



Office for Democratic Institutions and Human Rights

ELECTIONS TO THE EUROPEAN PARLIAMENT

4-7 June 2009

OSCE/ODIHR EXPLORATORY MISSION REPORT

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**ELECTIONS TO THE EUROPEAN PARLIAMENT
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OSCE/ODIHR Exploratory Mission Report

I. INTRODUCTION

On 26 February 2009, the Presidency of the European Union (EU) currently held by the Czech Republic, issued a statement at the OSCE Permanent Council's 751st meeting informing OSCE delegations that elections to the European Parliament (EP) are due to take place in the Member States of the EU between 4 and 7 June 2009, and that invitations to OSCE/ODIHR to observe these elections would be sent by individual EU Member States.¹

While there is some EU-level legislation relevant to the conduct of EP elections in individual EU Member States, the EP elections are still essentially administered according to each EU Member State's rules, making the EP elections 27 different nationally administered elections to a supra-national assembly. The scale and nature of this electoral exercise, unique to the OSCE area, would dictate the need for an innovative activity beyond the existing OSCE/ODIHR methodology.

In preparation for a potential OSCE/ODIHR election-related activity in connection with the EP elections, the OSCE/ODIHR conducted an Exploratory Mission to Brussels from 30 March to 2 April 2009. The purpose of the Exploratory Mission was to get reacquainted and further updated on existing EU rules for the EP elections since the 2004 EP elections, including the role of European political parties and party foundations, which has been formalised and expanded by an EU Regulation since the 2004 EP elections.

In June 2004, the OSCE/ODIHR issued a Pre-election Overview of the EP 2004 elections in which it identified a range of election-related issues. Among these issues were voter registration, suffrage and the incompatibility of national and EP mandates. Apart from EP election issues regulated by Community legislation and the lack of commonality among national legislations, the 2004 pre-election overview also addressed questions such as voter information and turnout.²

The OSCE/ODIHR Exploratory Mission met with the EU Council of Ministers (the Council), the European Commission, most European political parties, and academics, as well as representatives of the Czech and Greek Permanent Representations to the EU, which currently hold the Presidency of the EU and the Chairmanship of the OSCE respectively. The OSCE/ODIHR mission also met Member of European Parliament (MEP) Andrew Duff, who is the *rapporteur* of an EP draft report on possible reform of European Parliament elections.³ Regrettably, it was not possible for OSCE/ODIHR to meet with the administration of the European Parliament.

¹ As of 22 April, 26 of the 27 EU Member States have invited OSCE/ODIHR to observe the EP elections in their country.

² The pre-election overview is available at <http://www.osce.org/odihr-elections/14463.html>

³ The meetings held by the OSCE/ODIHR Exploratory Mission are listed in Annex 1.

The OSCE/ODIHR Exploratory Mission was initially scheduled to take place from 16 to 19 February, as it is customary to take an early planning mission on the basis of standing OSCE commitments. Due to the reluctance or unavailability of some interlocutors to meet with an OSCE/ODIHR Exploratory Mission until after the issuance of an EU statement referring to the intent of EU Member States to invite ODIHR which occurred on 26 February, the mission was postponed. The OSCE/ODIHR expresses its appreciation to all the interlocutors who did take the time to meet with the Exploratory Mission.

II. EXECUTIVE SUMMARY

Elections to the European Parliament (EP) will be taking place in the 27 Member States of the European Union (EU) between 4 and 7 June 2009. In line with the 2001 Treaty of Nice and the 2005 Accession Treaties for the 2007 accession of Romania and Bulgaria to the European Union, 736 members are to be elected to the EP. Since the Lisbon Treaty foresees 751 seats in the EP, EU Member States that are granted additional seats under this Treaty will have to adopt or apply specific legal provisions in order to allow additional Members of Parliament to take up their seats if and when the Lisbon Treaty enters into force.

The role and power of the EP in co-drafting legislation has increased significantly in the last 20 years, especially after the co-decision procedure was introduced by the 1992 Treaty of Maastricht. This Treaty made the EP an equal partner with the EU Council of Ministers in drafting new legislation in those policy areas falling under the co-decision procedure. The Treaties of Amsterdam (1998) and Nice (2001) furthered strengthened the position of the EP as most policy areas were put under the co-decision procedure under these treaties.

EU legislation now affects almost 500 million EU citizens. The EP elections are also the largest single electoral event in the OSCE area in terms of eligible voters, approximately 375 million, and it involves almost half of OSCE participating States.

