

BIJLAGEN DEEL II

STEMMEN MET VERTROUWEN

Adviescommissie inrichting verkiezingsproces



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12. The Netherlands Parliamentary Elections 22 November 2006, OSCE/ODIHR Election Assessment Mission Report
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Bijlage 8

**Potentiële spanningen tussen taakvelden in het verkiezingsproces:
advies over de toekomstige invulling van taken van de Kiesraad**

POTENTIËLE SPANNINGEN TUSSEN TAAKVELDEN IN HET VERKIEZINGSPROCES: ADVIES OVER DE TOEKOMSTIGE INVULLING VAN TAKEN VAN DE KIESRAAD

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1. Inleiding

De Commissie Inrichting Verkiezingsproces zal in het najaar met aanbevelingen komen over de wijze waarop het verkiezingsproces in Nederland in de toekomst gestalte dient te krijgen. Een van de vragen die aan de commissie zijn gesteld, heeft betrekking op de verdeling van taken en verantwoordelijkheden tussen de verschillende bestuurslagen en –organen die in het verkiezingsproces een rol spelen.

De Kiesraad neemt in dat proces momenteel een bijzondere positie in. Zo adviseert de Raad aan de minister over uitvoeringstechnische aspecten van het verkiezingsproces, speelt de Raad een rol bij de organisatie van verkiezingen als centraal stembureau en heeft de Raad bovendien een controlerende taak onder tot uitdrukking komend bij de evaluatie van de verkiezingen. Deze rollen zijn overigens niet voor alle verkiezingen gelijk ingevuld. Zo zijn gemeenten zelf centraal stembureau tijdens de gemeenteraadsverkiezingen.

Al deze taken zijn ook in de toekomst van belang bij de inrichting van het verkiezingsproces. Wie deze taken uit zal moeten voeren, is daarbij evenwel niet op voorhand gegeven. De commissie wil, zo luiden de uitgangspunten van de aan ons verstrekte opdracht, de mogelijkheid open houden om deze taken indien nodig in het proces elders, dus eventueel ook bij andere partijen te beleggen. Voorts is ons meegegeven dat de commissie voornemens is aan te bevelen dat er bij de hernieuwde inrichting van het verkiezingsproces een nieuwe taak zal worden toegevoegd, te weten ‘toezicht op het verkiezingsproces’. Binnen dit taakgebied zullen al die aspecten van het verkiezingsproces bijeen worden gebracht die te maken hebben met het houden van toezicht op de volledige ‘keten’ die in het verkiezingsproces wordt doorlopen. Daaronder valt ook het toezicht op de uitvoering door gemeenten en het toezicht op bijvoorbeeld de adviserende en informerende taken die de Kiesraad momenteel heeft.¹ De commissie heeft ons gevraagd of en (zo ja) hoe deze taken in de toekomst te combineren zijn.²

¹ In deze notitie hebben we ervoor gekozen zo dicht mogelijk aan te sluiten bij de door (het secretariaat van) de commissie gehanteerde omschrijvingen en definities van taakgebieden. Daarom is bijvoorbeeld de taak ‘evaluatie van verkiezingen’ onder de noemer ‘uitvoerende taken’ vervat en niet opgenomen bij ‘controlerende/toezichthoudende taken’.

² Toezicht is een taak die op heel verschillende manieren kan worden ingevuld. Het kan betrekking hebben op de grote lijnen of juist gaan om de details, het kan gebeuren om fouten op te sporen of juist ruimte te maken voor leren. Gegeven de nadruk die de commissie legt op een transparant en controleerbaar verkiezingsproces gaan wij er vanuit dat de commissie eerst en vooral een strikte en scherpe variant van toezicht voor ogen staat.

Voor de commissie zijn transparantie en controleerbaarheid van het verkiezingsproces de waarden die voorop moeten staan bij de inrichting daarvan. Bij het beoordelen van potentiële spanningen zullen wij dan ook telkens laten zien wat het eventueel optreden van deze spanningen zou kunnen betekenen voor zowel de transparantie als de controleerbaarheid van het verkiezingsproces.

2. Taken en potentiële spanningen op hoofdlijnen

Het secretariaat van de Commissie Inrichting Verkiezingsproces heeft reeds een uitgebreide analyse gemaakt van de taken zoals deze momenteel door de Kiesraad worden uitgevoerd. Deze analyse en de daarin benoemde taken, hebben wij voor deze notitie als vertrekpunt genomen. De eventueel nog aan het werkpakket van de Kiesraad toe te voegen taak ‘financiering politieke partijen’ hebben wij hierin overigens niet betrokken. De commissie beschouwt oordeelsvorming over deze taak (in relatie tot de andere) niet als onderdeel van haar opdracht, zo is ons door het secretariaat mee gedeeld. Financiering van politieke partijen heeft, zo is de redenering, weinig van doen met de inrichting van het verkiezingsproces.³

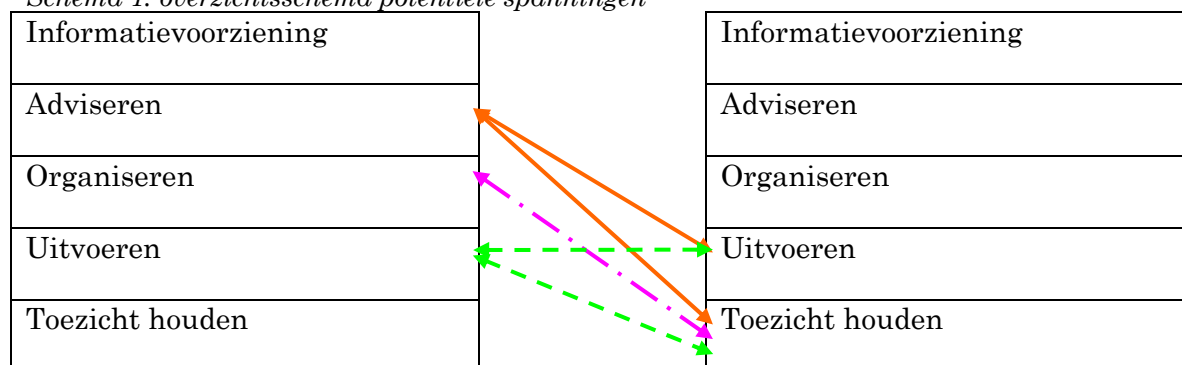
De verschillende, in deze notitie te behandelen taken, lichten we hieronder kort toe:

1. *Informatievoorziening*. Dit taakgebied omvat onafhankelijke informatievertrekking en voorlichting aan onder andere lokale overheden, verkiezingsorganen, overheden, politieke partijen en burgers.
2. *Advisering*. Hierbij gaat het om onafhankelijke advisering aan het kabinet en de beide Kamers van de Staten Generaal.
3. *Organisatie*. Dit betreft het organiseren van de nationale verkiezingen, met inbegrip van de aansturing van decentrale autoriteiten en de verdeling van middelen.
4. *Uitvoering*. Bij dit taakgebied gaat het om het uitvoeren van een of meerdere taken binnen een of meerdere fasen in het verkiezingsproces. Ook het controleren van de uitvoering van verkiezingen middels evaluatie valt onder deze taak.
5. *Toezicht op het verkiezingsproces*. Dit heeft betrekking op het onafhankelijk en onpartijdig controleren van het volledige verkiezingsproces in de breedste zin des woords. Opvallend is dat deze taak momenteel nogal versnipperd is en op de dag van de verkiezingen zelf niet is ingevuld – en op dit moment dus ook niet behoort tot de taken en verantwoordelijkheden van de Kiesraad, hoewel dat vaak wordt gedacht.
6. *Financiering politieke partijen*. Hierbij gaat het om het voorstel zoals dat momenteel nog bij het kabinet ligt. Het voorstel behelst de dagelijkse afhandeling van de registratie en financiering van overheidswege van politieke partijen.

In onderstaand overzicht geven wij weer hoe de onderscheiden taken in het verkiezingsproces (de huidige taken van de Kiesraad en de eerder genoemde nieuwe taken) zich tot elkaar verhouden en laten we zien welke spanningen zich in potentie daartussen kunnen voordoen.

³ Wij realiseren ons overigens wel dat een eventuele toevoeging van deze taak (mocht het kabinet daartoe besluiten) aan het werkpakket van de Kiesraad in beginsel mogelijk tot nieuwe spanningen kan leiden. In deze notitie werken wij die spanningen niet uit, maar volstaan in plaats daarvan met te verwijzen naar het mogelijk optreden daarvan.

Schema 1: overzichtsschema potentiële spanningen



Dit overzicht van potentiële spanningen geeft overigens nadrukkelijk geen inzicht in welke spanningen zich in de praktijk werkelijk voordoen en zegt ook nog niets over de kans dat die spanningen zich daadwerkelijk zouden kunnen voordoen. Het overzicht geeft slechts de denkbare spanningen weer. In de tekst die volgt werken we deze spanningen nader uit.

3. Potentiële spanningen benoemd

In principe kunnen er zowel spanningen bestaan *tussen* als *binnen* de onderscheiden taken. In totaal zijn 15 *potentiële* spanningen te onderscheiden. Potentiële spanningen *binnen* taken hebben we genummerd met de Romeinse cijfers I tot en met V. De Arabische cijfers 1 tot en met 10 geven potentiële spanningen *tussen* taken weer.

Schema 2: potentiële spanningen tussen taken

	Informa- tievoorzie- ning	Adviseren	Organise- ren	Uitvoeren	Toe- zicht Houden
Informa- tievoorzie- ning	I Niet aan de orde				
Adviseren	1 Niet aan de orde	II Niet aan de orde			
Organise- ren	2 Niet aan de orde	3 Niet aan de orde	III Niet aan de orde		
Uitvoeren	4 Niet aan de orde	5 Wel aan de orde	6 Niet aan de orde	IV Wel aan de orde	
Toe- zicht houden	7 Niet aan de orde	8 Wel aan de orde	9 Wel aan de orde	10 Wel aan de orde	V Niet aan de orde

Dit schema leidt direct tot een belangrijk inzicht. De meeste spanningen doen zich voor rond combinaties met de nieuwe taak van ‘toezichthouder op het verkiezingsproces’. Deze taak lijkt lastig te combineren met de andere taken die zijn te onderscheiden in het verkiezingsproces. De specifieke potentiële spanningen werken we hieronder gedetailleerder uit.

4. Uitwerking van potentiële spanningen

In deze paragraaf werken we de potentiële spanningen verder uit. Dat doen we door voor elk van de potentiële spanningen telkens twee vragen te beantwoorden.

1. Wat is de aard van de potentiële spanning? We beschrijven in dat kader de redenen waarom het niet goed is de betreffende taken te combineren (binnen één instelling).
2. Hoe is de potentiële spanning te beoordelen? Daarbij gaat het om de ernst van de zaak als opeens zeker moment mocht blijken dat de geschetste spanning zich in de praktijk ook daadwerkelijk voordoet.

We werken de verschillende spanningen uit middels concrete voorbeelden. De taken zijn uit specifieke activiteiten opgebouwd. Het zijn deze activiteiten die tot concrete spanningsvelden leiden. Waar mogelijk onderbouwen wij onze claims ten aanzien van potentiële spanningen met voorbeelden op activiteitsniveau. In de paragraaf die hierop volgt gaan we dan vervolgens dieper in op de vraag of en hoe de potentiële spanningen zijn te voorkomen.

*Potentiële spanning 5: **adviseren versus uitvoeren***

Advisering over de uitvoering en in de praktijk ook over het beleid staat op gespannen voet met enkele van de specifieke activiteiten die vallen onder de uitvoering. In algemene zin kunnen we stellen dat het uitvoeren van activiteiten door eenzelfde orgaan dat daarover eerst heeft geadviseerd risico's met zich brengt.

Mogelijke spanningen op dit punt komen concreet naar voren als we kijken naar de activiteiten 'klachtenafhandeling' en 'evaluatie', die onderdeel uitmaken van het taakveld 'uitvoering'. Is het wenselijk dat een orgaan dat eerst adviseert over te nemen beslissingen ten aanzien van de uitvoering daarna ook eventuele klachten beoordeelt en afhandelt die betrekking hebben op diezelfde uitvoering van het verkiezingsproces? Dit zou (onbedoeld) de indruk kunnen oproepen dat de partij die de klachten afhandelt niet onbevooroordeeld en onpartijdig omdat in eerder gegeven adviezen al helder is wat daar de opvatting is en sterker nog: het volgen van die opvatting door de bewindspersoon de aanleiding is voor de klacht. En is het wenselijk dat het adviserend orgaan ook de evaluatie uitvoert van de verkiezingen? Het orgaan evalueert dan immers ook een praktijk die mogelijk juist op basis van de eigen adviezen is opgeroepen of ontstaan.

De transparantie en controleerbaarheid van de verkiezingen komen, voor zover wij dat op basis van de beschikbare informatie kunnen beoordelen, mogelijk in het geding door de taken advisering en uitvoering te combineren.

*Potentiële spanning 8: **adviseren versus toezicht houden***

De spanning tussen adviseren en toezicht houden is belangrijker en eigenlijk steeds latent aanwezig. Het is echter niet de meest prangende spanning die wij hebben geïdentificeerd. De adviserende taak heeft (formeel) betrekking op uitvoeringsgerelateerde kwesties. In de praktijk wordt ook advies gegeven over beleidsmatige aangelegenheden. Op een advies volgt een beslissing. Deze beslissing, de vaststelling van beleid en de uitwerking daarvan door de minister, vallen uiteraard niet onder de verantwoordelijkheid van het adviserende orgaan. In die zin is de adviseur formeel niet verantwoordelijk voor het daadwerkelijk gevoerde beleid. Wanneer een beslissing echter in hoge mate op een advies is gebaseerd, dan wordt de adviseur in de praktijk

ook regelmatig beschouwd als ‘mede verantwoordelijk’ voor het gevoerde beleid. Bij critici van het beleid zal de vraag bestaan hoe onafhankelijk het toezicht zal zijn als het orgaan dat daarvoor verantwoordelijk is met eigen adviezen mede richtinggevend is geweest voor het al dan niet goed functioneren van de verkiezingspraktijk. Het toezichthoudend orgaan beziet uiteraard niet alleen de kwaliteit van het beleid en de uitvoering daarvan, maar kijkt ook naar de advisering over het beleid. In dat opzicht bestaat er in potentie een spanning tussen advisering en toezicht. Het gaat dus vooral om de vraag of een adviesorgaan als toezichthouder de uitvoering van haar werkzaamheden zelf mag beoordelen. En dus of het combineren van toezicht en advies tot spanningen elders in het verkiezingsproces leidt.

Wij zijn op voorhand van mening dat de transparantie en controleerbaarheid van het verkiezingsproces slechts beperkt in het geding zullen raken wanneer de taakvelden advisering en toezicht met elkaar worden gecombineerd en de kans op spanning dus gering is. Immers, de verantwoordelijkheden kunnen hier nauwelijks met elkaar vermengd raken. Het aantal situaties waarin daadwerkelijk een probleem zal (kunnen) optreden, achten wij beperkt.

Potentiële spanning 9: organiseren versus toezicht houden

De taak ‘organiseren’ behelst het dragen van de verantwoordelijkheid voor de organisatie van de verkiezingen. Hiermee gaat het verdelen van budgetten en het aansturen van decentrale organen en autoriteiten gepaard. Een gedetailleerde uitwerking van wat de taak ‘organiseren’ omvat is niet voorhanden en het valt buiten de scope van onze opdracht om die uitwerking op detailniveau zelf te maken. In algemene zin is ons echter wel duidelijk dat er spanning kan bestaan tussen het organiseren van de verkiezingen en het toezicht houden daarop. Taak van de toezichthouder is om te verifiëren of de organisatie van de verkiezingen, zoals deze door het organiserende orgaan ter hand wordt genomen, verloopt volgens de daarvoor geldende afspraken en wet- en regelgeving. Worden deze taken gecombineerd in één en hetzelfde orgaan dan kan het voorkomen dat de toezichthouder zichzelf als organisator controleren moet.

De beide taken staan dan ook op gespannen voet met elkaar. Combineren van beide taken houdt in dat het organiserende orgaan niet alleen toezicht houdt op zichzelf, maar daarnaast ook op de eventuele andere organen die taken in het verkiezingsproces uitvoeren. Het organiserende orgaan verdeelt de budgetten. Dat roept onder meer de vraag op of wenselijk is dat hetzelfde orgaan dat de verdeling van budgetten moet verzorgen ook zou moeten toetsen of dat gebeurt volgens de daarvoor geldende regels en bovendien beoordelen moet of eventuele klachten hierover al dan niet terecht en gegrond zijn. Is het wenselijk dat hetzelfde orgaan bij eventuele frictie met andere organiserende partijen (decentrale overheden) zich vervolgens uitspreekt over de vraag wie in deze kwestie gelijk heeft en adviseert hoe voortaan de organisatie van verkiezingen moeten worden ingericht als partijen er samen maar moeilijk uitkomen? Ons vermoeden is dat een meer gedetailleerdere uitwerking van het taakveld organiseren nog meer, vergelijkbare, spanningen aan het licht brengen.

Zowel de transparantie als de controleerbaarheid van het verkiezingsproces kunnen onder druk komen te staan als organiseren en toezicht houden met elkaar worden gecombineerd in één orgaan. De transparantie kan afnemen als er sprake is van een vermenging van taakvelden omdat dan niet zonder meer duidelijk is in welke hoedanigheid het orgaan in kwestie handelt en oordeelt. De controleerbaarheid van het verkiezingsproces kan eveneens onder druk komen te staan, als hetzelfde orgaan dat

verantwoordelijk is voor een deel van de organisatie ook het toezicht daarop uitoefent en in die hoedanigheid een kwaliteitsoordeel uitspreekt over het eigen handelen en dat van andere partijen (bijvoorbeeld decentrale overheden). Als er hierop kritiek komt van derden die menen dat hun hierdoor geen recht is gedaan kan dat de geloofwaardigheid van de democratie aantasten.

Potentiële spanning 10: uitvoeren versus toezicht houden

Dit is het meest in het oog springende en voor de hand liggende spanningsveld, dat zich in beginsel tussen de geschetste taakvelden kan voordoen. Uitvoering en toezicht zijn moeilijk met elkaar te verenigen. Immers, de uitvoerende instantie draagt zorg voor de realisatie van één of meerdere taken binnen het verkiezingsproces. De uitvoering krijgt vorm binnen kaders en met gebruikmaking van de daarvoor gestelde regels. Een toezichthouder beziet de mate waarin deze regels door de uitvoerende instantie juist en volledig zijn toegepast. Het risico bestaat dat de beide taken worden vermengd wanneer zij bij dezelfde instantie worden belegd. In het ergste geval leidt dit tot een uitvoerder die met de toezichthouder een akkoord bereikt over de wijze waarop de uitvoering plaats zal hebben, waarbij op voorhand al de tekst van het toezichtrapport wordt geschreven en de minister een gelikt, maar weinig betrouwbaar verhaal over de gang van zaken in het verkiezingsproces krijgt voorgeschoteld. De klassieke ‘checks and balances’ (het systeem is in evenwicht doordat de uitvoerder wordt gecontroleerd door een daarvan onafhankelijk orgaan) komen dan in het geding.

