹⁶

Positive examples of EU Member States that in recent years have amended their legislation to accommodate international election observation are Austria, Luxembourg and the United Kingdom.

Consideration should be given to introducing amendments into election legislation in order to ensure adequate access and co-operation for domestic and international observers, in line with OSCE commitments.

⁹⁶ The resolution does not address observation of the counting process by domestic observers or other international observers.

**ANNEX 1: SEATS 2009-2014 BY POLITICAL GROUP
IN EACH MEMBER STATE**

		EPP	S&D	ALDE	GREENS/ EFA	ECR	GUE/ NGL	EFD	NA	Total
	BE	5	5	5	4	1	0	0	2	22
	BG	6	4	5	0	0	0	0	2	17
	CZ	2	7	0	0	9	4	0	0	22
	DK	1	4	3	2	0	1	2	0	13
	DE	42	23	12	14	0	8	0	0	99
	EE	1	1	3	1	0	0	0	0	6
	IE	4	3	4	0	0	1	0	0	12
	EL	8	8	0	1	0	3	2	0	22
	ES	23	21	2	2	0	1	0	1	50
	FR	29	14	6	14	0	5	1	3	72
	IT	35	21	7	0	0	0	9	0	72
	CY	2	2	0	0	0	2	0	0	6
	LV	3	1	1	1	1	1	0	0	8
	LT	4	3	2	0	1	0	2	0	12
	LU	3	1	1	1	0	0	0	0	6
	HU	14	4	0	0	1	0	0	3	22
	MT	2	3	0	0	0	0	0	0	5
	NL	5	3	6	3	1	2	1	4	25
	AT	6	4	0	2	0	0	0	5	17
	PL	28	7	0	0	15	0	0	0	50
	PT	10	7	0	0	0	5	0	0	22
	RO	14	11	5	0	0	0	0	3	33
	SI	3	2	2	0	0	0	0	0	7
	SK	6	5	1	0	0	0	1	0	13
	FI	4	2	4	2	0	0	1	0	13
	SE	5	5	4	3	0	1	0	0	18
	UK	0	13	11	5	25	1	13	4	72
	EU total	265	184	84	55	54	35	32	27	736

From July 2009, all political groups must include Members from at least seven Member States. The minimum number of Members required to establish a political group is 25.

ANNEX 2: EU MEMBER STATES VISITED BY OSCE/ODIHR



ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and **fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).