The 1976 Electoral Act establishing electoral rules common to all 27 Member States is limited in scope. Apart from introducing universal suffrage for the EP elections, the Act also provides the requirement for the elections to be held under a proportional system and incompatibility between the elected office of MEP and certain specified positions, mostly in other EU institutions. While there are some other pieces of EU-level legislation regulating *inter alia* the right to vote, the right to stand in the EP elections, and the funding of European political parties, the elections are still essentially administered according to each EU Member State's rules, making the EP elections 27 different nationally administered elections to a supra-national assembly.

The OSCE/ODIHR has, according to its existing methodology, observed election processes in large OSCE participating States that are either highly centralised and conducted within a common legal and administrative framework, or that are highly decentralised and administered at state and county level, although within a common federal framework. However, as the 27 separate but simultaneous elections to the EP represent a unique electoral event, the OSCE/ODIHR suggests a novel approach adapted to these specific circumstances.

In this context, the OSCE/ODIHR Exploratory Mission considered three options for following the EP elections: the deployment of Limited Election Observation Missions; the deployment of some Election Assessment Missions; and the deployment of a number of Expert Visits to EU Member States. Based on the findings and conclusions of the Exploratory Mission, and given constraints related to the timeframe, available human and financial resources, and other commitments in the same period, the OSCE/ODIHR has determined to deploy expert visits in about half the EU Member States, comprising of some fourteen visits, prior to the EP election days. This option appears to be the most realistic and feasible in the given context, as well as the most meaningful activity to follow trans-European electoral matters. It is intended that experts will be both contracted by OSCE/ODIHR and seconded by OSCE Participating States.

These visits will focus on the following EU-level issues: procedures for registering foreign EU-nationals as voters or candidates, legal provisions on electing additional MEPs where applicable for the possible entry into force of the Lisbon Treaty, campaign activities of European political parties, timing of publication of results, factors influencing voter turnout and voter information by EU Institutions and Member States. They will furthermore address, in addition to national election campaigns, national rules and structures within the respective electoral systems as regards, *inter alia* electoral system, distribution of seats, preferential voting, vacant seats, franchise, constituencies and polling day procedures and regulations.

Since the OSCE/ODIHR will not be able to visit all 27 EU Member States, the following criteria will be considered when identifying States to be visited: a geographical diversity, balanced representation between large and small States in terms of registered voters, and between Member States that have more recently joined the EU and those that have been members for a longer time. Other factors will also be taken into account, such as whether concurrent elections are held on the same day. Also, whether or not the OSCE/ODIHR has already followed an electoral event in a given EU Member State may also be taken into account.

III. THE ROLE OF EUROPEAN UNION RULES AND INSTITUTIONS IN RELATION TO NATIONAL ONES

A. THE EUROPEAN COMMUNITY 1976 ACT CONCERNING THE ELECTIONS OF THE MEMBERS OF THE EUROPEAN PARLIAMENT

Already the 1951 Treaty on the Coal and Steel Community and the 1957 Treaty establishing the European Community provided for the European Parliament (EP, in 1951 called Assembly) to draw up proposals for its election by direct universal suffrage in accordance with a uniform procedure in all EU Member States. One milestone was achieved with the *EC 1976 Act concerning the elections of the Members of the European Parliament by direct universal suffrage*. Accordingly, the 1979 EP elections were the first ones to be held by direct universal suffrage. Apart from introducing universal suffrage for the EP elections, the Act also provides some other basic common EU rules for EP elections, such as the requirement for the elections to be proportional and incompatibility between the elected office of MEP and certain specified positions, mostly in other EU institutions. The 1976 Act is still in force, though it has been amended a number of times.

B. PROPORTIONAL ELECTIONS AND THE RIGHT TO VOTE AND TO STAND AS CANDIDATE IN ANY EU MEMBER STATE

Despite efforts to make the EP elections more trans-European in nature, they are at present carried out according to the election legislation in each of the 27 EU Member States. Nonetheless, there are a few basic European level rules.

In May 2002 the EU Council decided that elections in EU Member States to the EP should be proportional. Moreover, according to EU directive 93/109/EC of 6 December 1993, EU citizens, who are eligible voters in their own EU Member State of origin, are automatically eligible to vote in the EP elections in any other EU Member State as long as they are resident in the Member State they intend to vote in and they register as voters for the EP elections by the relevant deadline. There are, however, some requirements as to the length of residency in this respect. Some EU Member States also allow their citizens to vote at their diplomatic representations in other EU Member States for candidates of the Member States of origin.