Binnen de taak ‘uitvoeren’ vallen vele activiteiten waarvan we er een aantal hier benoemen om het spanningsveld nader uit te werken. Onderzoek naar de hertelling van stemmen is bedoeld om zekerheid te geven over de vraag of de hertelling goed is verlopen. Is het dan wenselijk dat de instantie die dit onderzoek heeft uitgevoerd vervolgens kwijting verleent door in een toezichtfunctie aan te geven dat dit belangrijke onderzoek goed is uitgevoerd? De evaluatie van de verkiezingen, zo hebben we eerder beredeneerd, is een taak die valt onder ‘uitvoering’. In een evaluatie wordt aangegeven hoe de verkiezingen zijn verlopen en wordt aangegeven hoe verkiezingen in de toekomst beter kunnen worden vormgegeven. Is het wenselijk dat dezelfde instantie dan in een toezichtfunctie aangeeft dat de evaluatie goed is uitgevoerd en dat deze evaluatie een getrouw beeld geeft van hetgeen de toezichthouder zelf heeft waargenomen? Binnen de uitvoering wordt verder verwacht dat de betreffende instantie onderzoek verricht naar en beslist over de geldigheid van kandidatenlijsten. Is het dan wenselijk dat dezelfde instantie bepaalt dat de vaststelling van de geldigheid van kandidatenlijsten is verlopen volgens de daarvoor geldende regels? Daarnaast controleert het betreffende orgaan handmatig de zetelverdeling en de uitslagberekening zoals deze door de computer wordt gemaakt. Is het wenselijk dat ditzelfde orgaan zich uitspreekt over de totstandkoming van de zetelverdeling en de uitslag?

Combinatie van uitvoering en toezicht is niet zonder risico en roept spanning op die gevolgen kan hebben voor zowel de transparantie als de controleerbaarheid van het verkiezingsproces. In termen van ‘transparantie’ gaat het dan om een mogelijk vervaging van grenzen tussen de beide taakvelden. Wie doet nu precies wat, wie is waarvoor verantwoordelijk en komen in dat opzicht de theorie en de praktijk wel met elkaar overeen? Ook de ‘controleerbaarheid’ van het verkiezingsproces neemt af als uitvoering en toezicht gecombineerd raken en mogelijk zelfs door elkaar gaan lopen. Dan is immers achteraf niet onomstotelijk helder vast te stellen of het oordeel van de toezichthouder wel voldoende objectief en onafhankelijk tot stand gekomen is, gege-

ven de standpunten die hetzelfde orgaan in een andere hoedanigheid betrokkenheid heeft en de handelingen die vanuit die hoedanigheid zijn uitgevoerd. Dat kan in potentie uiteindelijk de geloofwaardigheid van het verkiezingsproces aantasten.

Potentiële spanning IV: uitvoeren versus uitvoeren

Niet alleen met maar ook binnen het taakveld 'uitvoeren' zijn wij spanningen tegengekomen die hier niet onbenoemd mogen blijven. Het gaat hierbij in ieder geval om een (potentiële) spanning tussen het 'vaststellen van de verkiezingsuitslag' en de 'overige uitvoerende taken'. Met het vaststellen van de verkiezingsuitslag verricht de Kiesraad (momenteel) een aantal taken die hem onderdeel maken van de uitvoerende organisatie. Dit kan op gespannen voet staan met de afhandeling van klachten (ook klachten die bij de Nationale Ombudsman binnen komen) die betrekking hebben op de uitvoering van de Kieswet, het Kiesbesluit en andere regelingen en AMvB die van toepassing zijn. Natuurlijk zijn er best praktische overwegingen te geven die pleiten voor een combinatie van de beide activiteiten als onderdeel van de uitvoerende taak, maar mogelijke risico's zijn er zeker ook.

Eerder onderzoek van de commissie besluitvorming stemmachines heeft laten zien dat de Kiesraad zich in het kader van de uitvoerende taken onder meer als opdrachtgever/marktpartij op de markt voor elektronische uitslagberekening apparatuur beweegt. Gevolg hiervan is samenloop, in die zin dat het centraal stembureau ook opdrachtgever is voor externe partijen die onder verantwoordelijkheid van het centraal stembureau dergelijke apparatuur leveren. Is dat opdrachtgeverschap wel te verenigen met de andere uitvoerende taken in het verkiezingsproces? Deze kwestie doet zich overigens niet alleen voor bij de Kiesraad (als centraal stembureau voor verkiezingen van Tweede Kamer, Eerste Kamer en Europees Parlement), maar ook bij de gemeenten (als centraal stembureau bij de gemeenteraadsverkiezingen).

De transparantie van het verkiezingsproces neemt in principe af wanneer taken met elkaar worden gecombineerd. De controleerbaarheid van het verkiezingsproces daalt hierdoor naar onze mening eveneens. Immers, het uitvoerende orgaan kan onderdeel vormen van het probleem en van de klacht die het zelf geacht wordt af te handelen. Dit dient naar onze mening te worden voorkomen.


5. Voorkomen van spanningen

In de voorgaande paragraaf zijn we uitgebreid ingegaan op de verschillende spanningen die zich in potentie kunnen voordoen tussen en binnen taakvelden. Niet alle spanning is echter even problematisch en sommige spanningen zijn bovendien eenvoudig te verhelpen of te voorkomen. Zo zijn potentiële spanningen tussen de taakvelden adviseren en uitvoeren (5) alsook de potentiële spanningen binnen het taakveld uitvoering (IV) voor een belangrijk deel weg te nemen door het instellen van een onafhankelijk toezichthouder op het verkiezingsproces. Afhankelijk van de combinatie van taken die deze toezichthouder krijgt toebedeeld wordt dus het risico dat deze potentiële spanningen kunnen veroorzaken kleiner. Ook is het goed denkbaar om de specifieke activiteiten die spanningen veroorzaken, te herschikken en bij een ander orgaan te beleggen (bijvoorbeeld klachteninstantie) op een zodanige manier dat zich niet langer een spanning binnen het orgaan voordoet.

Wanneer taken ondanks de geconstateerde potentiële spanningen met elkaar worden gecombineerd (een keuze die uiteindelijk niet aan ons is), ontstaat de noodzaak tot het treffen van aanvullende voorzieningen. Daar zijn uiteenlopende mogelijkheden

voor. Naarmate de mogelijke spanning groter is en het daaruit voortvloeiend risico omvangrijker moet worden geacht, neemt ook de noodzaak tot verdergaande maatregelen toe. In onderstaand overzicht geven we (in oplopend gewicht) weer welke mogelijkheden wij zien.

Schema 3: enkele mogelijke voorzieningen voor wegnemen potentiële spanningen

Licht	
	Garanderen juiste bezwaar en beroep procedures
	Beleggen verantwoordelijkheid bij aparte functionarissen
	Scheiden van informatiestromen
	Scheiden van procedures
	Beleggen verantwoordelijkheid bij aparte kamers onder één verantwoordelijkheid
	Scheiden locaties
	Meetekenverplichting voor controlerende partij
	Scheiden verantwoordelijkheden
Zwaar	

6. Toekomstscenario's

De commissie streeft naar een transparant en controleerbaar verkiezingsproces. Een vereiste daarvoor is een robuuste invulling van verantwoordelijkheden en een weloverwogen toedeling van taakvelden in de toekomst. Diverse scenario's zijn denkbaar. We lichten toe wat naar ons idee de belangrijkste zijn en beoordelen die ook, gezien vanuit de potentiële spanningen die hiermee samenhangen.

Scenario 1: Combineren van taakvelden

Een van de mogelijkheden zou zijn om alle taakvelden in het verkiezingsproces bij één orgaan te beleggen en dus te combineren. Dit brengt dan wel met zich dat alle potentiële spanningen zich in principe ook zullen kunnen voordoen. Het is dan zaak een arrangement te vinden dat voorkomt dat deze spanningen ook daadwerkelijk problemen zouden veroorzaken. Het inrichten van verschillende kamers binnen één orgaan biedt hier naar onze inschatting wel enig soelaas maar de vraag is of het genoeg zal blijken te zijn wanneer het bijvoorbeeld om de (spanningen die onvermijdelijk worden opgeroepen door de) overall taak van toezicht houden op het verkiezingsproces gaat.

Scenario 2: Scheiden van taakvelden

Een tweede mogelijkheid is om alle taakvelden in het verkiezingsproces te scheiden en bij verschillende organen te beleggen. De potentiële spanningen zullen zich in dit geval niet snel voordoen. Maar aan dat alternatief kleven wel enige nadelen. Zo nemen de transactiekosten toe en moet op meerdere plaatsen vergelijkbare expertise worden opgebouwd. Bovendien ontstaat nu een uitgebreide en complexe structuur rondom het verkiezingsproces dat veel afstemming en coördinatie vereist.

Scenario 3: Minimalisering van risico's

De derde mogelijkheid zou zijn om te kiezen voor combinaties van taakvelden die zo min mogelijk risico met zich brengen. Deze variant, die het midden houdt tussen de beide voorgaande, heeft onze voorkeur. Op basis van onze analyse van de potentiële spanningen (zie ook schema 1) komen wij tot de conclusie dat de volgende taken met elkaar kunnen worden gecombineerd:

Optie 1:

- a. Informatievoorziening met advisering
- b. Organiseren met uitvoeren
- c. Toezicht

In deze variant zijn geen potentiële spanningen aanwezig. Of beter gezegd, door op deze manier te kiezen voor het scheiden van verantwoordelijkheden, wordt voorkomen dat zich binnen één en hetzelfde orgaan spanningen voordoen. Er zijn dan ook geen bijzondere nadere arrangementen nodig om het optreden van de spanningen te voorkomen. Hierop is één uitzondering, namelijk de spanning die binnen het taakveld 'uitvoeren' aan de orde is. Het betreft hier een potentiële spanning die voortkomt uit samenloop van de verantwoordelijkheid voor afhandeling van klachten enerzijds en het uitvoeren van taken waarop de klachten mogelijk betrekking hebben anderzijds. Daar is altijd een bijzonder arrangement voor nodig, bijvoorbeeld dat naast bezwaar ook beroep open staat bij het orgaan dat toezicht houdt over het totale verkiezingsproces. Daarnaast kan het als aanvullend arrangement wenselijk zijn om, met het oog op de transparantie en controleerbaarheid van het verkiezingsproces, de verantwoordelijkheid voor deze mogelijk spanningsvolle activiteiten in de uitvoering in ieder geval ook te beleggen bij verschillende afdelingen en personen.

Optie 2:

- a. Informatievoorziening met advisering en organiseren
- b. Uitvoering
- c. Toezicht

Ook deze optie brengt in beginsel geen bijzondere spanningen met zich mee, waardoor het scheppen van aanvullende arrangementen om het risico dat daaruit kan voortvloeien weg te nemen niet nodig is. Wel gelden hier dezelfde aanvullende opmerkingen als die welke zijn gemaakt bij optie 1 over de spanningen die zich kunnen voordoen binnen het taakveld 'uitvoering' en de arrangementen die nodig zijn om het risico daarvan aanvaardbaar te maken.

Optie 3:

- a. Informatievoorziening met advisering, organiseren en uitvoeren
- b. Toezicht

Deze derde optie brengt naar onze inschatting, door het samenbrengen/samenhouden van taakvelden die onderling potentieel spanning vertonen wel enige risico's met zich mee. Nog afgezien van de eerder genoemde inherente spanningen binnen het taakveld 'uitvoeren' doen zich hier in potentie nog meer spanningen voor. Met name adviseren en uitvoeren kunnen met elkaar op gespannen voet komen te staan, zoals we eerder hebben betoogd. Een arrangement dat deze spanning nog wel zou kunnen ondervangen is het inrichten van verschillende kamers binnen hetzelfde orgaan. Naar ons idee is dat evenwel in ieder geval niet het geval met het taakveld 'toezicht'. De potentiële spanningen met de andere taakvelden zijn hier zo omvangrijk en de risico's die daaruit voortvloeien zo groot dat wij adviseren om het nieuwe taakveld 'toezicht op het gehele verkiezingsproces' in ieder geval gescheiden te organiseren.

Daarbij zij van onze kant in ieder geval verder nog opgemerkt dat (bij willekeurig welke optie) de wijze waarop het taakveld 'toezicht op het gehele verkiezingsproces' wordt ingericht bijzondere aandacht verdient omdat die vooralsnog versnipperd georganiseerd is (bijvoorbeeld in de verdeling over centraal en decentraal) en op essentiële

le punten (zoals waar het gaat om toezicht tijdens de verkiezingsdag zelf) nog niet goed is ingevuld.

Tot slot nog dit. In deze notitie hebben wij geen antwoord gegeven op de vraag bij *welk* orgaan de onderscheiden combinaties van taakvelden in het verkiezingsproces al dan niet zouden moeten worden ondergebracht: een adviesorgaan als de Raad voor het Openbaar Bestuur, een uitvoeringsinstantie als BPR en/of natuurlijk een orgaan als de Kiesraad zelf. Het is aan de commissie inrichting verkiezingsproces om daarover een uitspraak te doen.

-- Einde van deze notitie --

Bijlage 9

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE



Conference for Security and Co-operation in Europe

SECOND CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE

Copenhagen

5 June- 29 July

DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE

COPENHAGEN 1990

The representatives of the participating States of the Conference on Security and Co-operation in Europe (CSCE), Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia, met in Copenhagen from 5 to 29 June 1990, in accordance with the provisions relating to the Conference on the Human Dimension of the CSCE contained in the Concluding Document of the Vienna Follow-up Meeting of the CSCE.

The representative of eting was opened and closed by the Minister for Foreign Affairs of Denmark Albania attended the Copenhagen Meeting as observer.

The first Meeting of the Conference was held in Paris from 30 May to 23 June 1989.

The Copenhagen Meeting was opened and closed by the Minister for Foreign Affairs of Denmark.

The formal opening of the Copenhagen Meeting was attended by Her Majesty the Queen of Denmark and

His Royal Highness the Prince Consort.

Opening statements were made by Ministers and Deputy Ministers of the participating States.

At a special meeting of the Ministers for Foreign Affairs of the participating States of the CSCE on 5 June 1990, convened on the invitation of the Minister for Foreign Affairs of Denmark, it was agreed to convene a Preparatory Committee in Vienna on 10 July 1990 to prepare a Summit Meeting in Paris of their Heads of State or Government.

The participating States welcome with great satisfaction the fundamental political changes that have occurred in Europe since the first Meeting of the Conference on the Human Dimension of the CSCE in Paris in 1989. They note that the CSCE process has contributed significantly to bringing about these changes and that these developments in turn have greatly advanced the implementation of the provisions of the Final Act and of the other CSCE documents.

They recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.

At the Copenhagen Meeting the participating States held a review of the implementation of their commitments in the field of the human dimension. They considered that the degree of compliance with the commitments contained in the relevant provisions of the CSCE documents had shown a fundamental improvement since the Paris Meeting. They also expressed the view, however, that further steps are required for the full realization of their commitments relating to the human dimension.

The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe. They therefore reaffirm their commitment to implement fully all provisions of the Final Act and of the other CSCE documents relating to the human dimension and undertake to build on the progress they have made.

They recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

I

(1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

(2) They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

(4) They confirm that they will respect each others right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) - free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

(5.2) - a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;

(5.3) - the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;

(5.4) - a clear separation between the State and political parties; in particular, political parties will not be merged with the State;

(5.5) - the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;

(5.6) - military forces and the police will be under the control of, and accountable to, the civil authorities;

(5.7) - human rights and fundamental freedoms will be guaranteed by law and in accordance with their

obligations under international law;

(5.8) - legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

(5.9) - all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

(5.10) - everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(5.11) - administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;

(5.12) - the independence of judges and the impartial operation of the public judicial service will be ensured;

(5.13) - the independence of legal practitioners will be recognized and protected, in particular as regards conditions for recruitment and practice;

(5.14) - the rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;

(5.15) - any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;

(5.16) - in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

(5.17) - any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(5.18) - no one will be charged with, tried for or convicted of any criminal offence unless the offence is provided for by a law which defines the elements of the offence with clarity and precision;

(5.19) - everyone will be presumed innocent until proved guilty according to law;

(5.20) - considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and

Cultural Rights and other relevant international instruments, if they have not yet done so;

(5.21) - in order to supplement domestic remedies and better to ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law;

(7.2) - permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) - guarantee universal and equal suffrage to adult citizens;

(7.4) - ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) - ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) - provide 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;

(7.9) - ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

II

(9) The participating States reaffirm that

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;

(9.2) - everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;

(9.3) - the right of association will be guaranteed. The right to form and subject to the general right of a trade union to determine its own membership freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards;

(9.4) - everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change ones religion or belief and freedom to manifest ones religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards;

(9.5) - they will respect the right of everyone to leave any country, including his own, and to return to his

country, consistent with a States international obligations and CSCE commitments. Restrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner;

(9.6) - everyone has the right peacefully to enjoy his property either on his own or in common with others. No one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

(10.1) - respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

(10.2) - respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards;

(10.3) - ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

(10.4) - allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

(11) - The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include

(11.1) - the right of the individual to seek and receive adequate legal assistance;

(11.2) - the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms;

(11.3) - the right of individuals or groups acting on their behalf to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses.

(12) The participating States, wishing to ensure greater transparency in the implementation of the commitments undertaken in the Vienna Concluding Document under the heading of the human dimension of the CSCE, decide to accept as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held *in camera* in the circumstances prescribed by law and consistent with obligations under international law and international commitments.

(13) The participating States decide to accord particular attention to the recognition of the rights of the child, his civil rights and his individual freedoms, his economic, social and cultural rights, and his right to special protection against all forms of violence and exploitation. They will consider acceding to the Convention on the Rights of the Child, if they have not yet done so, which was opened for signature by States on 26 January 1990. They will recognize in their domestic legislation the rights of the child as affirmed in the international agreements to which they are Parties.

(14) The participating States agree to encourage the creation, within their countries, of conditions for the training of students and trainees from other participating States, including persons taking vocational and technical courses. They also agree to promote travel by young people from their countries for the purpose of obtaining education in other participating States and to that end to encourage the conclusion, where appropriate, of bilateral and multilateral agreements between their relevant governmental institutions, organizations and educational establishments.

(15) The participating States will act in such a way as to facilitate the transfer of sentenced persons and encourage those participating States which are not Parties to the Convention on the Transfer of Sentenced Persons, signed at Strasbourg on 21 November 1983, to consider acceding to the Convention.

(16) The participating States

(16.1) - reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such practices, to protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and to take effective measures to prevent and punish such practices;

(16.2) - intend, as a matter of urgency, to consider acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so, and recognizing the competences of the Committee against Torture under articles 21 and 22 of the Convention and withdrawing reservations regarding the competence of the Committee under article 20;

(16.3) - stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture;

(16.4) - will ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual

subjected to any form of arrest, detention or imprisonment;

(16.5) - will keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any cases of torture;

(16.6) - will take up with priority for consideration and for appropriate action, in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE, any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information;

(16.7) - will act upon the understanding that preserving and guaranteeing the life and security of any individual subjected to any form of torture and other inhuman or degrading treatment or punishment will be the sole criterion in determining the urgency and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman or degrading treatment or punishment within the framework of any other international body or mechanism may not be invoked as a reason for refraining from consideration and appropriate action in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE.

(17) The participating States

(17.1) - recall the commitment undertaken in the Vienna Concluding Document to keep the question of capital punishment under consideration and to co-operate within relevant international organizations;

(17.2) - recall, in this context, the adoption by the General Assembly of the United Nations, on 15 December 1989, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(17.3) - note the restrictions and safeguards regarding the use of the death penalty which have been adopted by the international community, in particular article 6 of the International Covenant on Civil and Political Rights;

(17.4) - note the provisions of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;

(17.5) - note recent measures taken by a number of participating States towards the abolition of capital punishment;

(17.6) - note the activities of several non-governmental organizations on the question of the death penalty;

(17.7) - will exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration;

(17.8) - will make available to the public information regarding the use of the death penalty.