In accordance with the 1993 directive, no voter is allowed to vote in more than one Member State. EU Member States should exchange voter list information before EP elections to avoid double voting. In other words, whenever an EU resident registers as a voter for the EP elections in an EU Member State other than his own, the competent authorities are expected to inform the authorities in his or her EU Member State of origin so that they can delete his or her name from the voter list in the country of origin. In 2006, the European Commission made a proposal to the EU Council which would have allowed cross-checking of voter lists between EU Member States after election day, and which would have put the responsibility for checking that there were no double entries unambiguously on the host EU Member State rather than on the EU Member State of origin⁴. However, this proposal was not adopted by the EU Council.

According to the same 93/109/EC directive, EU citizens also have the right to stand as candidates in other EU Member States than their own. However, in practice the number of candidates running in an EU Member State other than their own has been very limited. The European Commission, in its 2006 proposal referred to above, pointed out that it is often difficult for such potential foreign EU candidates to obtain in time an attestation from their country of origin, as required by the 93/109/EC directive, stating that they are not deprived of the right to stand as a candidate. For the 2004 EP elections, only 57 candidates ran in EU Member States other than their own, down from 62 for the 1999 EP elections. Only three MEPs were actually elected in other Member States than their country of origin in 2004, while the corresponding number was four in 1999.

C. THE NUMBER OF SEATS IN THE EUROPEAN PARLIAMENT

Given that the Lisbon Treaty has not been ratified by all EU Member States, the 2009 EP elections will be conducted under the Treaty of Nice, which specifies that there are 736 seats in the EP.⁵ However, the Treaty of Lisbon, which could potentially be ratified by all EU Member States and come into force during the next term of the EP, foresees 751 seats

⁴ COM(2006) 791 final

⁵ This was temporarily expanded to 785 MEPs for the 2004 – 2009 term under treaties governing the accession of Bulgaria and Romania in 2007.

in the EP. According to the Lisbon Treaty, some Member States will be entitled to send more members to the EP than before, while Germany would lose three seats. However, it was agreed by the European Council in December 2008 to raise the number of MEPs to 754 when the Treaty of Lisbon comes into force, in order to allow these three elected MEPs to remain in the EP until the end of its next mandate in 2014. However, some interlocutors stated that it is unclear whether they would be reduced to “observer” MEPs after the entry into force of the Lisbon Treaty.

As EU Member States which gain additional seats according to the Treaty of Lisbon would have the right to send additional MEPs if and when the treaty enters into force, these States will have to elect the additional MEPs in the 2009 elections, which may require a change in the respective national election legislation. At present it remains unclear how the EU Member States concerned will go about electing the additional MEPs and what the status of the additional MEPs will be in the meantime. One possibility raised to the OSCE/ODIHR Exploratory Mission is that the additional MEPs could become observers to the next Parliament, taking up their seats as full members as soon as, and if, the Lisbon Treaty enters into force.

D. THE ROLE OF EU INSTITUTIONS WITH REGARD TO EUROPEAN PARLIAMENT ELECTIONS

The Council of Ministers of the European Union plays a very minor role with regard to the holding of EP elections. It can only modify the time frame of the elections. However, any new Community legislation drafted with regard to EP elections or any other matter must be approved by the Council.

The European Commission follows how directive 93/109/EC on the right to vote and stand as candidate in other EU Member States is implemented. It also monitors compliance with the 1976 Act. The European Commission will produce a post-election communication on the 2009 elections to reflect its finding as regards compliance with the rules. A corresponding communication on the 2004 EP elections was published in 2006⁶.

In the second half of 2008, the EU Council, the European Commission and the European Parliament concluded an inter-institutional agreement whose aim is to better communicate European Union policies and structures to EU citizens. Among the themes in the communication strategy are the EP elections. Within the theme on EP elections, border control, food safety and internet security are among the topics put forward to attract the interest of EU citizens, with a view to reaching a higher voter turnout. The European Commission representations in EU Member States hold a central role in this awareness-raising campaign. There are also EU opinion polls conducted about the level of awareness about the EP elections⁷.

The OSCE/ODIHR Exploratory Mission was not able to meet with the Secretariat of the European Parliament, but it would appear that the European Parliament administration does not play a very active role with regard to the EP elections, apart from channelling EU financial support to the European political parties’ campaigns and awareness-raising activities (See Chapter IV below).

⁶ Communication from the Commission of 12 December 2006.

⁷ Information about the 2009 elections to the European Parliament can be found at www.europarl.europa.eu/elections2009/default.htm.

E. POSSIBLE FUTURE DEVELOPMENTS ON THE EUROPEAN UNION LEVEL

There is a current initiative in the form of a draft report by MEP Andrew Duff to strengthen the European dimension of these elections through far-reaching amendments to the 1976 Act.

The proposals in the draft report include 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 harmonisation of the minimum age of electors and candidates, and changes to the timing of the elections.

However, this draft report will only be considered by the next EP, and any changes it would bring to the rules and structure for EP elections would take effect for the 2014 EP elections at the earliest. According to the European Commission, any changes to the number of seats in the EP per EU Member State, or the introduction of a transnational list, would require amendments to the EU Treaties, either following a revision of the treaties themselves or in connection with an accession treaty for any new Member State.

F. CURRENT NATIONAL ELECTORAL RULES IN EUROPEAN UNION MEMBER STATES

Apart from the EU requirement that the EP elections must be held on a proportional basis, and that EU citizens have the right to vote or to run in the EP elections regardless of the EU Member State in which they reside, the EP elections are carried out according to national rules of the EU Member States. There are differences between EU Member States as regards the methods for distributing seats, the possibility to cast preferential votes, allocating vacant seats, electoral system, franchise, candidature, nomination of candidates, constituencies and polling days. For more detail, see Annex 2.

IV. EUROPEAN POLITICAL PARTIES AND FOUNDATIONS AND THEIR ROLE IN RAISING AWARENESS OF AND TURNOUT IN EUROPEAN PARLIAMENT ELECTIONS

A. COUNCIL REGULATION ON EUROPEAN POLITICAL PARTIES

Though some European level political parties date their origins to the 1970s, their role and status were formalised only in 2004 when a Council regulation (amended in 2007)⁸ established rules governing political parties at the European level, together with rules on their funding. At present, European political parties are organizations composed of national political parties, with limited ability to campaign and to function as genuine political parties. They cannot field candidates or campaign in favour of selected national parties or candidates. They are rather umbrella organizations, and those which have registered their headquarters in Belgium have the status of international non-governmental organizations with regard to Belgian legislation.

⁸ Regulation (EC) 2004/2003 on the Regulations Governing Political Parties at European Level and the Rules Regarding their Funding (OJ L297 of 15 November 2003) and Regulation (EC) 1524/2007 amending Regulation (EC) 2004/2003 (OJ L343 of 27 December 2007).

For an organization to be considered a political party at European level, four conditions must be met:

- 1) It must have legal personality in the Member State in which its seat is located. Most of the European political parties have their headquarters and legal seats in Brussels, where each of them has the legal status of an international non-governmental organization.
- 2) It must be represented in at least one quarter of the Member States, by Members of the European Parliament or in the national Parliaments or regional Parliaments or in the regional assemblies, or, have received at least three per cent of the votes cast in one quarter of Member States at the most recent European elections.
- 3) It must observe, in its activities, the principles on which the European Union is founded, namely liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.
- 4) It must have participated in elections to the European Parliament, or have expressed the intention to do so.

According to Regulation EC 2004/2003 as amended in 2007, the European political parties have a limited right to campaign for the EP elections, contrary to the political groups in the European parliament which have no right to campaign at all. The European political parties are nonetheless only allowed to promote their party manifesto, containing some main policy principles of their party.

Apart from these main principles, the European political parties expressed somewhat different interpretations of the campaign rules. They generally considered the 2009 EP elections a test run, since these are the first EP elections to which the amended rules will apply. It is the administration of the EP itself, and in particular its Bureau, which is competent to decide on how the Regulation should be implemented. However, in the absence of any meeting with representatives of the EP Administration, it was unfortunately not possible for the OSCE/ODIHR mission to establish the precise roles of the different parts of the EP administration in implementing the Regulation.

B. CODE OF CONDUCT FOR EUROPEAN POLITICAL PARTIES

Most of the European political parties agreed in August 2008 to a common code of conduct to complement the Regulation and ensure a consistent approach to its implementation. According to the European political parties, this Code of Conduct has been recognised by the EP administration responsible for the financial support to the European political parties, as a reference for establishing whether the funds have been used in a correct way or not. Some political party interlocutors also expressed the view that the code of conduct may still develop, based on the experiences of the 2009 elections.