(18) The participating States

(18.1) - note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;

(18.2) - note recent measures taken by a number of participating States to permit exemption from compulsory military service on the basis of conscientious objections;

(18.3) - note the activities of several non-governmental organizations on the question of conscientious objections to compulsory military service;

(18.4) - agree to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;

(18.5) - will make available to the public information on this issue;

(18.6) - will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exemption from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions.

(19) The participating States affirm that freer movement and contacts among their citizens are important in the context of the protection and promotion of human rights and fundamental freedoms. They will ensure that their policies concerning entry into their territories are fully consistent with the aims set out in the relevant provisions of the Final Act, the Madrid Concluding Document and the Vienna Concluding Document. While reaffirming their determination not to recede from the commitments contained in CSCE documents, they undertake to implement fully and improve present commitments in the field of human contacts, including on a bilateral and multilateral basis. In this context they will

(19.1) - strive to implement the procedures for entry into their territories, including the issuing of visas and passport and customs control, in good faith and without unjustified delay. Where necessary, they will shorten the waiting time for visa decisions, as well as simplify practices and reduce administrative requirements for visa applications;

(19.2) - ensure, in dealing with visa applications, that these are processed as expeditiously as possible in order, *inter alia*, to take due account of important family, personal or professional considerations, especially in cases of an urgent, humanitarian nature;

(19.3) - endeavour, where necessary, to reduce fees charged in connection with visa applications to the

lowest possible level.

(20) The participating States concerned will consult and, where appropriate, cooperate in dealing with problems that might emerge as a result of the increased movement of persons.

(21) The participating States recommend the consideration, at the next CSCE Follow-up Meeting in Helsinki, of the advisability of holding a meeting of experts on consular matters.

(22) The participating States reaffirm that the protection and promotion of the rights of migrant workers have their human dimension. In this context, they

(22.1) - agree that the protection and promotion of the rights of migrant workers are the concern of all participating States and that as such they should be addressed within the CSCE process;

(22.2) - reaffirm their commitment to implement fully in their domestic legislation the rights of migrant workers provided for in international agreements to which they are parties;

(22.3) - consider that, in future international instruments concerning the rights of migrant workers, they should take into account the fact that this issue is of importance for all of them;

(22.4) - express their readiness to examine, at future CSCE meetings, the relevant aspects of the further promotion of the rights of migrant workers and their families.

(23) The participating States reaffirm their conviction expressed in the Vienna Concluding Document that the promotion of economic, social and cultural rights as well as of civil and political rights is of paramount importance for human dignity and for the attainment of the legitimate aspirations of every individual. They also reaffirm their commitment taken in the Document of the Bonn Conference on Economic Co-operation in Europe to the promotion of social justice and the improvement of living and working conditions. In the context of continuing their efforts with a view to achieving progressively the full realization of economic, social and cultural rights by all appropriate means, they will pay special attention to problems in the areas of employment, housing, social security, health, education and culture.

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

(25) The participating States confirm that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. They also reaffirm that

(25.1) - measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments;

(25.2) - the imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law;

(25.3) - measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation;

(25.4) - such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

III

(26) The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:

- constitutional law, reform and development,
- electoral legislation, administration and observation,
- establishment and management of courts and legal systems,
- the development of an impartial and effective public service where recruitment and advancement are based on a merit system,
- law enforcement,
- local government and decentralization,
- access to information and protection of privacy,
- developing political parties and their role in pluralistic societies,

- free and independent trade unions,
- co-operative movements,
- developing other forms of free associations and public interest groups,
- journalism, independent media, and intellectual and cultural life,
- the teaching of democratic values, institutions and practices in educational institutions and the fostering of an atmosphere of free enquiry.

Such endeavours may cover the range of co-operation encompassed in the human dimension of the CSCE, including training, exchange of information, books and instructional materials, co-operative programmes and projects, academic and professional exchanges and conferences, scholarships, research grants, provision of expertise and advice, business and scientific contacts and programmes.

(27) The participating States will also facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law, which may also serve as focal points for co-ordination and collaboration between such institutions in the participating States. They propose that co-operation be encouraged between parliamentarians from participating States, including through existing inter-parliamentary associations and, *inter alia*, through joint commissions, television debates involving parliamentarians, meetings and round-table discussions. They will also encourage existing institutions, such as organizations within the United Nations system and the Council of Europe, to continue and expand the work they have begun in this area.

(28) The participating States recognize the important expertise of the Council of Europe in the field of human rights and fundamental freedoms and agree to consider further ways and means to enable the Council of Europe to make a contribution to the human dimension of the CSCE. They agree that the nature of this contribution could be examined further in a future CSCE forum.

(29) The participating States will consider the idea of convening a meeting or seminar of experts to review and discuss co-operative measures designed to promote and sustain viable democratic institutions in participating States, including comparative studies of legislation in participating States in the area of human rights and fundamental freedoms, *inter alia* drawing upon the experience acquired in this area by the Council of Europe and the activities of the Commission "Democracy through Law".

IV

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning

independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

(31) Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

(32) To belong to a national minority is a matter of a persons individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

(32.1) - to use freely their mother tongue in private as well as in public;

(32.2) - to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.3) - to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

(32.4) - to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

(32.5) - to disseminate, have access to and exchange information in their mother tongue;

(32.6) - to establish and maintain organizations or associations within their country and to participate in

international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

(34) The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

(35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

(36) The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice.

Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

(37) None of these commitments may be interpreted as implying any right to engage in any activity or

perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States.

(38) The participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other relevant international instruments and consider adhering to the relevant conventions, if they have not yet done so, including those providing for a right of complaint by individuals.

(39) The participating States will co-operate closely in the competent international organizations to which they belong, including the United Nations and, as appropriate, the Council of Europe, bearing in mind their on-going work with respect to questions relating to national minorities.

They will consider convening a meeting of experts for a thorough discussion of the issue of national minorities.

(40) The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

(40.1) - take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

(40.2) - commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

(40.3) - take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

(40.4) - endeavour to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;

(40.5) - recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts;

(40.6) - consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;

(40.7) - consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

V

(41) The participating States reaffirm their commitment to the human dimension of the CSCE and emphasize its importance as an integral part of a balanced approach to security and co-operation in Europe. They agree that the Conference on the Human Dimension of the CSCE and the human dimension mechanism described in the section on the human dimension of the CSCE of the Vienna Concluding Document have demonstrated their value as methods of furthering their dialogue and co-operation and assisting in the resolution of relevant specific questions. They express their conviction that these should be continued and developed as part of an expanding CSCE process.

(42) The participating States recognize the need to enhance further the effectiveness of the procedures described in paragraphs 1 to 4 of the section on the human dimension of the CSCE of the Vienna Concluding Document and with this aim decide

(42.1) - to provide in as short a time as possible, but no later than four weeks, a written response to requests for information and to representations made to them in writing by other participating States under paragraph 1;

(42.2) - that the bilateral meetings, as contained in paragraph 2, will take place as soon as possible, as a rule within three weeks of the date of the request;

(42.3) - to refrain, in the course of a bilateral meeting held under paragraph 2, from raising situations and cases not connected with the subject of the meeting, unless both sides have agreed to do so.

(43) The participating States examined practical proposals for new measures aimed at improving the implementation of the commitments relating to the human dimension of the CSCE. In this regard, they considered proposals related to the sending of observers to examine situations and specific cases, the appointment of rapporteurs to investigate and suggest appropriate solutions, the setting up of a Committee on the Human Dimension of the CSCE, greater involvement of persons, organizations and institutions in the human dimension mechanism and further bilateral and multilateral efforts to promote the resolution of relevant issues.

They decide to continue to discuss thoroughly in subsequent relevant CSCE fora these and other proposals designed to strengthen the human dimension mechanism, and to consider adopting, in the context of the

further development of the CSCE process, appropriate new measures. They agree that these measures should contribute to achieving further effective progress, enhance conflict prevention and confidence in the field of the human dimension of the CSCE.

* * *

(44) The representatives of the participating States express their profound gratitude to the people and Government of Denmark for the excellent organization of the Copenhagen Meeting and the warm hospitality extended to the delegations which participated in the Meeting.

(45) In accordance with the provisions relating to the Conference on the Human Dimension of the CSCE contained in the Concluding Document of the Vienna Follow-up Meeting of the CSCE, the third Meeting of the Conference will take place in Moscow from 10 September to 4 October 1991.

Copenhagen, 29 June 1990

ANNEX

CHAIRMAN'S STATEMENT

ON THE ACCESS OF NON-GOVERNMENTAL ORGANIZATIONS AND THE MEDIA TO MEETINGS OF THE CONFERENCE ON THE HUMAN DIMENSION

The Chairman notes that the practices of openness and access to the Meetings of the Conference on the Human Dimension, as they were applied at the Vienna Meeting and as contained in Annex XI of the Concluding Document of that Meeting, are of importance to all participating States. In order to follow and build upon those practices at forthcoming CSCE meetings of the Conference on the Human Dimension, the participating States agree that the following practices of openness and access should be respected:

- free movement by members of interested non-governmental organizations (NGOs) in the Conference premises, except for the areas restricted to delegations and to the services of the Executive Secretariat. Accordingly, badges will be issued to them, at their request, by the Executive Secretariat;

- unimpeded contacts between members of interested NGOs and delegates, as well as with accredited representatives of the media;
- access to official documents of the Conference in all the working languages and also to any document that delegates might wish to communicate to members of interested NGOs;
- the opportunity for members of interested NGOs to transmit to delegates communications relating to the human dimension of the CSCE. Mailboxes for each delegation will be accessible to them for this purpose;
- free access for delegates to all documents emanating from interested NGOs and addressed to the Executive Secretariat for the information of the Conference. Accordingly, the Executive Secretariat will make available to delegates a regularly updated collection of such documents.

They further undertake to guarantee to representatives of the media

- free movement in the Conference premises, except for the areas restricted to delegations and to the services of the Executive Secretariat. Accordingly, badges will be issued to them by the Executive Secretariat upon presentation of the requisite credentials;
- unimpeded contacts with delegates and with members of interested NGOs;
- access to official documents of the Conference in all the working languages.

The Chairman notes further that this statement will be an Annex to the Document of the Copenhagen Meeting and will be published with it.

Bijlage 10

**Code of good practice in electoral matters, European Commission for
Democracy through Law**

Strasbourg, 23 May 2003

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Opinion no. 190/2002

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**CODE OF GOOD PRACTICE
IN ELECTORAL MATTERS**

**GUIDELINES
AND EXPLANATORY REPORT**

**Adopted by the Venice Commission
at its 52nd session
(Venice, 18-19 October 2002)**

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Introduction

On 8 November 2001 the Standing Committee of the Parliamentary Assembly, acting on behalf of the Assembly, adopted Resolution 1264 (2001) inviting the Venice Commission:¹

- i. to set up a working group, comprising representatives of the Parliamentary Assembly, the CLRAE and possibly other organisations with experience in the matter, with the aim of discussing electoral issues on a regular basis;*
- ii. to devise a code of practice in electoral matters which might draw, inter alia, on the guidelines set out in the appendix to the explanatory memorandum of the report on which this resolution is based (Doc. 9267), on the understanding that this code should include rules both on the run-up to the election, the elections themselves and on the period immediately following the vote;*
- iii. as far as its resources allow, to compile a list of the underlying principles of European electoral systems by co-ordinating, standardising and developing current and planned surveys and activities. In the medium term, the data collected on European elections should be entered into a database, and analysed and disseminated by a specialised unit.*

The following guidelines are a concrete response to the three aspects of this resolution. They were adopted by the Council for Democratic Elections – the joint working group provided for by the Parliamentary Assembly resolution – at its second meeting (3 July 2002) and subsequently by the Venice Commission at its 51st Session (5-6 July 2002); they are based on the underlying principles of Europe's electoral heritage; lastly and above all, they constitute the core of a code of good practice in electoral matters.

The explanatory report explains the principles set forth in the guidelines, defining and clarifying them and, where necessary, including recommendations on points of detail. The report was adopted by the Council for Democratic Elections at its 3rd meeting (16 October 2002), and subsequently by the Venice Commission at its 52nd Session (18-19 October 2002).

The code of good practice in electoral matters was approved by the Parliamentary Assembly of the Council of Europe at its 2003 session – 1st part and by the Congress of Local and Regional Authorities of Europe at its Spring session 2003.

As requested in the Parliamentary Assembly's resolution, this document is based on the guidelines appended to the explanatory memorandum to the report on which the Assembly resolution was based (Doc. 9267). It is also based on the work of the Venice Commission in the electoral field, as summarised in Document CDL (2002) 7.

¹Item 6; see Doc. 9267, Report by the Political Affairs Committee; Rapporteur: Mr Clerfayt.

GUIDELINES ON ELECTIONS

**adopted by the Venice Commission
at its 51st Plenary Session
(Venice, 5-6 July 2002)**

I. Principles of Europe's electoral heritage

The five principles underlying Europe's electoral heritage are *universal, equal, free, secret and direct suffrage*. Furthermore, elections must be held at regular intervals.

1. Universal suffrage

1.1. Rule and exceptions

Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions:

a. Age:

- i. the right to vote and to be elected must be subject to a minimum age;
- ii. the right to vote must be acquired, at the latest, at the age of majority;
- iii. the right to stand for election should preferably be acquired at the same age as the right to vote and in any case not later than the age of 25, except where there are specific qualifying ages for certain offices (e.g. member of the upper house of parliament, Head of State).

b. Nationality:

- i. a nationality requirement may apply;
- ii. however, it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence.

c. Residence:

- i. a residence requirement may be imposed;
- ii. residence in this case means habitual residence;
- iii. a length of residence requirement may be imposed on nationals solely for local or regional elections;
- iv. the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities;
- v. the right to vote and to be elected may be accorded to citizens residing abroad.

d. Deprivation of the right to vote and to be elected:

- i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:
- ii. it must be provided for by law;
- iii. the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them;
- iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence.

v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

1.2. Electoral registers

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

- i. electoral registers must be permanent;
- ii. there must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period;
- iii. electoral registers must be published;
- iv. there should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place at the polling station on election day;
- v. a similar procedure should allow voters to have incorrect inscriptions amended;
- vi. a supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.

1.3. Submission of candidatures

- i. The presentation of individual candidates or lists of candidates may be made conditional on the collection of a minimum number of signatures;
- ii. The law should not require collection of the signatures of more than 1% of voters in the constituency concerned;
- iii. Checking of signatures must be governed by clear rules, particularly concerning deadlines;
- iv. The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked;
- v. Validation of signatures must be completed by the start of the election campaign;
- vi. If a deposit is required, it must be refundable should the candidate or party exceed a certain score; the sum and the score requested should not be excessive.

2. Equal suffrage

This entails:

2.1. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.

2.2. Equal voting power: seats must be evenly distributed between the constituencies.

- i. This must at least apply to elections to lower houses of parliament and regional and local elections;
- ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.
- iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.

- iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).
- v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.
- vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.
- vii. When constituency boundaries are redefined – which they must be in a single-member system – it must be done:
 - impartially;
 - without detriment to national minorities;
 - taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.

2.3. Equality of opportunity

- a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:
 - i. the election campaign;
 - ii. coverage by the media, in particular by the publicly owned media;
 - iii. public funding of parties and campaigns.
- b. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.
- c. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.
- d. Political party, candidates and election campaign funding must be transparent.
- e. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

2.4. Equality and national minorities

- a. Parties representing national minorities must be permitted.
- b. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.

- c. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.

2.5. Equality and parity of the sexes

Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis.

3. Free suffrage

3.1. Freedom of voters to form an opinion

- a. State authorities must observe their duty of neutrality. In particular, this concerns:
 - i. media;
 - ii. billposting;
 - iii. the right to demonstrate;
 - iv. funding of parties and candidates.
- b. The public authorities have a number of positive obligations; inter alia, they must:
 - i. submit the candidatures received to the electorate;
 - ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting.
 - iii. The above information must also be available in the languages of the national minorities.
- c. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion.

3.2. Freedom of voters to express their wishes and action to combat electoral fraud

- i. voting procedures must be simple;
- ii. voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions:
- iii. postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible;
- iv. electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent;
- v. very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited;
- vi. mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud;
- vii. at least two criteria should be used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box;
- viii. voting slips must not be tampered with or marked in any way by polling station officials;

- ix. unused voting slips must never leave the polling station;
- x. polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting;
- xi. military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station;
- xii. counting should preferably take place in polling stations;
- xiii. counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records;
- xiv. results must be transmitted to the higher level in an open manner;
- xv. the state must punish any kind of electoral fraud.

4. Secret suffrage

- a. For the voter, secrecy of voting is not only a right but also a duty, non-compliance with which must be punishable by disqualification of any ballot paper whose content is disclosed.
- b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.
- c. The list of persons actually voting should not be published.
- d. The violation of secret suffrage should be sanctioned.

5. Direct suffrage

The following must be elected by direct suffrage:

- i. at least one chamber of the national parliament;
- ii. sub-national legislative bodies;
- iii. local councils.

6. Frequency of elections

Elections must be held at regular intervals; a legislative assembly's term of office must not exceed five years.

II. Conditions for implementing these principles

1. Respect for fundamental rights

- a. Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.
- b. Restrictions of these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality.

2. Regulatory levels and stability of electoral law

- a. Apart from rules on technical matters and detail – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute.
- b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.

3. Procedural guarantees

3.1. Organisation of elections by an impartial body

- a. An impartial body must be in charge of applying electoral law.
- b. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.
- c. The central electoral commission must be permanent in nature.
- d. It should include:
 - i. at least one member of the judiciary;
 - ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.
It may include:
 - iii. a representative of the Ministry of the Interior;
 - iv. representatives of national minorities.
- e. Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis (see point I.2.3.b).
- f. The bodies appointing members of electoral commissions must not be free to dismiss them at will.
- g. Members of electoral commissions must receive standard training.

h. It is desirable that electoral commissions take decisions by a qualified majority or by consensus.

3.2. Observation of elections

a. Both national and international observers should be given the widest possible opportunity to participate in an election observation exercise.

b. Observation must not be confined to the election day itself, but must include the registration period of candidates and, if necessary, of electors, as well as the electoral campaign. It must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting.

c. The places where observers are not entitled to be present should be clearly specified by law.

d. Observation should cover respect by the authorities of their duty of neutrality.

3.3. An effective system of appeal

a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.

b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.

c. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.

d. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.

e. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.

f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.

g. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).

h. The applicant's right to a hearing involving both parties must be protected.

- i. Where the appeal body is a higher electoral commission, it must be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.

4. Electoral system

Within the respect of the above-mentioned principles, any electoral system may be chosen.

EXPLANATORY REPORT

**adopted by the Venice Commission
at its 52nd Plenary Session
(Venice, 18-19 October 2002)**

General remarks

1. Alongside human rights and the rule of law, democracy is one of the three pillars of the European constitutional heritage, as well as of the Council of Europe. Democracy is inconceivable without elections held in accordance with certain principles that lend them their democratic status.

2. These principles represent a specific aspect of the European constitutional heritage that can legitimately be termed the “European electoral heritage”. This heritage comprises two aspects, the first, the hard core, being the constitutional principles of electoral law such as universal, equal, free, secret and direct suffrage, and the second the principle that truly democratic elections can only be held if certain basic conditions of a democratic state based on the rule of law, such as fundamental rights, stability of electoral law and effective procedural guarantees, are met. The text which follows – like the foregoing guidelines – is therefore in two parts, the first covering the definition and practical implications of the principles of the European electoral heritage and the second the conditions necessary for their application.

I. The underlying principles of Europe’s electoral heritage

Introduction: the principles and their legal basis

3. If elections are to comply with the common principles of the European constitutional heritage, which form the basis of any genuinely democratic society, they must observe five fundamental rules: *suffrage must be universal, equal, free, secret and direct*. Furthermore, elections must be held *periodically*. All these principles together constitute the European electoral heritage.

4. Although all these principles are conventional in nature, their implementation raises a number of questions that call for close scrutiny. We would do well to identify the “hard core” of these principles, which must be scrupulously respected by all European states.

5. The hard core of the European electoral heritage consists mainly of international rules. The relevant universal rule is Article 25 (b) of the International Covenant on Civil and Political Rights, which expressly provides for all of these principles except direct suffrage, although the latter is implied.¹ The common European rule is Article 3 of the Additional Protocol to the European Convention on Human Rights, which explicitly provides for the right to periodical elections by free and secret suffrage;² the other principles have also been

¹See Article 21 of the Universal Declaration of Human Rights.

²Article 3, Right to free elections: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.

recognised in human rights case law.³ The right to direct elections has also been admitted by the Strasbourg Court, at least implicitly.⁴ However, the constitutional principles common to the whole continent do not figure only in the international texts: on the contrary, they are often mentioned in more detail in the national constitutions.⁵ Where the legislation and practice of different countries converge, the content of the principles can be more accurately pinpointed.

1. Universal suffrage

1.1. Rule and exceptions

6. Universal suffrage covers both active (the right to vote) and passive electoral rights (the right to stand for election). The right to vote and stand for election may be subject to a number of conditions, all of which are given below. The most usual are *age* and *nationality*.

a. There must be a minimum age for the right to vote and the right to stand for election; however, attainment of the age of majority, entailing not only rights but also obligations of a civil nature, must at least confer the right to vote. A higher age may be laid down for the right to stand for election but, save where there are specific qualifying ages for certain offices (senator, head of state), this should not be more than 25.

b. Most countries' legislations lay down a *nationality* requirement. However, a tendency is emerging to grant local political rights to long-standing foreign residents, in accordance with the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.⁶ It is accordingly recommended that the right to vote in local elections be granted after a certain period of residence. Furthermore, under the European integration process European citizens have been granted the right to vote and stand for election in municipal and European Parliament elections in their EU member state of residence.⁷ The nationality criterion can, moreover, sometimes cause problems if a state withholds citizenship from persons who have been settled in its territory for several generations, for instance on linguistic grounds. Furthermore, under the European Convention on Nationality⁸ persons holding dual nationality must have the same electoral rights as other nationals.⁹

c. Thirdly, the right to vote and/or the right to stand for election may be subject to *residence* requirements,¹⁰ residence in this case meaning habitual residence. Where local and regional elections are concerned, the residence requirement is not incompatible *a priori* with

³Where universality is concerned, cf. ECHR No. 9267/81, judgment in *Mathieu-Mohin and Clerfayt vs. Belgium*, 2 March 1987, Series A vol. 113, p. 23; judgment in *Gitonas and others vs. Greece*, 1 July 1997, No. 18747/91, 19376/92; 19379/92, 28208/95 and 27755/95, *Collected Judgments and Decisions*, 1997-IV, p. 1233; re. equality, cf. aforementioned judgment of *Mathieu-Mohin and Clerfayt*, p. 23.

⁴ECHR No. 24833/94, judgment in *Matthews vs. the United Kingdom*, 18 February 1999, *Collected Judgments and Decisions* 1999-I, para. 64.

⁵E.g. Article 38.1 of the German Constitution, Articles 68.1 and 69.2 of the Spanish Constitution and Article 59.1 of the Romanian Constitution.

⁶ETS 144.

⁷Article 19 of the Treaty establishing the European Community.

⁸ETS 166, Article 17.

⁹The ECHR does not go so far: Eur. Comm. HR No. 28858/95, judgment 25.11.96 *Ganchev vs. Bulgaria*, DR 87, p. 130.

¹⁰See most recently ECHR No. 31891/96, judgment 7.9.99, *Hilbe vs. Liechtenstein*.

the principle of universal suffrage, if the residence period specified does not exceed a few months; any longer period is acceptable only to protect national minorities.¹¹ Conversely, quite a few states grant their nationals living abroad the right to vote, and even to be elected. This practice can lead to abuse in some special cases, e.g. where nationality is granted on an ethnic basis. Registration could take place where a voter has his or her secondary residence, if he or she resides there regularly and it appears, for example, on local tax payments; the voter must not then of course be registered where he or she has his or her principal residence.

The freedom of movement of citizens within the country, together with their right to return at any time is one of the fundamental rights necessary for truly democratic elections.¹² If persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence.

d. Lastly, provision may be made for *clauses suspending political rights*. Such clauses must, however, comply with the usual conditions under which fundamental rights may be restricted; in other words, they must:¹³

- be provided for by law;
- observe the principle of proportionality;
- be based on mental incapacity or a criminal conviction for a serious offence.

Furthermore, the withdrawal of political rights may only be imposed by express decision of a court of law. However, in the event of withdrawal on grounds of mental incapacity, such express decision may concern the incapacity and entail *ipso jure* deprivation of civic rights.

The conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them, as the holding of a public office is at stake and it may be legitimate to debar persons whose activities in such an office would violate a greater public interest.

1.2. Electoral registers

7. The proper maintenance of *electoral registers* is vital in guaranteeing universal suffrage. However, it is acceptable for voters not to be included automatically on the registers, but only at their request. In practice, electoral registers are often discovered to be inaccurate, which leads to disputes. Lack of experience on the part of the authorities, population shifts and the fact that few citizens bother to check the electoral registers when they are presented for inspection make it difficult to compile these registers. A number of conditions must be met if the registers are to be reliable:

- i. There must be permanent electoral registers.
- ii. There must be regular updates, at least once a year, so that municipal (local) authorities get into the habit of performing the various tasks involved in updating at the same time every year. Where registration of voters is not automatic, a fairly long time-period must be allowed for such registration.

¹¹ See Eur. Comm. HR No. 23450/94, judgment 15.9.97, *Polacco and Garofalo vs. Italy (re. Trentino-Alto Adige)*.

¹² See Chapter II.1 below.

¹³ See e.g. ECHR No. 26772/95, judgment in *Labita vs. Italy*, 6 April 2002, paras. 201 ff.

iii. The electoral registers must be published. The final update should be sent to a higher authority under the supervision of the impartial body responsible for the application of the electoral law.

iv. There should be an administrative procedure – subject to judicial control – or a judicial procedure enabling electors not on the register to have their names included. In some countries, the closing date for entry in the supplementary register may be, for example, 15 days before the election or election day itself. The latter case, whilst admirably broad-minded, relies on decisions made by a court obliged to sit on polling day, and is thus ill-suited to the organisational needs on which democracies are based. In any event polling stations should not be permitted to register voters on election day itself.

v. Furthermore, inaccuracies in electoral registers stem both from unjustified entries and from the failure to enter certain electors. A procedure of the kind mentioned in the previous paragraph should make it possible for electors to have erroneous entries corrected. The capacity for requesting such corrections may be restricted to electors registered in the same constituency or at the same polling station.

vi. A supplementary register can enable persons who have changed address or reached the statutory voting age since the final register was published to vote.

1.3. Submission of candidatures

8. The obligation to collect a specific number of *signatures* in order to be able to stand is theoretically compatible with the principle of universal suffrage. In practice, only the most marginal parties seem to have any difficulty gathering the requisite number of signatures, provided that the rules on signatures are not used to bar candidates from standing for office. In order to prevent such manipulation, it is preferable for the law to set a maximum 1% signature requirement.¹⁴ The signature verification procedure must follow clear rules, particularly with regard to deadlines, and be applied to all the signatures rather than just a sample;¹⁵ however, once the verification shows beyond doubt that the requisite number of signatures has been obtained, the remaining signatures need not be checked. In all cases candidatures must be validated by the start of the election campaign, because late validation places some parties and candidates at a disadvantage in the campaign.

9. There is another procedure where candidates or parties must pay a deposit, which is only refunded if the candidate or party concerned goes on to win more than a certain percentage of the vote. Such practices appear to be more effective than collecting signatures. However, the amount of the deposit and the number of votes needed for it to be reimbursed should not be excessive.

2. Equal suffrage

10. Equality in electoral matters comprises a variety of aspects. Some concern equality of suffrage, a value shared by the whole continent, while others go beyond this concept and cannot be deemed to reflect any common standard. The principles to be respected in all cases

¹⁴CDL (99) 66, p. 9.

¹⁵CDL-INF (2000) 17, pp. 4-5; CDL (99) 67, pp 7-8.

are numerical vote equality, equality in terms of electoral strength and equality of chances. On the other hand, equality of outcome achieved, for instance, by means of proportional representation of the parties or the sexes, cannot be imposed.

2.1 Equal voting rights

11. *Equality in voting rights* requires each voter to be normally entitled to one vote, and to one vote only. Multiple voting, which is still a common irregularity in the new democracies, is obviously prohibited – both if it means a voter votes more than once in the same place and if it enables a voter to vote simultaneously in several different places, such as his or her place of current residence and place of former residence.

12. In some electoral systems, the elector nonetheless has more than one vote. In, for example, a system that allows split voting (voting for candidates chosen from more than one list), the elector may have one vote per seat to be filled; another possibility is when one vote is cast in a small constituency and another in a larger constituency, as is often the case in systems combining single-member constituencies and proportional representation at the national or regional level.¹⁶ In this case, equal voting rights mean that all electors should have the same number of votes.

2.2 Equal voting power

13. *Equality in voting power*, where the elections are not being held in one single constituency, requires constituency boundaries to be drawn in such a way that seats in the *lower chambers* representing the people are distributed equally among the constituencies, in accordance with a specific apportionment criterion, e.g. the number of residents in the constituency, the number of resident nationals (including minors), the number of registered electors, or possibly the number of people actually voting. An appropriate combination of these criteria is conceivable. The same rules apply to regional and local elections. When this principle is not complied with, we are confronted with what is known as *electoral geometry*, in the form either of “active electoral geometry”, namely a distribution of seats causing inequalities in representation as soon as it is applied, or of “passive electoral geometry”, arising from protracted retention of an unaltered territorial distribution of seats and constituencies. Furthermore, under systems tending towards a non-proportional result, particularly majority (or plurality) vote systems, gerrymandering may occur, which consists in favouring one party by means of an artificial delimitation of constituencies.

14. Constituency boundaries may also be determined on the basis of geographical criteria and the administrative or indeed historic boundary lines, which often depend on geography.

15. The maximum admissible departure from the distribution criterion adopted depends on the individual situation, although it should seldom exceed 10% and never 15%, except in really exceptional circumstances (a demographically weak administrative unit of the same importance as others with at least one lower-chamber representative, or concentration of a specific national minority).¹⁷

16. In order to avoid passive electoral geometry, seats should be redistributed at least every

¹⁶See, for example, Article 64 of the Albanian Constitution and Section 1 of the German Federal Elections Act.

¹⁷See CDL (98) 45, p. 3; CDL (99) 51, p. 8; CDL (2000) 2, p. 5; CDL-AD (2002) 9, para. 22.

ten years, preferably outside election periods, as this will limit the risks of political manipulation.¹⁸

17. In multi-member constituencies electoral geometry can easily be avoided by regularly allocating seats to the constituencies in accordance with the distribution criterion adopted. Constituencies ought then to correspond to administrative units, and redistribution is undesirable. Where a uninominal method of voting is used, constituency boundaries need to be redrawn at each redistribution of seats. The political ramifications of (re)drawing electoral boundaries are very considerable, and it is therefore essential that the process should be non-partisan and should not disadvantage national minorities. The long-standing democracies have widely differing approaches to this problem, and operate along very different lines. The new democracies should adopt simple criteria and easy-to-implement procedures. The best solution would be to submit the problem in the first instance to a commission comprising a majority of independent members and, preferably, a geographer, a sociologist, a balanced representation of the parties and, where appropriate, representatives of national minorities. The parliament would then make a decision on the basis of the commission's proposals, with the possibility of a single appeal.

2.3 Equality of opportunity

18. *Equality of opportunity* should be ensured between parties and candidates and should prompt the state to be impartial towards them and to apply the same law uniformly to all. In particular, the *neutrality* requirement applies to the *electoral campaign* and *coverage by the media*, especially the publicly owned media, as well as to *public funding* of parties and campaigns. This means that there are two possible interpretations of equality: either "strict" equality or "proportional" equality. "Strict" equality means that the political parties are treated without regard to their present strength in parliament or among the electorate. It must apply to the use of public facilities for electioneering purposes (for example bill posting, postal services and similar, public demonstrations, public meeting rooms). "Proportional" equality implies that the treatment of political parties is in proportion to the number of votes. Equality of opportunity (strict and/or proportional) applies in particular to radio and television airtime, public funds and other forms of backing. Certain forms of backing may on the one hand be submitted to strict equality and on the other hand to proportional equality.

19. The basic idea is that the main political forces should be able to voice their opinions in the main organs of the country's media and that all the political forces should be allowed to hold meetings, including on public thoroughfares, distribute literature and exercise their right to post bills. All of these rights must be clearly regulated, with due respect for freedom of expression, and any failure to observe them, either by the authorities or by the campaign participants, should be subject to appropriate sanctions. Quick rights of appeal must be available in order to remedy the situation before the elections. But the fact is that media failure to provide impartial information about the election campaign and candidates is one of the most frequent shortcomings arising during elections. The most important thing is to draw up a list of the media organisations in each country and to make sure that the candidates or parties are accorded sufficiently balanced amounts of airtime or advertising space, including on state radio and television stations.

20. In conformity with freedom of expression, legal provision should be made to ensure that

¹⁸CDL-AD (2002) 9, para. 23.

there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

21. The question of funding, and in particular of the need for it to be transparent, will be considered later.¹⁹ Spending by political parties, particularly on advertising, may likewise be limited in order to guarantee equality of opportunity.

2.4 Equality and national minorities

22. In accordance with the principles of international law, the electoral law must guarantee equality for persons belonging to national minorities, which includes prohibiting any discrimination against them.²⁰ In particular, the national minorities must be allowed to set up political parties.²¹ Constituency delimitations and quorum regulations must not be such as to form an obstacle to the presence of persons belonging to minorities in the elected body.

23. Certain measures taken to ensure minimum representation for minorities either by reserving seats for them²² or by providing for exceptions to the normal rules on seat distribution, eg by waiving the quorum for the national minorities' parties²³ do not infringe the principle of equality. It may also be foreseen that people belonging to national minorities have the right to vote for both general and national minority lists. However, neither candidates nor electors must be required to indicate their affiliation with any national minority.^{24,25}

2.5 Equality and parity of the sexes

24. If there is a specific constitutional basis²⁶, rules could be adopted guaranteeing some degree of balance between the two sexes in elected bodies, or even parity. In the absence of such a constitutional basis, such provisions could be considered contrary to the principle of equality and freedom of association.

25. Moreover, the scope of these rules depends on the electoral system. In a fixed party list system, parity is imposed if the number of men and women who are eligible is the same. However, if preferential voting or cross-voting is possible, voters will not necessarily choose candidates from both sexes, and this may result in an unbalanced composition of the elected body, chosen by voters.

3. Free suffrage

26. Free suffrage comprises two different aspects: free formation of the elector's opinion, and free expression of this opinion, i.e. freedom of voting procedure and accurate assessment of

¹⁹See below, Chapter II.3.5.

²⁰Article 4.1 of the Framework Convention for the Protection of National Minorities (ETS 157).

²¹Re. bans on political parties and similar measures, see CDL-INF (2000) 1.

²²As is the case in Slovenia and Croatia.

²³As is the case in Germany and Poland. Romanian law even provides for representation of minorities' organisations if they have secured a number of votes equivalent to 5% (only) of the average number of validly cast votes required for the election of a deputy to the lower house country-wide.

²⁴Article 3 of the Framework Convention for the Protection of National Minorities (ETS 157).

²⁵Re. electoral law and national minorities, see CDL-INF (2000) 4.

²⁶See Article 3.2 of the French Constitution; cf. judgment of 18 November 1982, *Recueil des décisions du Conseil constitutionnel*, 1982, pp. 66 ff.

the result.

3.1 Freedom of voters to form an opinion

a. *Freedom of voters to form an opinion* partly overlaps with equality of opportunity. It requires the *state* – and public authorities generally – to honour their duty of even-handedness, particularly where the use of the mass media, billposting, the right to demonstrate on public thoroughfares and the funding of parties and candidates are concerned.

b. Public authorities also have certain positive obligations. They must submit lawfully presented candidatures to the citizens' votes. The presentation of specific candidatures may be prohibited only in exceptional circumstances, where necessitated by a greater public interest. Public authorities must also give the electorate access to lists and candidates standing for election by means, for instance, of appropriate billposting. The information in question must also be available in the languages of national minorities, at least where they make up a certain percentage of the population.

Voters' freedom to form an opinion may also be infringed by *individuals*, for example when they attempt to buy votes, a practice which the state is obliged to prevent or punish effectively.

c. In order to ensure that the rules relating to voters' freedom to form an opinion are effective, any violation of the foregoing rules must be punished.

3.2. Freedom of voters to express their wishes and combating electoral fraud

3.2.1. In general

27. *Freedom of voters to express their wishes* primarily requires strict observance of the *voting procedure*. In practice, electors should be able to cast their votes for registered lists or candidates, which means that they must be supplied with ballot papers bearing their names and that they must be able to deposit the ballot papers in a ballot box. The state must make available the necessary premises for electoral operations. Electors must be protected from threats or constraints liable to prevent them from casting their votes or from casting them as they wish, whether such threats come from the authorities or from individuals; the state is obliged to prevent and penalise such practices.

28. Furthermore, the voter has the right to an accurate assessment of the result of the ballot; the state should punish any election fraud.

3.2.2. Voting procedures

29. Voting procedures play a vital role in the overall electoral process because it is during voting that election fraud is most likely to occur.

30. In some countries the implementation of democratic practices requires a radical change of attitudes, which must be actively promoted by the authorities. In this respect some measures have to be taken to control the habits and reflexes which have a negative impact on the

elections. Most of these irregularities, such as “family voting”²⁷ occur during the voting procedure.-

31. All these observations lead us to the following conclusion: *the voting procedure must be kept simple. Compliance is therefore recommended with the criteria set out in the ensuing paragraphs.*

32. If the polling station officials represent a proper balance of political opinion, fraud will be difficult, and the fairness of the ballot should be judged by two main criteria alone: the number of electors who have cast votes compared with the number of ballot papers in the ballot box. The first measure can be determined by the number of signatures in the electoral register. Human nature being what it is (and quite apart from any intention to defraud), it is difficult to achieve total congruity between the two measures, and any further controls such as numbering the stubs of ballot papers or comparing the total number of ballot papers found in the ballot box plus those cancelled and unused with the number of ballot papers issued to the polling station may give some indication, but one should be under no illusion that the results of these various measures will coincide perfectly. The risk in multiplying the measures used is rather that the differences in the totals, and in the end the real irregularities, will not be taken seriously. It is better to have strict control over two measures than slack – and hence ineffective – control over a larger number of variables.