C. EUROPEAN POLITICAL FOUNDATIONS

The 2007 amendments to Regulation (EC) 2004/2003 introduces the concept of European level political foundations and allows these to apply for EU funding through the European political party with which they are affiliated. Such foundations are defined as an entity, or network of entities which has legal personality in a Member State, is affiliated with a

political party at European level, and which through its activities, within the aims and fundamental values pursued by the European Union, underpins and complements the objectives of the political party at European level.

D. FINANCING OF EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS

Both European political parties and European political foundations are eligible for funding from the EU general budget. A total of approximately ten Million Euro is allocated for financial support to European political parties⁹. Fifteen per cent of the designated funds are distributed in equal shares to European political parties and foundations, while the remaining 85 per cent is distributed among those which have elected MEPs, in proportion to the number of elected Members. Such support from the general EU budget may not exceed 85 per cent of the annual budget of such European political parties or foundations. European level political parties and foundations are allowed to accept donations within certain limits from individuals as well as from national member parties or foundations, but such contributions should not exceed 40 per cent of their total annual budget.

The European political parties have to submit detailed disclosure reports to the EP on how they have spent their funds. The European political parties are as of 2008 allowed, according to an EP Bureau decision laying down the procedures for implementing Regulation 2004/2003, to carry over remaining funds from one budget year to another, potentially allowing them to build up funds for more comprehensive activities around election time or at other occasions deemed important by the party.

Most representatives of European political parties were satisfied with the way the EP financial services administer their financial support, but it appears unclear what the avenues for recourse are, should a European political party consider that its rights to financing would have been violated by the EP administration or that another European political party has violated the rules as regards permitted ways of spending the financial support, particularly regarding election campaigning. In general, any complaints related to administrative decisions by EU Institutions should be directed to the European Ombudsman. The EU Court of Auditors also has a general responsibility to review how EU funds are spent.

As a rule, individuals, associations and institutions have the possibility to file complaints with the European Commission if EU Regulations such as the EC 2004/2003 have been violated. In such cases, the European Commission first investigates any infringements of Community legislation and then has the option of bringing the matter to the European Court of Justice if it considers that a violation has occurred. There are no clear consequences foreseen in case of violation of the Code of Conduct, although the European Parliament may take breaches into account when deciding on financial support for the European political parties the next year.

⁹ The final consolidated figure of EU financial support only becomes available after the parties have submitted their disclosure reports. The most recent final figure for EU support to European political parties is from 2007 and stands at about 9, 3 million Euro, the total having more than tripled from 2004 to the present.

E. THE ELECTION CAMPAIGNS AND AWARENESS-RAISING BY THE EUROPEAN POLITICAL PARTIES

Most of the European political parties have adopted manifestos stating their main policy positions. The member parties on a national level, and other associated public organizations such as trade unions, have been consulted to harmonize positions with national level member parties. Bringing the various campaign issues existing in the 27 EU Member States together to become a coherent campaign message is a complex task. Some of the European political parties have already held party congresses in view of the EP elections, while others have congresses scheduled during April 2009. All European political parties met by OSCE/ODIHR produce campaign materials such as leaflets which are used in member parties' campaigns in EU Member States. At least one European political party has adopted a strategy of "personalisation", i.e. designating well-known party activists to visit multiple EU Member States and appear at campaign events on behalf of the European political party. Some of these are candidates for the EP themselves, but they do not campaign for the European political party in the country where they are themselves candidates, as campaigning by a European political party on behalf of a particular candidate is not allowed.

Some European political parties have decided to hold "theme days" around issues such as women's participation. Presenting the voting records of MEPs associated to their own European political party and comparing them to those of its competitor parties is also a strategy adopted by some.

All European political parties appear keen to increase voter turnout. Indeed the idea behind formalizing the role of and funding European level political parties appears, to a large extent, to have been to promote debate and awareness about European questions rather than to provide a vehicle for European national level political parties to co-ordinate their activities for party political gain.

F. VOTER TURNOUT

All interlocutors expressed concern about voter turnout, which has steadily decreased since the first direct elections in 1979. However, according to the Centre for European Policy Studies, the turnout in the old EU Member States actually increased slightly in the 2004 EP elections compared to 1999, but the low turnout in the new Member States brought down the average. According to the same source, voter turnout has statistically been low in new Member States for the first EP elections after accession, whereas it has gone up in the second EP elections after accession. Voter turnout tends to be higher in smaller EU Member States than in larger ones, making turnout figures lower if they are based on all eligible EU voters than if they are based on the average of the turnout figures in each EU Member State. Statistical evidence also shows that holding other national elections on the same day as EP elections tends to increase turnout. Regardless of the precise way voter turnout is calculated, the relatively low rate remains a concern because of its implications for the legitimacy of the elected EP.

V. OPTIONS FOR AN OSCE/ODIHR ACTIVITY WITH REGARD TO THE 2009 ELECTIONS TO THE EUROPEAN PARLIAMENT

EU legislation affects almost 500 million EU citizens in 27 European States. The EP elections are also the largest single electoral event in the OSCE area in terms of eligible voters, approximately 375 million, and it involves almost half of OSCE participating States. The OSCE/ODIHR therefore considers that gaining further insights into the EP elections by expanding upon its 2004 Pre-Election Overview will be of utility to OSCE participating States.

Given the predominant role of EU Member States in the conduct of the elections, the OSCE/ODIHR wishes to follow the EP elections on the level of individual EU Member States in a meaningful manner, and with a focus on trans-European issues. All of the interlocutors met by the members of the OSCE/ODIHR Exploratory Mission favourably viewed an OSCE/ODIHR undertaking with regard to the EP elections.

Conducting an activity for multiple, simultaneous, national elections to a supra-national body, poses evident challenges for the OSCE/ODIHR. Given the geographical scope, the complexity of EP elections, and other competing commitments in the same period - in combination with finite human and financial resources - the OSCE/ODIHR gave careful consideration as to how such an activity can be conducted in a meaningful and effective manner. Three distinct options have been identified.

Option 1:

Limited Election Observation Missions (LEOMs) to all 27 EU Member States. This option would provide the most extensive assessment of the conduct of EP elections in all EU Member States and would theoretically allow an observer presence on election day(s). It would however require an unprecedented amount of financial and human resources, which are not available to the Office. Such a comprehensive exercise would mobilize the entire staff of the OSCE/ODIHR Elections Department and beyond, and would cost the equivalent of the yearly budget of the Department. It would be extremely difficult to prepare such a logistically and otherwise complex exercise in the available timeframe and within the existing constraints. It would therefore appear that option 1 is not a genuine option.

Option 2:

Election Assessment Missions (EAMs) to a limited number of EU Member States. This option would entail standard OSCE/ODIHR election assessment missions to a limited number of EU Member States for the duration of approximately two to three weeks, potentially including visits to a small number of polling stations on election day(s), but without any comprehensive or systematic observation of election day procedures. The number of six assessment missions has been chosen to illustrate this option. While smaller in scope than option 1, and financially more realistic, this option would still constitute a significant logistical challenge to recruit and deploy a group of some sixty experts, in total, for six parallel assessment missions within the timeframe available. At the same time, conducting an assessment in only six EU Member States would not achieve the objective of having a more comprehensive overview of the EP elections, based on a representative sample of EU Member States.

Beyond the obvious practical challenges that this option poses, assessing the conduct of the EP elections in only six Member States would neither adequately reflect the nature and geographical scope, nor the political complexity of the EP elections. It would only provide a partial assessment of the way Member States approach the conduct of these elections and would not sufficiently provide the necessary scope to look into pan-European matters. While potentially feasible, option 2 does not appear to be the most meaningful one.

Option 3:

Expert visits to a larger number of EU Member States. This approach would envisage designating an overall Head of the Expert Group, with experts divided into teams of three to visit about half of the EU Member States, some 14 EU Member States in all, for the duration of up to one week. This option would allow OSCE/ODIHR to draw more representative conclusions regarding the way EU Member States approach the challenges of conducting EP elections. It would allow a comparative review of pan-European election issues in the selected Member States and also of the administrative and political structures in each visited State, as well as the content of national EP election campaigns.

The pan-European election issues to be addressed at Member State level would include questions such as procedures for registering foreign EU-nationals as voters or candidates, legal provisions on electing additional MEPs (where applicable) in the event of the entry into force of the Lisbon Treaty during the upcoming term of the EP, campaign activities of European political parties, the timing of publication of results, factors influencing turnout, voter information by EU Institutions and Member States, and the extent to which the election campaigns address questions of EU-wide relevance, as opposed to purely national matters and politics.

In addition to the pan-European issues, this option would also provide an overview of national rules and structures within the respective electoral systems as concerns, *inter alia*, distribution of seats, preferential voting, vacant seats, electoral system, franchise, constituencies and polling days. However, this option would only provide a more limited view of the actual conduct of the EP elections in the selected EU Member States and it would not entail an observer presence on election day(s).