33. Any unused ballot papers should remain at the polling station and should not be deposited or stored in different premises. As soon as the station opens, the ballot papers awaiting use must be in full view on the table of the senior station official for instance. There should be no others stored in cupboards or other places.

34. The signing and stamping of ballot papers should not take place at the point when the paper is presented to the voter, because the signatory or the person affixing the stamp might mark the paper so that the voter could be identified when it came to counting the votes, which would violate the secrecy of the ballot.

35. The voter should collect his or her ballot paper and no one else should touch it from that point on.

36. It is important that the polling station officials include multi-party representatives and that observers assigned by the candidates be present.

37. Voters should always have the possibility of voting in a polling station; other means of voting are, however, acceptable on certain conditions, as indicated below.

3.2.2.1. Postal voting or proxy voting in certain circumstances

38. Postal voting and proxy voting are permitted in countries throughout the western world, but the pattern varies considerably. Postal voting, for instance, may be widespread in one country and prohibited in another owing to the danger of fraud. It should be allowed only if the postal service is secure – in other words, safe from intentional interference – and reliable, in the sense that it functions properly. Proxy voting is permissible only if subject to very strict rules, again in order to prevent fraud; the number of proxies held by any one elector must be

²⁷See section I.4 below.

limited.

39. Neither of these practices should be widely encouraged if problems with the postal service are added to other difficulties inherent in this kind of voting, including the heightened risk of “family voting”. Subject to certain precautions, however, postal voting can be used to enable hospital patients, persons in custody, persons with restricted mobility and electors resident abroad to vote, in so far as there is no risk of fraud or intimidation. This would dispense with the need for a mobile ballot box, which often causes problems and risks of fraud. Postal voting would take place under a special procedure a few days before the election.

40. The use of *mobile ballot boxes* is undesirable because of the attendant serious risk of fraud. Should they nonetheless be used, strict conditions should be imposed to prevent fraud, including the attendance of several members of the polling station election commission representing different political groupings.

3.2.2.2. Military voting

41. Where servicemen cannot return home on polling day, they should preferably be registered at polling stations near their barracks. Details of the servicemen concerned are sent by the local command to the municipal authorities who then enter the names in the electoral list. The one exception to this rule is when the barracks are too far from the nearest polling station. Within the military units, special commissions should be set up to supervise the pre-election period, in order to prevent the risk of superior officers’ imposing or ordering certain political choices.

3.2.2.3. Mechanical and electronic voting methods

42. Several countries are already using, or are preparing to introduce mechanical and electronic voting methods. The advantage of these methods becomes apparent when a number of elections are taking place at the same time, even though certain precautions are needed to minimise the risk of fraud, for example by enabling the voter to check his or her vote immediately after casting it. Clearly, with this kind of voting, it is important to ensure that ballot papers are designed in such a way as to avoid confusion. In order to facilitate verification and a recount of votes in the event of an appeal, it may also be provided that a machine could print votes onto ballot papers; these would be placed in a sealed container where they cannot be viewed. Whatever means used should ensure the confidentiality of voting.

43. Electronic voting methods must be secure and reliable. They are secure if the system can withstand deliberate attack; they are reliable if they can function on their own, irrespective of any shortcomings in the hardware or software. Furthermore, the elector must be able to obtain confirmation of his or her vote and, if necessary, correct it without the secrecy of the ballot being in any way violated.

44. Furthermore, the system’s transparency must be guaranteed in the sense that it must be possible to check that it is functioning properly.

3.2.2.4. Counting

45. The votes should preferably be counted at the polling stations themselves, rather than in special centres. The polling station staff are perfectly capable of performing this task, and this arrangement obviates the need to transport the ballot boxes and accompanying documents, thus reducing the risk of substitution.

46. The vote counting should be conducted in a transparent manner. It is admissible that voters registered in the polling station may attend; the presence of national or international observers should be authorised. These persons must be allowed to be present in all circumstances. There must be enough copies of the record of the proceedings to distribute to ensure that all the aforementioned persons receive one; one copy must be immediately posted on the notice-board, another kept at the polling station and a third sent to the commission or competent higher authority.

47. The relevant regulations should stipulate certain practical precautions as regards equipment. For example, the record of the proceedings should be completed in ballpoint pen rather than pencil, as text written in pencil can be erased.

48. In practice, it appears that the time needed to count the votes depends on the efficiency of the presiding officer of the polling station. These times can vary markedly, which is why a simple tried and tested procedure should be set out in the legislation or permanent regulations which appear in the training manual for polling station officials.

49. It is best to avoid treating too many ballot papers as invalid or spoiled. In case of doubt, an attempt should be made to ascertain the voter's intention.

3.2.2.5. Transferring the results

50. There are two kinds of results: provisional results and final results (before all opportunities for appeal have been exhausted). The media, and indeed the entire nation, are always impatient to hear the initial provisional results. The speed with which these results are relayed will depend on the country's communications system. The polling station's results can be conveyed to the electoral district (for instance) by the presiding officer of the polling station, accompanied by two other members of the polling station staff representing opposing parties, in some cases under the supervision of the security forces, who will carry the records of the proceedings, the ballot box, etc.

51. However much care has been taken at the voting and vote-counting stages, transmitting the results is a vital operation whose importance is often overlooked; it must therefore be effected in an open manner. Transmission from the electoral district to the regional authorities and the Central Electoral Commission – or other competent higher authorities – can be done by fax. In that case, the records will be scanned and the results can be displayed as and when they come in. Television can be used to broadcast these results but once again, too much transparency can be a dangerous thing if the public is not ready for this kind of piecemeal reporting. The fact is that the initial results usually come in from the towns and cities, which do not normally or necessarily vote in the same way as rural areas. It is important therefore to make it clear to the public that the final result may be quite different from, or even completely opposite to, the provisional one, without there having been any question of foul play.

4. Secret suffrage

52. Secrecy of the ballot is one aspect of voter freedom, its purpose being to shield voters from pressures they might face if others learned how they had voted. Secrecy must apply to the entire procedure – and particularly the casting and counting of votes. Voters are entitled to it, but must also respect it themselves, and non-compliance must be punished by disqualifying any ballot paper whose content has been disclosed.²⁸

53. Voting must be individual. Family voting, whereby one member of a given family can supervise the votes cast by the other members, infringes the secrecy of the ballot; it is a common violation of the electoral law. All other forms of control by one voter over the vote of another must also be prohibited. Proxy voting, which is subject to strict conditions, is a separate issue.²⁹

54. Moreover, since abstention may indicate a political choice, lists of persons voting should not be published.

55. Violation of the secrecy of the ballot must be punished, just like violations of other aspects of voter freedom.

5. Direct suffrage

56. Direct election of one of the chambers of the national parliament by the people is one aspect of Europe's shared constitutional heritage. Subject to such special rules as are applicable to the second chamber, where there is one, other legislative bodies, like the Parliaments of Federate States,³⁰ should be directly elected, in accordance with Article 3 of the Additional Protocol to the European Convention on Human Rights. Nor can local self-government, which is a vital component of democracy, be conceived of without local elected bodies.³¹ Here, local assemblies include all infra-national deliberative bodies.³² On the other hand, even though the President of the Republic is often directly elected, this is a matter for the Constitution of the individual state.

6. Frequency of elections

57. Both the International Covenant on Civil and Political Rights³³ and the Additional Protocol to the European Convention on Human Rights³⁴ provide that elections must be held periodically. General elections are usually held at four- or five-yearly intervals, while longer periods are possible for presidential elections, although the maximum should be seven years.

²⁸CDL (2000) 2, p. 9.

²⁹See above, Chapter I.3.2.2.1.

³⁰See ECHR No. 9267/81, judgment *Mathieu-Mohin and Clerfayt vs. Belgium*, 2 March 1987, Series A No. 113, p. 23; Eur. Comm. HR No. 27311/95, 11.9.97, *Timke vs. Germany*, DR 82, p. 15; No. 7008/75, 12.7.76, *X vs. Austria*, DR 6, p. 120.

³¹Article 3 of the European Charter of Local self-government (ETS 122).

³²Article 13 of the European Charter of Local self-government.

³³Article 25 b.

³⁴Article 3.

II. Conditions for implementing the principles

58. The underlying principles of European electoral systems can only be guaranteed if certain *general conditions* are fulfilled.

- The first, general, condition is *respect for fundamental human rights*, and particularly freedom of expression, assembly and association, without which there can be no true democracy;
- Second, electoral law must enjoy a certain stability, protecting it against party political manipulation;
- Last and above all, a number of procedural guarantees must be provided, especially as regards the organisation of polling.

59. Furthermore, elections are held not in a vacuum but within the context of a specific electoral system and a given party system. This second section will conclude with a number of comments on this aspect, particularly on the relationship between electoral and party systems.

1. Respect for fundamental rights

60. The holding of democratic elections and hence the very existence of democracy are impossible without respect for *human rights*, particularly the freedom of expression and of the press and the freedom of assembly and association for political purposes, including the creation of political parties. Respect for these freedoms is vital particularly during election campaigns. *Restrictions* on these fundamental rights must comply with the European Convention on Human Rights and, more generally, with the requirement that they have a basis in law, are in the general interest and respect the principle of proportionality.

61. The fact is that many countries have legal limitations on *free speech*, which, if restrictively interpreted, may just be acceptable – but may generate abuses in countries with no liberal, democratic tradition. In theory, they are intended to prevent “abuses” of free speech by ensuring, for example, that candidates and public authorities are not vilified, and even protecting the constitutional system. In practice, however, they may lead to the censoring of any statements which are critical of government or call for constitutional change, although this is the very essence of democratic debate. For example, European standards are violated by an electoral law which prohibits insulting or defamatory references to officials or other candidates in campaign documents, makes it an offence to circulate libellous information on candidates, and makes candidates themselves liable for certain offences committed by their supporters. The insistence that materials intended for use in election campaigns must be submitted to electoral commissions, indicating the organisation which ordered and produced them, the number of copies and the date of publication, constitutes an unacceptable form of censorship, particularly if electoral commissions are required to take action against illegal or inaccurate publications. This is even more true if the rules prohibiting improper use of the media during electoral campaigns are rather vague.

62. Another very important fundamental right in a democracy is freedom of movement within the country, together with the right for nationals to return to their country at any time.

2. Regulatory levels and stability of electoral law

63. Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy.³⁵ Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.

64. In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged) as stability of some of the more specific rules of electoral law, especially those covering the electoral system *per se*, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results, and care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.

65. It is not so much changing voting systems which is a bad thing – they can always be changed for the better – as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests.

66. One way of avoiding manipulation is to define in the Constitution or in a text higher in status than ordinary law the elements that are most exposed (the electoral system itself, the membership of electoral commissions, constituencies or rules on drawing constituency boundaries). Another, more flexible, solution would be to stipulate in the Constitution that, if the electoral law is amended, the old system will apply to the next election – at least if it takes place within the coming year – and the new one will take effect after that.

67. For the rest, the electoral law should normally have the rank of statute law. Rules on implementation, in particular those on technical questions and matters of detail, can nevertheless be in the form of regulations.

3. Procedural safeguards

3.1. Organisation of elections by an impartial body

68. Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.

69. In states where the administrative authorities have a long-standing tradition of independence from the political authorities, the civil service applies electoral law without being subjected to political pressures. It is therefore both normal and acceptable for elections to be organised by administrative authorities, and supervised by the Ministry of the Interior.

70. However, in states with little experience of organising pluralist elections, there is too

³⁵On the importance of credibility of the electoral process, see for example CDL (99) 67, p. 11; on the need for stability of the law, see CDL (99) 41, p. 1.

great a risk of government's pushing the administrative authorities to do what it wants. This applies both to central and local government - even when the latter is controlled by the national opposition.

71. This is why *independent, impartial electoral commissions* must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity.

72. According to the reports of the Bureau of the Parliamentary Assembly of the Council of Europe on election observations, the following shortcomings concerning the electoral commissions have been noted in a number of member States: lack of transparency in the activity of the central electoral commission; variations in the interpretation of counting procedure; politically polarised election administration; controversies in appointing members of the Central Electoral Commission; commission members nominated by a state institution; the dominant position of the ruling party in the election administration.

73. *Any central electoral commission* must be *permanent*, as an administrative institution responsible for liaising with local authorities and the other lower-level commissions, e.g. as regards compiling and updating the electoral lists.

74. The composition of a central electoral commission can give rise to debate and become the key political issue in the drafting of an electoral law. Compliance with the following guidelines should facilitate maximum impartiality and competence on the part of the commission.

75. As a general rule, the commission should consist of:

- a judge or law officer: where a judicial body is responsible for administering the elections, its independence must be ensured through transparent proceedings. Judicial appointees should not come under the authority of those standing for office;
- representatives of parties already represented in parliament or which have won more than a certain percentage of the vote. Political parties should be represented equally in the central electoral commission; "equally" may be interpreted strictly or proportionally, that is to say, taking or not taking account of the parties' relative electoral strengths.³⁶ Moreover, party delegates should be qualified in electoral matters and should be prohibited from campaigning.

76. In addition, the electoral commission may include:

- representatives of national minorities; their presence is desirable if the national minority is of a certain importance in the territory concerned;
- a representative of the Ministry of the Interior. However, for reasons connected with the history of the country concerned, it may not always be appropriate to have a representative of the Ministry of the Interior in the commission. During its election observation missions the Parliamentary Assembly has expressed concern on several occasions about transfers of responsibilities from a fully-fledged multi-party electoral commission to an institution subordinate to the executive. Nevertheless, co-operation between the central electoral

³⁶See above, Chapter I.2.3.

commission and the Ministry of the Interior is possible if only for practical reasons, e.g. transporting and storing ballot papers and other equipment. For the rest, the executive power should not be able to influence the membership of the electoral commissions.³⁷

77. Broadly speaking, bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence. Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible - provided that the grounds for this are clearly and restrictively specified in law (vague references to “acts discrediting the commission”, for example, are not sufficient).

78. In the long-standing democracies where there are no electoral commissions but where another impartial body is competent in electoral matters, political parties must be able to observe the work of that body.

79. The composition of the central electoral commission is certainly important, but no more so than its mode of *operation*. The commission’s rules of procedure must be clear, because commission chairpersons have a tendency to let members speak, which the latter are quick to exploit. The rules of procedure should provide for an agenda and a limited amount of speaking time for each member – e.g. a quarter of an hour; otherwise endless discussions are liable to obscure the main business of the day.

80. There are many ways of making decisions. It would make sense for decisions to be taken by a qualified (e.g. 2/3) majority, so as to encourage debate between the majority and at least one minority party. Reaching decisions by consensus is preferable.

81. The meetings of the central electoral commission should be open to everyone, including the media (this is another reason why speaking time should be limited). Any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection.

82. Other electoral commissions operating at regional or constituency level should have a similar composition to that of the central electoral commission. Constituency commissions play an important role in uninominal voting systems because they determine the winner in general elections. Regional commissions also play a major role in relaying the results to the central electoral commission.

83. Appropriate staff with specialised skills³⁸ are required to organise elections. Members of central electoral commissions should be legal experts, political scientists, mathematicians or other people with a good understanding of electoral issues. There have been several cases of commissions lacking qualified and trained election staff.

84. Members of electoral commissions have to receive standardised training at all levels of the election administration. Such training should also be made available to the members of commissions appointed by political parties.

85. The electoral law should contain an article requiring the authorities (at every level) to meet the demands and needs of the electoral commission. Various ministries and other public administrative bodies, mayors and town hall staff may be directed to support the election

³⁷Cf CDL-AD (2002) 7, para. 5, 7 ff, 54.

³⁸See CDL (98) 10, p. 5.

administration by carrying out the administrative and logistical operations of preparing for and conducting the elections. They may have responsibility for preparing and distributing the electoral registers, ballot papers, ballot boxes, official stamps and other required material, as well as determining the arrangements for storage, distribution and security.

3.2. Observation of elections

86. Observation of elections plays an important role as it provides evidence of whether the electoral process has been regular or not.

87. There are three different types of observer: partisan national observers, non-partisan national observers and international (non-partisan) observers. In practice the distinction between the first two categories is not always obvious. This is why it is best to make the observation procedure as broad as possible at both the national and the international level.

88. Observation is not confined to the actual polling day but includes ascertaining whether any irregularities have occurred in advance of the elections (e.g. by improper maintenance of electoral lists, obstacles to the registration of candidates, restrictions on freedom of expression, and violations of rules on access to the media or on public funding of electoral campaigns), during the elections (e.g. through pressure exerted on electors, multiple voting, violation of voting secrecy, etc.) or after polling (especially during the vote counting and announcement of the results). Observation should focus particularly on the authorities' regard for their duty of neutrality.

89. International observers play a primordial role in states which have no established tradition of impartial verification of the lawfulness of elections.

90. Generally, international as well as national observers must be in a position to interview anyone present, take notes and report to their organisation, but they should refrain from making comments.

91. The law must be very clear as to what sites observers are not entitled to visit, so that their activities are not excessively hampered. For example, an act authorising observers to visit only sites where the election (or voting) takes place could be construed by certain polling stations in an unduly narrow manner.³⁹

3.3. An effective system of appeal

92. If the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results: individual citizens may challenge them on the grounds of irregularities in the voting procedures. It also applies to decisions taken before the elections, especially in connection with the right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding.

93. There are two possible solutions:

³⁹Re. election observation, see *Handbook for Observers of Elections*, Council of Europe, 1996.

- appeals may be heard by the ordinary courts, a special court or the constitutional court;
- appeals may be heard by an electoral commission. There is much to be said for this latter system in that the commissions are highly specialised whereas the courts tend to be less experienced with regard to electoral issues. As a precautionary measure, however, it is desirable that there should be some form of judicial supervision in place, making the higher commission the first appeal level and the competent court the second.

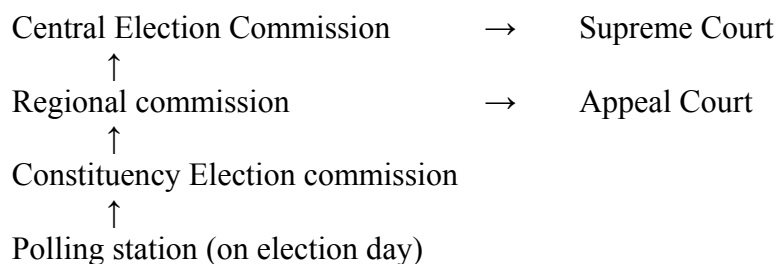
94. Appeal to parliament, as the judge of its own election, is sometimes provided for but could result in political decisions. It is acceptable as a first instance in places where it is long established, but a judicial appeal should then be possible.

95. Appeal proceedings should be as brief as possible, in any case concerning decisions to be taken before the election. On this point, two pitfalls must be avoided: first, that appeal proceedings retard the electoral process, and second, that, due to their lack of suspensive effect, decisions on appeals which could have been taken before, are taken after the elections. In addition, decisions on the results of elections must also not take too long, especially where the political climate is tense. This means both that the time limits for appeals must be very short and that the appeal body must make its ruling as quickly as possible. Time limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision. A time limit of three to five days at first instance (both for lodging appeals and making rulings) seems reasonable for decisions to be taken before the elections. It is, however, permissible to grant a little more time to Supreme and Constitutional Courts for their rulings.

96. The procedure must also be simple, and providing voters with special appeal forms helps to make it so.⁴⁰ It is necessary to eliminate formalism, and so avoid decisions of inadmissibility, especially in politically sensitive cases.