VI. CONCLUSIONS

The fact that the EP elections will be taking place in the 27 EU Member States almost simultaneously underscores the importance of an OSCE/ODIHR observation activity, covering as many EU Member States as is realistically possible, taking into account the available timeframe, the constraints of available human and financial resources, and other commitments in the same period.

Given the identified constraints, option 3 appears to be the most feasible and realistic. It is also the most meaningful option since it will enable the OSCE/ODIHR to follow the conduct of these complex elections, as well as pan-European electoral matters, in a greater number of EU Member States. It will thus provide a broader basis for a systematic and consistent assessment of the way some EU member States conduct the elections and

address pan-European issues. Finally, the size, duration and scope of these visits make this option the most effective for the OSCE/ODIHR.

Based on the findings and conclusions of the Exploratory Mission, the OSCE/ODIHR has determined to undertake expert visits to about half the EU Member States, which would comprise some fourteen visits as described in option 3 for the European Parliament elections to be held from 4 to 7 June 2009. Experts will be both contracted by OSCE/ODIHR and seconded by OSCE participating States.

The expert visits to EU Member States would be addressing such issues as:

- procedures for registering foreign EU-nationals as voters or candidates;
- campaign activities of European political parties;
- the timing of publication of results;
- factors influencing turnout;
- voter information provided by EU institutions;
- the extent to which the election campaigns address questions of EU-wide relevance as opposed to purely national matters and politics; and
- how EU Member States will provide for the election of additional MEPs, where applicable based on the possible entry into force of the Lisbon Treaty.

The expert visits would also provide an overview of national rules and structures within the respective electoral systems as concerns, *inter alia*:

- electoral system;
- distribution of seats;
- preferential voting;
- vacant seats;
- franchise;
- constituencies; and
- polling days.

Since the OSCE/ODIHR will not be able to visit all 27 EU Member States, the following criteria will be considered when identifying States to be visited: a geographical diversity, balanced representation between large and small States in terms of registered voters, and between Member States that have more recently joined the EU and those that have been members for a longer time. Other factors will also be taken into account, such as whether concurrent elections are held on the same day. Whether or not the OSCE/ODIHR has already followed an electoral event in a given EU Member State may also be taken into account.

ANNEX 1

OSCE/ODIHR MEETINGS IN BRUSSELS 30 MARCH – 2 APRIL

European Political Parties

Mr. Juan Manuel Gherinich, Secretary-General of the EUdemocrats
Mr. Juan Behrend, Secretary General of the European Green Party
Ms Federica Sabbati, Secretary General of the ELDR Party
Mr. Antonio López-Istúriz, Secretary General of the EPP and Mr. Kostas Sasmatzoglou,
EPP Secretary of External Relations
Mr. Helmut Scholz, member of the Executive Board of the Party
of the European Left and Ms Nora Circosta of the Party of the European Left
Mr. Julian Scola, Coordinator, Campaigns and Media, Party of European Socialists

European Union Institutions

Ms. Marta Arpio, Director, Legal Service – Interinstitutional Relations, General
Secretariat, Council of the European Union
Ms. Floriana Sipala, Member of the Cabinet of Commissioner Wallström
Mr. Roscam Abbing, Member of the Cabinet of Commissioner Barrot
Mr. Tibor Vaszi, official of European Commission DG Justice, Freedom and Security
Mr. Andrew Duff, Member of the European Parliament

Diplomatic Missions

Permanent Representation of the Czech Republic to the European Union:

Ms Karolína Cveklová

(Responsible at the mission for question of Institutional and Legal Affairs/Human Rights)

Permanent Representation of Greece to the European Union:

Mr. Joannis Vrailas, Head of External Relations and Enlargement Unit

Mr. Iakovos Iakovidis

Academia

Mr. Steven Van Hecke
Senior Research Fellow
Department of Political Science, University of Antwerp

Mr. Piotr Maciej Kaczyński (met separately on 16 February 2009)
Research Fellow, Centre for European Policy Studies