97. It is also vital that the appeal procedure, and especially the powers and responsibilities of the various bodies involved in it, should be clearly regulated by law, so as to avoid any positive or negative conflicts of jurisdiction. Neither the appellants nor the authorities should be able to choose the appeal body. The risk that successive bodies will refuse to give a decision is seriously increased where it is theoretically possible to appeal to either the courts or an electoral commission, or where the powers of different courts – e.g. the ordinary courts and the constitutional court – are not clearly differentiated.

Example:



98. Disputes relating to the electoral registers, which are the responsibility, for example, of

⁴⁰CDL (98) 45, p. 11.

the local administration operating under the supervision of or in co-operation with the electoral commissions, can be dealt with by courts of first instance.

99. Standing in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there to lodge an appeal. A reasonable quorum may, however, be imposed for appeals by voters on the results of elections.

100. The appeal procedure should be of a judicial nature, in the sense that the right of the appellants to proceedings in which both parties are heard should be safeguarded.

101. The *powers* of appeal bodies are important too. They should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats. This is the general principle, but it should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small. In zones where the results have been annulled, the elections must be repeated.

102. Where higher-level commissions are appeal bodies, they should be able to rectify or annul *ex officio* the decisions of lower electoral commissions.

103. Some points deserve to be developed.

3.4. Organisation and operation of polling stations

104. The quality of the voting and vote-counting systems and proper compliance with the electoral procedures depend on the mode of organisation and operation of the polling stations. The reports of the Bureau of the Assembly on the observation of elections in different countries have revealed a series of logistical irregularities. For example, significant differences between polling stations across different regions of the same State were noted.

105. Assembly observation missions have also noticed several cases of technical irregularities such as wrongly printed or stamped ballot boxes, overly complex ballot papers, unsealed ballot boxes, inadequate ballot papers or boxes, misuse of ballot boxes, insufficient means of identification of voters and absence of local observers.

106. All these irregularities and shortcomings, in addition to political party electioneering inside the polling station and police harassment, can seriously vitiate the voting process, or indeed undermine its integrity and validity.

3.5. Funding

107. Regulating the funding of political parties and electoral campaigns is a further important factor in the regularity of the electoral process.

108. First of all, funding must be *transparent*; such transparency is essential whatever the level of political and economic development of the country concerned.

109. Transparency operates at two levels. The first concerns campaign funds, the details of which must be set out in a special set of carefully maintained accounts. In the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election must be annulled. The second level involves monitoring the financial status of elected representatives before and after their term in office. A commission in charge of financial transparency takes formal note of the elected representatives' statements as to their finances. The latter are confidential, but the records can, if necessary, be forwarded to the public prosecutor's office.

110. In unitary states, any expenses incurred by local authorities in connection with the running of a national election, the payment of election commission members, the printing of ballot papers, etc, should normally be borne by the central state.

111. It should be remembered that in the field of *public funding* of parties or campaigns the principle of equality of opportunity applies ("strict" or "proportional" equality).⁴¹ All parties represented in parliament must in all cases qualify for public funding. However, in order to ensure equality of opportunity for all the different political forces, public funding might also be extended to political formations that represent a large section of the electorate and put up candidates for election. The funding of political parties from public funds must be accompanied by supervision of the parties' accounts by specific public bodies (e.g. the Auditor General's Department). States should encourage a policy of financial openness on the part of political parties receiving public funding.⁴²

3.6. Security

112. Every electoral law must provide for intervention by the security forces in the event of trouble. In such an event, the presiding officer of the polling station (or his or her representative) must have sole authority to call in the police. It is important to avoid extending this right to all members of the polling station commission, as what is needed in such circumstances is an on-the-spot decision that is not open to discussion.

113. In some states, having a police presence at polling stations is a national tradition, which, according to observers, does not necessarily trigger unrest or have an intimidating effect on voters. One should note that a police presence at polling stations is still provided for in the electoral laws of certain western states, even though this practice has changed over time.

Conclusion

114. Compliance with the five underlying principles of the European electoral heritage (universal, equal, free, secret and direct suffrage) is essential for democracy. It enables democracy to be expressed in different ways but within certain limits. These limits stem primarily from the interpretation of the said principles; the present text lays out the minimum rules to be followed in order to ensure compliance. Second, it is insufficient for the electoral law (in the narrow sense) to comprise rules that are in keeping with the European electoral principles: the latter must be placed in their context, and the credibility of the electoral process must be guaranteed. First, fundamental rights must be respected; and second, the

⁴¹See section I.2.3 above.

⁴²For further details on funding of political parties, see CDL-INF (2001) 8.

stability of the rules must be such as to exclude any suspicion of manipulation. Lastly, the procedural framework must allow the rules laid down to be implemented effectively.

Bijlage 11

Legal, Operational and Technical Standards for E-Voting, Recommendation Rec(2004)11 adopted by the Committee of Ministers of the Council of Europe

LEGAL, OPERATIONAL AND TECHNICAL STANDARDS FOR E-VOTING

Recommendation Rec(2004)11
adopted by the Committee of Ministers
of the Council of Europe
on 30 September 2004
and explanatory memorandum

Edition française:

Les normes juridiques, opérationnelles et techniques relatives au vote électronique

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2. The publication contains the text of Recommendation Rec(2004)11 and the explanatory memorandum thereto.

Recommendation Rec(2004)11

of the Committee of Ministers to member states on legal, operational and technical standards for e-voting

*(Adopted by the Committee of Ministers on 30 September 2004
at the 898th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and promoting the ideals and principles, which are their common heritage;

Reaffirming its belief that representative and direct democracy are part of that common heritage and are the basis of the participation of citizens in political life at the level of the European Union and at national, regional and local levels;

Respecting the obligations and commitments as undertaken within existing international instruments and documents, such as:

- the Universal Declaration on Human Rights;
- the International Covenant on Civil and Political Rights;
- the United Nations Convention on the Elimination of All Forms of Racial Discrimination;
- the United Nations Convention on the Elimination of All Forms of Discrimination against Women;
- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), in particular its Protocol No. 1 (ETS No. 9);
- the European Charter of Local Self-Government (ETS No. 122);

- the Convention on Cybercrime (ETS No. 185);
- the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108);
- Committee of Ministers Recommendation No. R (99) 5 on the protection of privacy on the Internet;
- the document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE;
- the Charter of Fundamental Rights of the European Union;
- the Code of Good Practice in Electoral Matters, adopted by the Council for Democratic Elections of the Council of Europe and the European Commission for Democracy through Law;

Bearing in mind that the right to vote is one of the primary foundations of democracy, and that, consequently, e-voting system procedures shall comply with the principles of democratic elections and referendums;

Recognising that as new information and communication technologies are increasingly being used in day-to-day life, member states need to take account of these developments in their democratic practice;

Noting that participation in elections and referendums at local, regional and national levels in some member states is characterised by low, and in some cases steadily decreasing, turnouts;

Noting that some member states are already using, or are considering using e-voting for a number of purposes, including:

- enabling voters to cast their votes from a place other than the polling station in their voting district;
- facilitating the casting of the vote by the voter;
- facilitating the participation in elections and referendums of all those who are entitled to vote, and particularly of citizens residing or staying abroad;
- widening access to the voting process for voters with disabilities or those having other difficulties in being physically present at a polling station and using the devices available there;
- increasing voter turnout by providing additional voting channels;

- bringing voting in line with new developments in society and the increasing use of new technologies as a medium for communication and civic engagement in pursuit of democracy;

- reducing, over time, the overall cost to the electoral authorities of conducting an election or referendum;

- delivering voting results reliably and more quickly; and

- providing the electorate with a better service, by offering a variety of voting channels;

Aware of concerns about certain security and reliability problems possibly inherent in specific e-voting systems;

Conscious, therefore, that only those e-voting systems which are secure, reliable, efficient, technically robust, open to independent verification and easily accessible to voters will build the public confidence which is a pre-requisite for holding e-voting,

Recommends that the governments of member states, where they are already using, or are considering using, e-voting comply, subject to paragraph iv. below, with paragraphs i. to iii. below, and the standards and requirements on the legal, operational and technical aspects of e-voting, as set out in the appendices to the present Recommendation:

- i. e-voting shall respect all the principles of democratic elections and referendums. E-voting shall be as reliable and secure as democratic elections and referendums which do not involve the use of electronic means. This general principle encompasses all electoral matters, whether mentioned or not in the appendices;

- ii. the interconnection between the legal, operational and technical aspects of e-voting, as set out in the appendices, has to be taken into account when applying the Recommendation;

- iii. member states should consider reviewing their relevant domestic legislation in the light of this Recommendation;

- iv. the principles and provisions contained in the appendices to this Recommendation do not, however, require individual member states to change their own domestic voting procedures which may exist at the time of the adoption of this Recommendation, and which can be maintained by those member states when e-voting is used, as long as these

domestic voting procedures comply with all the principles of democratic elections and referendums;

v. in order to provide the Council of Europe with a basis for possible further action on e-voting within two years after the adoption of this Recommendation, the Committee of Ministers recommends that member states:

- keep under review their policy on, and experience of, e-voting, and in particular the implementation of the provisions of this Recommendation; and

- report to the Council of Europe Secretariat the results of their reviews, who will forward them to member states and follow up the issue of e-voting.

In this Recommendation the following terms are used with the following meanings:

- authentication: the provision of assurance of the claimed identity of a person or data;

- ballot: the legally recognised means by which the voter can express his or her choice of voting option;

- candidate: a voting option consisting of a person and/or a group of persons and/or a political party;

- casting of the vote: entering the vote in the ballot box;

- e-election or e-referendum: a political election or referendum in which electronic means are used in one or more stages;

- electronic ballot box: the electronic means by which the votes are stored pending being counted;

- e-voting: an e-election or e-referendum that involves the use of electronic means in at least the casting of the vote;

- remote e-voting: e-voting where the casting of the vote is done by a device not controlled by an election official;

- sealing: protecting information so that it cannot be used or interpreted without the help of other information or means available only to specific persons or authorities;

- vote: the expression of the choice of voting option;

- voter: a person who is entitled to cast a vote in a particular election or referendum;
- voting channel: the way by which the voter can cast a vote;
- voting options: the range of possibilities from which a choice can be made through the casting of the vote in an election or referendum;
- voters' register: a list of persons entitled to vote (electors).

Appendix I

Legal standards

A. Principles

I. Universal suffrage

1. The voter interface of an e-voting system shall be understandable and easily usable.
2. Possible registration requirements for e-voting shall not pose an impediment to the voter participating in e-voting.
3. E-voting systems shall be designed, as far as it is practicable, to maximise the opportunities that such systems can provide for persons with disabilities.
4. Unless channels of remote e-voting are universally accessible, they shall be only an additional and optional means of voting.

II. Equal suffrage

5. In relation to any election or referendum, a voter shall be prevented from inserting more than one ballot into the electronic ballot box. A voter shall be authorised to vote only if it has been established that his/her ballot has not yet been inserted into the ballot box.
6. The e-voting system shall prevent any voter from casting a vote by more than one voting channel.
7. Every vote deposited in an electronic ballot box shall be counted, and each vote cast in the election or referendum shall be counted only once.
8. Where electronic and non-electronic voting channels are used in the same election or referendum, there shall be a secure and reliable method to aggregate all votes and to calculate the correct result.

III. Free suffrage

9. The organisation of e-voting shall secure the free formation and expression of the voter's opinion and, where required, the personal exercise of the right to vote.
10. The way in which voters are guided through the e-voting process shall be such as to prevent their voting precipitately or without reflection.
11. Voters shall be able to alter their choice at any point in the e-voting process before casting their vote, or to break off the procedure, without their previous choices being recorded or made available to any other person.
12. The e-voting system shall not permit any manipulative influence to be exercised over the voter during the voting.
13. The e-voting system shall provide the voter with a means of participating in an election or referendum without the voter exercising a preference for any of the voting options, for example, by casting a blank vote.
14. The e-voting system shall indicate clearly to the voter when the vote has been cast successfully and when the whole voting procedure has been completed.
15. The e-voting system shall prevent the changing of a vote once that vote has been cast.

IV. Secret suffrage

16. E-voting shall be organised in such a way as to exclude at any stage of the voting procedure and, in particular, at voter authentication, anything that would endanger the secrecy of the vote.
17. The e-voting system shall guarantee that votes in the electronic ballot box and votes being counted are, and will remain, anonymous, and that it is not possible to reconstruct a link between the vote and the voter.
18. The e-voting system shall be so designed that the expected number of votes in any electronic ballot box will not allow the result to be linked to individual voters.
19. Measures shall be taken to ensure that the information needed during electronic processing cannot be used to breach the secrecy of the vote.

B. Procedural safeguards

I. Transparency

20. Member states shall take steps to ensure that voters understand and have confidence in the e-voting system in use.
21. Information on the functioning of an e-voting system shall be made publicly available.
22. Voters shall be provided with an opportunity to practise any new method of e-voting before, and separately from, the moment of casting an electronic vote.
23. Any observers, to the extent permitted by law, shall be able to be present to observe and comment on the e-elections, including the establishing of the results.

II. Verifiability and accountability

24. The components of the e-voting system shall be disclosed, at least to the competent electoral authorities, as required for verification and certification purposes.
25. Before any e-voting system is introduced, and at appropriate intervals thereafter, and in particular after any changes are made to the system, an independent body, appointed by the electoral authorities, shall verify that the e-voting system is working correctly and that all the necessary security measures have been taken.
26. There shall be the possibility for a recount. Other features of the e-voting system that may influence the correctness of the results shall be verifiable.
27. The e-voting system shall not prevent the partial or complete re-run of an election or a referendum.

III. Reliability and security

28. The member state's authorities shall ensure the reliability and security of the e-voting system.
29. All possible steps shall be taken to avoid the possibility of fraud or unauthorised intervention affecting the system during the whole voting process.
30. The e-voting system shall contain measures to preserve the availability of its services during the e-voting process. It shall resist, in particular, malfunction, breakdowns or denial of service attacks.

31. Before any e-election or e-referendum takes place, the competent electoral authority shall satisfy itself that the e-voting system is genuine and operates correctly.

32. Only persons appointed by the electoral authority shall have access to the central infrastructure, the servers and the election data. There shall be clear rules established for such appointments. Critical technical activities shall be carried out by teams of at least two people. The composition of the teams shall be regularly changed. As far as possible, such activities shall be carried out outside election periods.

33. While an electronic ballot box is open, any authorised intervention affecting the system shall be carried out by teams of at least two people, be the subject of a report, be monitored by representatives of the competent electoral authority and any election observers.

34. The e-voting system shall maintain the availability and integrity of the votes. It shall also maintain the confidentiality of the votes and keep them sealed until the counting process. If stored or communicated outside controlled environments, the votes shall be encrypted.

35. Votes and voter information shall remain sealed as long as the data is held in a manner where they can be associated. Authentication information shall be separated from the voter's decision at a pre-defined stage in the e-election or e-referendum.

Appendix II

Operational standards

1. Notification

36. Domestic legal provisions governing an e-election or e-referendum shall provide for clear timetables concerning all stages of the election or referendum, both before and after the election or referendum.

37. The period in which an electronic vote can be cast shall not begin before the notification of an election or a referendum. Particularly with regard to remote e-voting, the period shall be defined and made known to the public well in advance of the start of voting.

38. The voters shall be informed, well in advance of the start of voting, in clear and simple language, of the way in which the e-voting will be organised, and any steps a voter may have to take in order to participate and vote.

II. Voters

39. There shall be a voters' register which is regularly updated. The voter shall be able to check, as a minimum, the information which is held about him/her on the register, and request corrections.

40. The possibility of creating an electronic register and introducing a mechanism allowing online application for voter registration and, if applicable, for application to use e-voting, shall be considered. If participation in e-voting requires a separate application by the voter and/or additional steps, an electronic, and, where possible, interactive procedure shall be considered.

41. In cases where there is an overlap between the period for voter registration and the voting period, provision for appropriate voter authentication shall be made.

III. Candidates

42. The possibility of introducing online candidate nomination may be considered.

43. A list of candidates that is generated and made available electronically shall also be publicly available by other means.

IV. Voting

44. It is particularly important, where remote e-voting takes place while polling stations are open, that the system shall be so designed that it prevents any voter from voting more than once.

45. Remote e-voting may start and/or end at an earlier time than the opening of any polling station. Remote e-voting shall not continue after the end of the voting period at polling stations.

46. For every e-voting channel, support and guidance arrangements on voting procedures shall be set up for, and be available to, the voter. In the case of remote e-voting, such arrangements shall also be available through a different, widely available communication channel.

47. There shall be equality in the manner of presentation of all voting options on the device used for casting an electronic vote.

48. The electronic ballot by which an electronic vote is cast shall be free from any information about voting options, other than that strictly required for casting the vote. The e-voting system shall avoid the display of other messages that may influence the voters' choice.

49. If it is decided that information about voting options will be accessible from the e-voting site, this information shall be presented with equality.

50. Before casting a vote using a remote e-voting system, voters' attention shall be explicitly drawn to the fact that the e-election or e-referendum in which they are submitting their decision by electronic means is a real election or referendum. In case of tests, participants shall have their attention drawn explicitly to the fact that they are not participating in a real election or referendum and shall – when tests are continued at election times – at the same time be invited to cast their ballot by the voting channel(s) available for that purpose.

51. A remote e-voting system shall not enable the voter to be in possession of a proof of the content of the vote cast.

52. In a supervised environment, the information on the vote shall disappear from the visual, audio or tactile display used by the voter to cast the vote as soon as it has been cast. Where a paper proof of the electronic vote is provided to the voter at a polling station, the voter shall not be able to show it to any other person, or take this proof outside of the polling station.

V. Results

53. The e-voting system shall not allow the disclosure of the number of votes cast for any voting option until after the closure of the electronic ballot box. This information shall not be disclosed to the public until after the end of the voting period.

54. The e-voting system shall prevent processing information on votes cast within deliberately chosen sub-units that could reveal individual voters' choices.

55. Any decoding required for the counting of the votes shall be carried out as soon as practicable after the closure of the voting period.

56. When counting the votes, representatives of the competent electoral authority shall be able to participate in, and any observers able to observe, the count.

57. A record of the counting process of the electronic votes shall be kept, including information about the start and end of, and the persons involved in, the count.

58. In the event of any irregularity affecting the integrity of votes, the affected votes shall be recorded as such.

VI. Audit

59. The e-voting system shall be auditable.
60. The conclusions drawn from the audit process shall be applied in future elections and referendums.

Appendix III

Technical requirements

The design of an e-voting system shall be underpinned by a comprehensive assessment of the risks involved in the successful completion of the particular election or referendum. The e-voting system shall include the appropriate safeguards, based on this risk assessment, to manage the specific risks identified. Service failure or service degradation shall be kept within pre-defined limits.

A. Accessibility

61. Measures shall be taken to ensure that the relevant software and services can be used by all voters and, if necessary, provide access to alternative ways of voting.
62. Users shall be involved in the design of e-voting systems, particularly to identify constraints and test ease of use at each main stage of the development process.
63. Users shall be supplied, whenever required and possible, with additional facilities, such as special interfaces or other equivalent resources, such as personal assistance. User facilities shall comply as much as possible with the guidelines set out in the Web Accessibility Initiative (WAI).
64. Consideration shall be given, when developing new products, to their compatibility with existing ones, including those using technologies designed to help people with disabilities.
65. The presentation of the voting options shall be optimised for the voter.

B. Interoperability

66. Open standards shall be used to ensure that the various technical components or services of an e-voting system, possibly derived from a variety of sources, interoperate.

67. At present, the Election Markup Language (EML) standard is such an open standard and in order to guarantee interoperability, EML shall be used whenever possible for e-election and e-referendum applications. The decision of when to adopt EML is a matter for member states. The EML standard valid at the time of adoption of this recommendation, and supporting documentation are available on the Council of Europe website.

68. In cases which imply specific election or referendum data requirements, a localisation procedure shall be used to accommodate these needs. This would allow for extending or restricting the information to be provided, whilst still remaining compatible with the generic version of EML. The recommended procedure is to use structured schema languages and pattern languages.

C. Systems operation

(for the central infrastructure and clients in controlled environments)

69. The competent electoral authorities shall publish an official list of the software used in an e-election or e-referendum. Member states may exclude from this list data protection software for security reasons. At the very least it shall indicate the software used, the versions, its date of installation and a brief description. A procedure shall be established for regularly installing updated versions and corrections of the relevant protection software. It shall be possible to check the state of protection of the voting equipment at any time.

70. Those responsible for operating the equipment shall draw up a contingency procedure. Any backup system shall conform to the same standards and requirements as the original system.

71. Sufficient backup arrangements shall be in place and be permanently available to ensure that voting proceeds smoothly. The staff concerned shall be ready to intervene rapidly according to a procedure drawn up by the competent electoral authorities.

72. Those responsible for the equipment shall use special procedures to ensure that during the polling period the voting equipment and its use satisfy requirements. The backup services shall be regularly supplied with monitoring protocols.

73. Before each election or referendum, the equipment shall be checked and approved in accordance with a protocol drawn up by the competent electoral authorities. The equipment shall be checked to ensure that it complies with technical specifications. The findings shall be submitted to the competent electoral authorities.

74. All technical operations shall be subject to a formal control procedure. Any substantial changes to key equipment shall be notified.

75. Key e-election or e-referendum equipment shall be located in a secure area and that area shall, throughout the election or referendum period, be guarded against interference of any sort and from any person. During the election or referendum period a physical disaster recovery plan shall be in place. Furthermore, any data retained after the election or referendum period shall be stored securely.

76. Where incidents that could threaten the integrity of the system occur, those responsible for operating the equipment shall immediately inform the competent electoral authorities, who will take the necessary steps to mitigate the effects of the incident. The level of incident which shall be reported shall be specified in advance by the electoral authorities.

D. Security

1. General requirements

(referring to pre-voting, voting, and post-voting stages)

77. Technical and organisational measures shall be taken to ensure that no data will be permanently lost in the event of a breakdown or a fault affecting the e-voting system.

78. The e-voting system shall maintain the privacy of individuals. Confidentiality of voters' registers stored in or communicated by the e-voting system shall be maintained.

79. The e-voting system shall perform regular checks to ensure that its components operate in accordance with its technical specifications and that its services are available.

80. The e-voting system shall restrict access to its services, depending on the user identity or the user role, to those services explicitly assigned to this user or role. User authentication shall be effective before any action can be carried out.

81. The e-voting system shall protect authentication data so that unauthorised entities cannot misuse, intercept, modify, or otherwise gain knowledge of all or some of this data. In uncontrolled environments, authentication based on cryptographic mechanisms is advisable.

82. Identification of voters and candidates in a way that they can unmistakably be distinguished from other persons (unique identification) shall be ensured.

83. E-voting systems shall generate reliable and sufficiently detailed observation data so that election observation can be carried out. The time at which an

event generated observation data shall be reliably determinable. The authenticity, availability and integrity of the data shall be maintained.

84. The e-voting system shall maintain reliable synchronised time sources. The accuracy of the time source shall be sufficient to maintain time marks for audit trails and observations data, as well as for maintaining the time limits for registration, nomination, voting, or counting.

85. Electoral authorities have overall responsibility for compliance with these security requirements, which shall be assessed by independent bodies.

II. Requirements in pre-voting stages

(and for data communicated to the voting stage)

86. The authenticity, availability and integrity of the voters' registers and lists of candidates shall be maintained. The source of the data shall be authenticated. Provisions on data protection shall be respected.

87. The fact that candidate nomination and, if required, the decision of the candidate and/or the competent electoral authority to accept a nomination has happened within the prescribed time limits shall be ascertainable.

88. The fact that voter registration has happened within the prescribed time limits shall be ascertainable.

III. Requirements in the voting stage

(and for data communicated during post-election stages)

89. The integrity of data communicated from the pre-voting stage (e.g. voters' registers and lists of candidates) shall be maintained. Data-origin authentication shall be carried out.

90. It shall be ensured that the e-voting system presents an authentic ballot to the voter. In the case of remote e-voting, the voter shall be informed about the means to verify that a connection to the official server has been established and that the authentic ballot has been presented.

91. The fact that a vote has been cast within the prescribed time limits shall be ascertainable.

92. Sufficient means shall be provided to ensure that the systems that are used by the voters to cast the vote can be protected against influence that could modify the vote.

93. Residual information holding the voter's decision or the display of the voter's choice shall be destroyed after the vote has been cast. In the case of

remote e-voting, the voter shall be provided with information on how to delete, where that is possible, traces of the vote from the device used to cast the vote.

94. The e-voting system shall at first ensure that a user who tries to vote is eligible to vote. The e-voting system shall authenticate the voter and shall ensure that only the appropriate number of votes per voter is cast and stored in the electronic ballot box.

95. The e-voting system shall ensure that the voter's choice is accurately represented in the vote and that the sealed vote enters the electronic ballot box.

96. After the end of the e-voting period, no voter shall be allowed to gain access to the e-voting system. However, the acceptance of electronic votes into the electronic ballot box shall remain open for a sufficient period of time to allow for any delays in the passing of messages over the e-voting channel.

IV. Requirements in post-voting stages

97. The integrity of data communicated during the voting stage (e.g. votes, voters' registers, lists of candidates) shall be maintained. Data-origin authentication shall be carried out.

98. The counting process shall accurately count the votes. The counting of votes shall be reproducible.

99. The e-voting system shall maintain the availability and integrity of the electronic ballot box and the output of the counting process as long as required.

E. Audit

I. General

100. The audit system shall be designed and implemented as part of the e-voting system. Audit facilities shall be present on different levels of the system: logical, technical and application.

101. End-to-end auditing of an e-voting system shall include recording, providing monitoring facilities and providing verification facilities. Audit systems with the features set out in sections II – V below shall therefore be used to meet these requirements.

II. Recording

102. The audit system shall be open and comprehensive, and actively report on potential issues and threats.

103. The audit system shall record times, events and actions, including:
- a. all voting-related information, including the number of eligible voters, the number of votes cast, the number of invalid votes, the counts and recounts, etc.;
 - b. any attacks on the operation of the e-voting system and its communications infrastructure;
 - c. system failures, malfunctions and other threats to the system.

III. Monitoring

104. The audit system shall provide the ability to oversee the election or referendum and to verify that the results and procedures are in accordance with the applicable legal provisions.

105. Disclosure of the audit information to unauthorised persons shall be prevented.

106. The audit system shall maintain voter anonymity at all times.

IV. Verifiability

107. The audit system shall provide the ability to cross-check and verify the correct operation of the e-voting system and the accuracy of the result, to detect voter fraud and to prove that all counted votes are authentic and that all votes have been counted.

108. The audit system shall provide the ability to verify that an e-election or e-referendum has complied with the applicable legal provisions, the aim being to verify that the results are an accurate representation of the authentic votes.

V. Other

109. The audit system shall be protected against attacks which may corrupt, alter or lose records in the audit system.

110. Member states shall take adequate steps to ensure that the confidentiality of any information obtained by any person while carrying out auditing functions is guaranteed.

F. Certification

111. Member states shall introduce certification processes that allow for any ICT (Information and Communication Technology) component to be tested and certified as being in conformity with the technical requirements described in this recommendation.

112. In order to enhance international co-operation and avoid duplication of work, member states shall consider whether their respective agencies shall join, if they have not done so already, relevant international mutual recognition arrangements such as the European Co-operation for Accreditation (EA), the International Laboratory Accreditation Co-operation (ILAC), the International Accreditation Forum (IAF) and other bodies of a similar nature.

Explanatory memorandum

Background

1. Common standards on e-voting, which reflect and apply the principles of democratic elections and referendums to the specificities of e-voting, are key to guaranteeing that all the principles of democratic elections and referendums are respected when using e-voting, and thus to building trust and confidence in domestic e-voting schemes.
2. Such common standards are also important for the interoperability of e-voting systems in order to ensure the development of secure and effective e-voting systems. While interoperability across borders in Europe may not seem necessary from a purely legal and operational point of view – at the time of adoption of the recommendation there were no cross-border common electoral procedures in place (notwithstanding data exchange procedures with respect to a limited group within the electorate for the European Parliament) – interoperable and open technical standards within and across member states' borders can both ensure the combined and continued use of e-voting systems supplied by different providers and reduce procurement costs for domestic authorities.
3. This set of standards consists of the legal, operational (mainly relating to organisational and procedural matters) and core technical requirements for e-voting. The legal standards are intended to apply the principles of existing Council of Europe and other international instruments relating to elections, to e-voting.
4. The recommendation has been developed by the Multidisciplinary Ad hoc Group of Specialists on legal, operational and technical standards for e-voting (IP1-S-EE). This intergovernmental group of all member states was set up by the Committee of Ministers and was entrusted with the task of developing a set of standards for e-voting that reflect the

differing circumstances of Council of Europe member states and should be followed by the information and computer technology (ICT) industry.

Scope of the recommendation

5. The recommendation covers political elections and referendums, both of which are part of the European democratic heritage and require standards. Elections and referendums are held at different levels; in some countries no referendums are held, and in some countries not all the levels mentioned in the recommendation are affected.

Reasons for introducing or considering the introduction of e-voting

6. The reasons for introducing or considering the introduction of e-voting in one or more stages of a political election or referendum can differ from country to country. In each country, the reasons depend on the specific domestic context.

Competence of member states

7. The competence of the member states of the Council of Europe in electoral matters and regarding referendums is not affected by this recommendation. Where reference is made to the European Union level, the purpose is to include reference to elections to the European Parliament.

Principles of democratic elections and referendums

8. Democracy is inconceivable without elections and referendums held in accordance with certain principles that lend them their democratic status. In 2002, the European Commission for Democracy through Law (Venice Commission) adopted a non-binding Code of Good Practice in Electoral Matters¹ in which five such principles are identified as fundamental: universal, equal, free, secret and direct suffrage. These

1. Code of good practice in electoral matters: (Venice Commission – Opinion 190/2002_el), endorsed by Parliamentary Assembly Resolution 1320 (2003) and CLRAE Resolution 148 (2003), subject of a Declaration by the Committee of Ministers (114th session, 13 May 2004)).

five principles reflect Europe's democratic heritage¹ and are equally applicable to e-elections and e-referendums as to traditional elections and referendums.

9. Although no generally agreed definitions of these principles exist, their meaning can for the purposes of this explanatory memorandum be summarised as follows:

- *universal suffrage*: all human beings have the right to vote and to stand for election subject to certain conditions, for example age and nationality;

- *equal suffrage*: each voter has the same number of votes;

- *free suffrage*: the voter has the right to form and to express his or her opinion in a free manner, without any coercion or undue influence;

- *secret suffrage*: the voter has the right to vote secretly as an individual, and the state has the duty to protect that right;

- *direct suffrage*: the ballots cast by the voters directly determine the person(s) elected.

10. Although these principles are generally accepted, their implementation in the context of e-voting raises a number of questions that call for close scrutiny. However, specificities of e-voting do not give rise to such questions to the same extent in relation to all of the five principles. Whereas for the principles of universal, equal, free and secret suffrage special provisions with regard to e-voting are necessary, the principle of

1. Point 7 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE of 29 June 1990 clearly speaks of free, universal, equal and secret suffrage; point 6 of direct suffrage, albeit in a qualified form; Article 25(b) of the International Covenant on Civil and Political Rights expressly provides for all these principles except direct suffrage, although the latter is implied (Article 21 of the Universal Declaration of Human Rights); Article 3 of the Additional Protocol to the European Convention on Human Rights explicitly provides for the right to periodic elections by free and secret suffrage; the other principles have also been recognised in human rights case-law (universality: ECHR No. 9267/81, judgment in Mathieu-Mohin and Clerfayt v. Belgium, 2 March 1997, Series A vol. 113, p. 23; judgment in Gitonas and Others v. Greece, 1 July 1997, No. 18747/91, 19376/92; 19379/92, 28208/95 and 27755/95, *Reports of Judgments and Decisions*, 1997-IV, p. 1233; re. equality: aforementioned judgment in Mathieu-Mohin and Clerfayt, p. 23). The right to direct elections has been admitted by the Strasbourg Court implicitly (ECHR No. 24833/94, judgment in Matthews v. The United Kingdom, 18 February 1999, *Reports of Judgments and Decisions* 1999-I, paragraph 64).

direct suffrage does not call for special attention and is therefore not addressed in the recommendation.

11. The standards in the recommendation address only those matters that are of specific relevance to e-voting. The general principles of democratic elections and referendums are not repeated.

Legal, operational and technical standards

12. Appendices I to III of the recommendation contain a set of legal, operational and technical standards. This set consists of minimum standards, which, if followed in an e-voting system, would facilitate compliance with the principles of democratic elections and referendums. However, compliance with these standards alone does not guarantee the democratic quality of the e-election or e-referendum. The e-election or e-referendum has to be judged as a whole and in detail, in the specific context. But compliance with the standards is an important element in enhancing the democratic quality of the e-voting system.

13. There is a close interconnection between the three categories of standards which need to be taken into account when applying the recommendation:

- the legal standards relate to the legal context in which e-voting is permitted;
- the operational standards relate to the manner in which e-voting hardware and software should be operated and maintained;
- the technical requirements relate to the construction and operation of e-voting hardware and software. The adoption of the technical requirements will ensure the technical security, accessibility and interoperability of e-voting systems.

The three categories of standards all include provisions relating to all stages of elections and referendums (that is, the pre-voting stage, the actual casting of the vote, and the post-voting stage). The interconnection can relate to one, two, or all stages.

i. Introductory statement ("e-voting shall respect ...")

14. This introductory statement covers a number of issues that are of general relevance in relation to e-elections and e-referendums.

15. Existing non-electronic voting systems have been developed in a way that ensures that the principles required for democratic elections and referendums are met. It is essential that these principles are not undermined by the introduction of new voting methods and, accordingly, e-voting systems must be designed and operated so as to ensure the reliability and security of the voting process, as is the case with the non-electronic voting systems in the state concerned.

16. In order to ensure that an e-voting system delivers an election or referendum that satisfies the principles overall, it may be necessary to give more attention to the application of one principle than to that of another. However, the result must still be to ensure that overall the principles are met.

17. The comparison with the non-electronic voting system in the state concerned does not imply that e-voting has to be as secure and reliable as all the non-electronic voting channels together. The underpinning principle of the recommendation is that a remote e-voting channel has to be – overall – as secure as an unsupervised remote non-electronic voting channel and a non-remote e-voting channel has to be as secure as a non-remote non-electronic voting channel.

18. Furthermore the comparison with non-electronic voting channels is not intended to prevent a state changing its non-electronic voting system, as long as the changes are in compliance with all the principles of democratic elections and referendums.

19. Comparing levels of reliability and security or other parameters, at the time when e-voting is introduced, with levels of non-electronic voting methods is not intended to freeze non-electronic voting levels, in particular when improvements in implementing the principles of democratic elections and referendums are possible and necessary.

ii. Review of domestic legislation

20. The recommendation indicates that member states should consider reviewing their relevant domestic legislation when introducing e-voting. Careful thought needs to be given to aspects of law other than those relating simply to the electronic equipment needed and its use. The extent of the review advisable will depend upon the existing laws of the member state in question and it is not possible to set these out in a

comprehensive manner here. Examples include criminal laws relating to election matters, specific data protection laws and laws relating to election observation.

iii. Localisation

21. The purpose of this recommendation is to provide for common standards on e-voting. In some states holding elections and referendums involves certain procedures which are very specific to the state concerned. Where such specific procedures are applicable only in one or a very small number of member states, those procedures were identified as “localisms” and therefore not included in the recommendation, but referred to in the explanatory memorandum. States concerned can retain their “localisms” and, if they so wish, adapt them in the future, and are not expected to abandon or change their “localisms” as a consequence of the recommendation, as long as these are in compliance with the principles of democratic elections and referendums and any obligations and commitments undertaken by member states.

iv. Sustainability

22. E-voting is a new and rapidly developing area of policy and technology. Standards and requirements need to keep abreast of, and where possible anticipate, new developments. In recognition of this, paragraph v. recommends that each member state keep its own policy on e-voting under review and report back to the Council of Europe the results of any review that it has conducted. The Council of Europe may look again at this issue two years after the adoption of this recommendation and member states may bear this timing in mind when deciding whether, and if so when, a review is appropriate in their particular circumstances.

23. As part of the follow-up, a review of the recommendation may be considered as soon as member states have gained further experience with e-elections or e-referendums.

24. Technological developments, unforeseeable at the time of the adoption of the recommendation, cannot exclude that any system valid at that time, including Election Markup Language (EML), may one day not be the most appropriate system for e-elections or e-referendums, and thus not be recommended by individual, or groups of, countries.

Interpretation

25. The interpretation paragraph contains definitions of terms used throughout the recommendation, including its appendices. The definitions should also be consulted when the recommendation or parts of it are translated into other languages. In Appendix 3 there is a separate technical glossary which contains additional definitions of terms used in that appendix.

Definition of remote e-voting

26. E-voting can be conducted in remote and non-remote ways. Many electoral systems already include both non-remote and remote voting. Remote voting can be conducted in both supervised (for example voting at embassies or consulates, voting at post offices or municipal offices) and unsupervised (that is unsupervised by officials) environments (for example voting by mail). Each member state has its own established practice concerning the types of voting channels available to voters.¹ For the purpose of this recommendation, however, remote e-voting means exclusively e-voting where the casting of the vote is via a device not controlled by election officials.

1. The European Commission for Democracy through Law (Venice Commission) has provided a report on the compatibility of remote voting and electronic voting with the requirements of the documents of the Council of Europe (adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004). Study No. 260, 2003, Strasbourg, 18 March 2004, CDL-AD (2004)012 Or. Fr.). The conclusion by the Venice Commission is that remote voting is compatible with the Council of Europe's standards, provided that certain preventative measures are observed in the procedures for either postal voting or electronic voting.

Appendix I

Legal standards

A. Principles

I. Universal suffrage

Standard No. 1. "The voter interface of an e-voting system ..."

27. No single voting system may ever be understandable and usable by every possible voter; for example, people with visual impairments may not be able to use a visual-only system. In order to ensure democratic elections and referendums, member states have to try to ensure that the voter interfaces of e-voting systems are usable and understandable by as many people as possible.

Standard No. 2. "Possible registration requirements for e-voting ..."

28. The purpose of this provision is to ensure that no voter is prevented from using e-voting because of difficult registration procedures.

Standard No. 3. "E-Voting systems shall be designed ..."

29. E-voting systems should be made accessible as far as possible and used in conjunction with other voting channels that together with the e-voting system provide accessibility for as many voters as possible. Not all persons with disabilities may be able to use e-voting. The design of the e-voting systems should, however, aim to maximise the potential of accessibility that these voting channels provide for disabled persons.

Standard No. 4. "Unless channels of remote e-voting are ..."

30. Adding additional electronic voting channels to traditional forms of voting may make elections and referendums more accessible, strengthening the principle of universality. However, using a single remote electronic voting channel in isolation restricts accessibility. This provision is to protect the voter from a situation where the only means offered for voting is one that is not effectively available to him or her.