ANNEX 2

MAIN FEATURES OF NATIONAL ELECTORAL SYSTEMS IN EUROPEAN UNION MEMBER STATES¹⁰

1. Distribution of seats

The majority of EU Member States has adopted varieties of the D'Hondt system for counting votes and allocating seats. Germany allocates at the national level using the divisor method with standard truncation Sainte-Laguë/Schepers, Luxembourg uses a variant of the D'Hondt system, the 'Hagenbach-Bischoff' system (similar to Droop/D'Hondt). In Italy seats are allocated using the method of whole quotients and highest remainders, in Ireland and in Malta by the system of the single transferable vote (STV-Droop). In Greece the system of pure proportional representation known as 'Enishimeni Analogiki' is applied. In Sweden, as in Latvia, the modified Sainte-Laguë method (odd-numbers method in which the highest common factor is 1.4) applies. In Slovakia and Cyprus a system based on the Droop method and the highest remainder, in Lithuania the Hare system combined with the highest remainder are used.

2. Preferential voting

In nine Member States the voters cannot alter the order in which candidates appear on a list (closed list) while in fourteen Member States casting preferential votes may change the order of names on the list (semi-open list). In three countries the lists are open. In Luxembourg voters may cross-vote, i.e. they can vote for candidates from different lists and they have got as many votes as there are mandates to allocate. In Malta and Ireland the electors vote for individual candidates, i.e. every voter lists the candidates in order of preference (single transferable vote). In Sweden voters may also add or delete names from the list.

3. Vacant seats

In most of the Member States vacant seats are allocated to the first non-elected candidate on the relevant list (in some cases after permutations based on the number of votes received by the various candidates), while in others vacant seats are filled by substitutes. In Spain and Germany, in the absence of substitutes, seats are filled according to the order on the list. In Greece vacant seats are allocated to substitutes on the same list; if there are insufficient candidates on the list, by-elections are held. In the UK, vacancies are no longer filled by means of by-elections: the next candidate on the relevant party list will take a vacant position.

4. Electoral system

Following the EU Council decision of May 2002, all members of the European Parliament must be elected on the basis of proportional representation, using the List-PR system or the Single Transferable Vote (STV). In practice 25 Member States use the List-PR system, while Malta and the Republic of Ireland use the Single Transferable Vote. The

¹⁰ The information in this overview is largely taken from a study entitled *The European Elections: EU Legislation, National Provisions and Civic Participation*, written by Mr. Willhelm Lehmann and published by the European Parliament Directorate-General for Internal Policies, Policy Department C – Citizens' Rights and Constitutional Affairs (PE 410.672).

threshold for gaining representation in the different Member States also varies. The 2002 decision allows for individual countries to determine the threshold but sets the ceiling for any formal threshold at 5 per cent.

5. Franchise

The minimum voting age in all Member States is 18, except in Austria (16). Every citizen of the Union residing in a Member State of which he is not a national now has the right to vote in the elections to the European Parliament on the same conditions as the nationals of that State. However, the concept of residence varies considerably from one Member State to another and may require a person to *have his domicile or usual residence in the electoral territory* or *to be ordinarily resident there* or *to be entered on the population register*. To be eligible to vote in some EU Member States, EU citizens must also satisfy a minimum period of residence.

6. Candidature

The minimum age to stand for election is non-uniform in the Member States - it varies between 18 and 25 years. In most EU Member States it is 18, in many 21 while a couple of Member States have set the minimum age at 23 or 25 respectively. Residency requirements with regard to candidature for EP elections vary between EU Member States but all Member States require candidates to be a national of one of the EU Member States.

7. Nomination of candidates

In seven Member States the submission of nominations is restricted to political parties and political organizations and in some, a deposit is also required. Elsewhere the only stipulation is that nominations or self-nominations should be endorsed by a specific number of signatures of voters.

8. Constituencies

In most of the Member States the whole country forms a single constituency, while Belgium, France, Ireland and the United Kingdom have divided their national territory into a number of regional constituencies. Moreover, constituencies of merely administrative interest or distributive relevance within the party lists exist in some Member States.

9. Polling days

The next elections to the European Parliament will be held 4-7 June 2009 in the 27 Member States of the European Union. According to national traditions, the voting days vary: The election will take place on Thursday 4 June 2009 in the Netherlands and the United Kingdom, on Friday 5 June 2009 in Ireland, on Saturday 6 June 2009 in Latvia and Malta and on Sunday 7 June 2009 in the other Member States. In two Member States there will be two voting days – the Czech Republic 5-6 June and Italy 6-7 June. The 2009 election will be the first time that Bulgaria and Romania participate in European Parliament elections at the same time as the other Member States. Bulgaria and Romania elected their members of the European Parliament for the first time in 2007.