31. In the case of non-remote e-voting it has to be left to member states to decide whether they want to offer other options of voting. As is the case with all non-remote voting, places where voting takes place and the e-voting system should comply with standards of accessibility.

II. Equal suffrage

Standards Nos. 5 and 6. "In relation to any election or referendum ..." and "The e-voting system ..."

32. The whole voting system should prevent multiple votes being cast by any one person. This principle is consistent with voting systems that allow voters to choose more than one option, such as systems that allow preferential votes, or one vote for a national list and one vote for a regional list. The concept of multiple votes relates to the risk that there might be an attempt to cast more votes than a particular voter has a right to cast. This might arise if the voter tried to cast multiple votes him or herself or if another person tried to use the voter's identity in order to vote in the voter's name and the voter also voted.

33. In some member states practices are in force where it may appear that a voter is allowed to vote more than once. However, in these systems the voter may cast only one vote that is finally counted. Examples of this include:

a. In the case of Denmark and Sweden, the voting systems provide the legal opportunity for voters to submit an advance vote and change it later. In Denmark, several advance votes may be submitted. In Sweden, only one advance vote may be submitted. In both systems only the last vote is inserted into the ballot box and thus is the vote cast.

b. In the case of the United Kingdom, if a person enters a polling station to vote and finds that somebody else has already voted in that person's name, that person is entitled to cast a special vote – a tendered ballot. This ballot is sealed in an envelope, is not placed in the ballot box, and is only looked at in the case of an election petition and in accordance with a direction of a court. A similar provision applies where two postal votes are received for the same voter.

Standard No. 7. "Every vote deposited ..."

34. It is important that all votes cast by either electronic or non-electronic voting channels are counted.

III. Free suffrage

Standard No. 9. "The organisation of e-voting ..."

35. Personal suffrage – the personal exercise of the right to vote – is a fundamental principle in many member states. As it is particularly vulnerable in the context of remote e-voting, special attention is drawn to this fact in the recommendation. However, this standard does not prevent remote e-voting.

36. There are some member states that allow for voting procedures where, in order to ensure accessibility, the principle of universality is given priority over the principle of personal suffrage and therefore, for example, proxy voting is allowed. This is also possible within the e-voting standards.

37. Where remote e-voting channels are provided, special attention has to be given to the provision of facilities that allow the voter to exercise the right to cast a vote in a supervised environment.

Standard No. 10. "The way in which voters ..."

38. "Without reflection" means without having had enough time to think about it.

Standard No. 11. "Voters shall be able ..."

39. Only the voter must have access to the vote. For example, the e-voting facilities should not enable the completed ballot to be stored on the voter's device and the vote cast later. No one other than the voter should have access to the vote, either on the device or during the transmission to the ballot box.

Standard No. 12. "The e-voting system shall not permit ..."

40. The e-voting system should be designed and operated in a way that ensures that all forms of manipulative influence are excluded. For example, sounds which can be associated with a candidate or an option, pop-up screens promoting a particular choice and similar devices should be prevented, as far as possible.

Standard No. 13. "The e-voting system shall provide the voter ..."

41. In non-electronic voting systems voters are able to cast a blank vote, that is, not to express a preference for the proposed choices. This standard provides that the possibility of leaving the ballot blank is maintained with e-voting.

42. It is a matter for each member state's domestic policy whether the intended spoiling of a ballot paper or intentional casting of a non-blank invalid vote is possible with e-voting as well.

Standard No. 14. "The e-voting system shall indicate clearly ..."

43. Generally speaking, the voting procedure is completed successfully when the electronic vote is deposited in the electronic ballot box. In the context of remote e-voting this means that the voting procedure is completed successfully only when the vote has been sent from the voter's voting device (PC, telephone,

etc.), over the Internet or another network and has reached its destination, that is the ballot box server.

44. The message confirms to the voter that his or her vote is deposited in the ballot box and thus will be counted. The voter then knows that he or she has cast his or her vote, which is important from the point of view of trusting the system and because of the principle that every vote cast has to be taken into account. Furthermore, the voter must be able to know at what moment the whole voting procedure is completed successfully and he or she can safely end the connection. Both messages (the successful casting of the ballot and the completion of the procedure) could be combined in one, if both events coincide.

IV. Secret suffrage

45. All international obligations and commitments pertaining to secret suffrage that bind a member state need to be implemented with any e-voting system used by that state.

Standard No. 16. "E-voting shall be organised in such a way ..."

46. Secrecy must apply to the entire procedure: in the pre-voting stage (for example, the transmitting of PINs or electronic tokens to voters), during the completion of the ballot paper, the casting and transmission of the ballot and during counting and any recounting of the votes.

Standard No. 17. "The e-voting system shall guarantee that votes ..."

47. This standard provides that it must never be possible to reconstruct the content of any voter's vote and link it to the voter who cast it.

48. In the context of (remote) e-voting special attention has to be given to the principles of free and secret suffrage. Only entitled voters are allowed to cast a vote, which means that every voter has to be authenticated and his/her right to vote has to be checked. Domestic legislation may vary on the extent of identification (indication of the voter's name, showing of an ID card, etc.), but the basic principle remains the same: in order to prevent multiple votes being cast or other misuse, the voter has to be authenticated and a record must be made and checked in order to establish whether he or she has already cast a vote.

49. At a certain stage in the remote voting process the voter's identity and the voter's vote may be connected in some way. If the content of the vote were to be made known at that stage, or if the connection between voter and vote were

to be kept and the content of the vote made known at a later stage, the secrecy of the vote would be breached. In traditional voting systems the separation of voter identification and vote is made by physical separation. This physical separation can easily be controlled by election officials and election observers. In non-remote e-voting processes the voter authentication and the vote could also be separated physically, as is the case if the e-voting system is used only for the casting of the vote. With a remote electronic voting system this separation has to be made electronically. The electronic separation requires specific technical solutions. This fact has to be taken into account when introducing e-voting.

50. In voting systems that provide a legal opportunity for voters to submit an advance vote and change it later (for example, Sweden), it must be possible to identify a specific person's sealed vote to be able to retract that specific vote. The identification and retraction of such a vote must be done without jeopardising the secrecy of the vote; in other words, a vote must be completely sealed throughout the voting, storage and retraction processes. But the sealed vote must still be linked to a specific voter.

51. The moment of inserting a vote into the electronic ballot box is the latest point in time at which the vote must be separated from the information on who has cast it – without any possibility of ever reconstructing this link.

52. In some cases domestic law requires a permanent link between the voter and the vote to exist and to be maintained during the election or referendum and for a specific period thereafter (for example, in the United Kingdom). In such cases, it has to be assured that the link between a voter and his or her ballot paper is sufficiently protected throughout the period in order to ensure the secrecy of the vote. This is only revealed pursuant to an order of a competent judicial authority and it must be ensured, that even where the link is so revealed, no voter is compelled to reveal how he or she has voted.

Standard No. 19. "Measures shall be taken to ensure ..."

53. The necessary measures would include, for example, that the votes cast must be stored randomly in the electronic ballot box. The order in which they are stored must not make it possible to reconstruct the order in which they arrived.

B. Procedural safeguards

54. The procedural safeguards ensure that all principles of democratic elections and referendums are implemented and maintained in an e-voting context.

I. Transparency

Standard No. 20. "Member states shall take steps to ensure that ..."

55. Confidence by voters and candidates in the voting system(s) used is essential, not only to participation but also to the democratic system of the member state. Full understanding of the e-voting system(s) in use is the basis for this confidence.

56. Traditional voting methods are simple and well tried and tested in member states. Voters are familiar with voting systems using ballot papers and ballot boxes and understand the general rules that govern how they should vote and how their vote is collected and counted unaltered. The introduction of e-voting produces a new situation in which voters will be less familiar with the electoral process and perhaps less able to understand the safeguards built into the e-voting system. Accordingly, as e-voting systems are introduced, it is likely that, in order to maintain voter understanding and confidence, steps will have to be taken to introduce the system to voters. Over time, it may be necessary to continue to take such steps in order to secure the understanding and confidence of voters who are unfamiliar with e-voting.

57. Confidence can be enhanced by providing voters with as much information as possible about the method of e-voting being used.

Standard No. 22. "Voters shall be provided with an opportunity to practise ..."

58. A new e-voting system may cause voters anxieties of different kinds. In order to promote understanding and confidence in any new e-voting system, including in its transparency, opportunities to try out the system should be provided before, and separately from, the moment of casting an electronic vote. Special attention should be paid to any voters who are not familiar with the new e-voting method, for example the elderly.

Standard No. 23. "Any observers, to the extent permitted by law ..."

59. There are various international and domestic obligations on election observation: by representatives of candidates, as well as by independent domestic and/or international observers. All member states are bound to the commitments of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE of 29 June 1990 to "invite observers from any other OSCE participating state and any appropriate private institution and organisation who may wish to do so to observe the course of their national

election proceedings [...] facilitate similar access for election proceedings held below the national level”.

60. Observers should be able to verify that the e-voting system itself is designed and operated in a way which respects the fundamental principles of democratic elections and referendums. Therefore, member states should have clear legal provisions on observers' access to the e-voting system documentation and audit data.

61. E-elections/e-referendums pose special challenges to observers, inherent in the electronic method of the election or referendum. Observers will thus have to be provided with an opportunity, in particular, to have access to relevant software information, to see physical and electronic safety measures for servers, to inspect and test certified devices, to have access to and test sites and information provided for remote e-voting, and to observe cast electronic votes entering the electronic ballot box and that votes are being counted. Security measures for telephone or Internet voting may, however, make it necessary not to allow the presence of observers in the computer room itself. In that case measures should be taken in order to give the observers the opportunity to monitor the activities.

II. Verifiability and accountability

Standard No. 24. “The components of the e-voting system ...”

62. Assessment that e-voting systems function correctly and that security is maintained is essential. This can be done by the independent evaluation or certification of the system as a whole or of its components, which requires disclosure of the critical system elements. The assessment can be carried out through, for example, disclosure of the system design, inspection of detailed documentation, source code disclosure, inspection of component evaluation and certification reports, in-depth penetration testing, etc. The actual level of disclosure of the system elements needed to achieve appropriate assurance depends on the specific features of the system, its components and the services provided.

Standard No. 26. “There shall be the possibility for a recount.”

63. The recount is a procedure that verifies election and referendum results that have already been established. There are different possibilities for recounts in the case of e-voting, which differ in their complexity and in their contribution to accountability. A very simple method of recounting can be produced by instructing the e-voting system to perform a second count. A second option is to transfer the electronic ballot box to a similar but distinct e-voting system and perform the second count on that system. A third option is to let the recount be

carried out by a different system, which is interoperable with the e-voting system. A fourth option is to produce, at some stage of the voting process, paper ballots and to use these for recounting.

64. To verify the result, it may not be sufficient only to conduct a recount. Depending on the architecture of the system used, there may be further elements that contribute to the correctness of the result. The confirmation that all votes cast have been considered is an example.

Standard No. 27. "The e-voting system shall ..."

65. If a re-run of an e-election or e-referendum becomes necessary, that re-run may not be possible without the support of the e-voting system that was used in the original election or referendum, even if that e-voting system is not to be used in the re-run itself. This may be the case if the persons who are entitled to vote can be identified only by using information that is available by means of that the original e-voting system.

III. Reliability and security

Standard No. 28. "The member state's authorities shall ensure ..."

66. The new voting channels need to be as reliable and secure as traditional voting methods. The member state has to guarantee that this is the case; the final responsibility can never be delegated to a voting system supplier.

Standard No. 29. "All possible steps shall be taken ..."

67. Throughout the whole electronic voting process, there must be no intervention unrelated to the voting which affects either the ballot and election or referendum server or the electronic ballot box server. The recommendation is not intended to suggest that every possible method of protection available must be used in every case. In each case a judgment will have to be made as to the nature and extent of the protection measures to be applied. This judgment will require a proper balance to be struck between different factors. For example, in a particular case a balance may need to be struck between the all-important need for security and the advisability of having systems that are easily usable by voters. In such a case usability must not override the need for high levels of security but may be a factor in determining which security measures should be adopted. A similar position might apply were a very small additional security benefit to be achievable but only at an excessively high cost.

Standard No. 30. "The e-voting system shall contain measures to preserve ..."

68. An e-voting system should be protected against malfunction and breakdown. However, the possibility of a breakdown can never be entirely excluded (see Appendix III, Standard No. 77).

Standard No. 31. "Before any e-election ..."

69. The standard requires that the correct functioning of an e-voting system is verified (cf. Standard No. 24). Furthermore, it has to be ensured that the verified e-voting system is actually being used during the e-election or e-referendum. Verification should prevent any e-voting system being installed where that system or any component of that system has been tampered with or might have been replaced. The authority needs to ensure that the correct system is put into service.

Standard No. 33. "While an electronic ballot box is open, any authorised intervention ..."

70. "Any" indicates that, if election observers are allowed by domestic law, then they should have access. Security measures for telephone or Internet voting may make it necessary to prohibit the presence of observers in the computer room. In that case measures should be taken in order to give the observers the opportunity to monitor the intervention.

Standard No. 34. "The e-voting system shall maintain ..."

71. From the moment the vote is cast, no one should be able to read or change it or relate the vote to the voter who cast it. This is achieved by the process of sealing the ballot box, and where the ballot box is remote from the voter, by sealing the vote throughout its transmission from voter to ballot box. In some circumstances, sealing has to be done by using encryption.

72. To seal any ballot box, physical and organisational measures are needed. These may include physically locking the box, and ensuring that more than one person guards it. In the case of an electronic ballot box, additional measures may be necessary, such as access controls, authorisation structures and firewalls.

73. To seal an electronic vote for its transmission from voter to the ballot box (remote from the voter), encryption is required in addition to physical and organisational measures.

74. A vote is sealed when its content has been subjected to measures ensuring that it cannot be read, changed, or related to the voter who cast it.

Operational standards

I. Notification

Standard No. 36. " Domestic legal provisions governing ... "

75. An e-election or e-referendum can differ from a traditional election or referendum with regard to the procedures that have to be followed by voters. Examples of potential differences are the period of time during which votes can be cast, the steps a voter has to take in order to participate in the e-election or e-referendum and the way the e-voting actually takes place. These differences should be communicated to the voter in order to avoid any misunderstanding of the procedures and in order to give the voter all the information necessary to be able to make an informed decision as to whether or not he/she wishes to use the available e-voting channels. Careful consideration should be given to deciding how much time the voter needs for this decision.

Standard No. 37. "The period in which an electronic vote can ... "

76. Communicating the period of time for voting is especially important where this period of time differs in the case of an e-voting channel. This difference arises particularly in the case of remote e-voting in which the choice may be made to have a different period of time for voting using the electronic voting channels, due to the specific nature of those channels.

Standard No. 38. "The voters shall be informed ... "

77. Communicating the procedures, and the steps the user has to take, is important because the use of electronic voting channels will in most cases mean that the voter has to have access to certain equipment in order to use a particular electronic voting channel. For example, in the case of the Internet as a channel, most personal computers that can connect to the Internet will be able to use this facility, but it is always possible that a small percentage of voters that use old computers or old software will not be able to use the Internet channel. Thus, it should be made clear what equipment is necessary in order to use a particular channel. Consideration should also be given to offering the voter the opportunity to try the suitability of his/her equipment before he/she decides to use a specific electronic voting channel. Consideration should also be given to allowing the voter to change his/her preferred electronic voting channel in the case that he/she cannot use that specific channel. For example, the voter could choose to switch from the Internet channel to the telephone channel, if both channels are being offered.

II. Voters

Standard No. 39. "There shall be a voters' register ..."

78. It is necessary to check whether or not a specific person has the right to vote and whether or not a specific voter has cast a vote. There are a variety of means to perform this check in non e-voting situations. Such checks can involve measures ranging from physically marking in a register persons who have voted to registering by electronic means the fact that a person has actually cast his/her vote.

79. For these checks to be accurate, it is necessary that the registers in question contain up-to-date information as to those who have a right to vote at the election or referendum in question. Therefore these registers need to be updated before an election or referendum takes place. It should be noted that the use of the word "register" in the singular does not necessarily imply that there must be one single register that contains all the voters in a whole country or region.

80. In the case of remote e-voting, these checks are necessarily performed using registers. Although it is feasible that in some cases paper-based registers could be used, in most remote e-voting schemes, the registers will have to be electronic. Where remote e-voting channels are available to a voter in parallel with voting in polling stations, the polling station officials should be able to verify whether that voter has already cast a vote.

81. The registers in question will in practice be created by different procedures. In some countries population registers exist which include almost all the voters (but may, for example, not include expatriate voters). Using these population registers it is possible to derive, often by electronic means, the registers that specifically contain the persons who are entitled to vote (the voters' registers). In other countries where these population registers do not exist, voters' registers have to be prepared by a registration procedure that, among other things, involves persons applying to be registered as voters. These procedures will differ from country to country.

82. Persons claiming the right to vote should be able to check whether they are registered on the voters' register and whether their personal information is correct. In some member states the voters' register may be published (or accessible to the public). In other member states, personal data protection laws allow persons to check only their own registration.

Standard No. 40. "The possibility of creating an electronic register ..."

83. It is conceivable that online registration will be offered to voters. This implies the existence of some means of electronic authentication through, for

example, a digital signature and the existence of electronic registers. It is also conceivable that voters are enabled to apply for remote e-voting in an online or electronic way, for example after they have registered themselves. It should be noted that, for both possibilities, a very substantial effort will be necessary in order to solve the problems of identification and authentication in a remote electronic way. Therefore, the standard only provides for online registration to be considered.

III. Candidates

Standard No. 43. "A list of candidates that is generated ..."

84. In order to offer the voters the voting options, complete lists of candidates must be created. These lists of candidates will be publicly presented in a variety of ways. Most common will be paper-based candidate lists. The use of new media, such as the Internet, for publicising this crucial information for the voter, is one of the ways in which more voters may be reached. Naturally, the Internet should not be the only way of publicising the candidate lists. If the Internet is used to create the candidate list (for example, by allowing online candidate nomination), it should be ensured that the lists of candidates generated are complete, accurate and authentic. This implies the use of digital signatures and certifying the website in an appropriate way.

85. In the case of non-remote e-voting, the voting machines in the polling station will probably contain all the information that is present on the ballot paper. With some types of voting machines, this information will be contained in a hardware display, for example on the physical buttons the voter has to press. In other situations, the information will be presented in digital form and one could speak of an electronic ballot.

IV. Voting

Standard No. 44. "It is particularly important, where remote e-voting takes place ..."

86. The system for checking voters must be such that it is permanently updated with regard to those who have already cast a vote. However, if some voters are allowed to cast a vote only in the polling station and a separate register is being kept for those voters, the register of the remote e-voting system does not have to be updated with regard to those voters. In such a case, other methods may be required in order to prevent voters voting both in a polling station and by the other means available.

87. The introduction of remote e-voting brings with it the question of how the periods of time for voting in the polling station and remote e-voting are related. At first sight, it would seem logical that, for both methods of voting the same periods of time should apply, in order to avoid complications and distinctions. However, reasons that can lead to different periods of time being used include:

- when casting a vote in a polling station is the fall-back option for voters who are within the national territory of the election or referendum in case the electronic voting channel breaks down, the closing time for the electronic voting channel may have to be before the closing time of the polling station.

- when the system is designed and operated in such a way that voters can choose between channels without prior registration and the channels used do not have a common register in which it is noted which voters have already cast their vote, the periods of time when these channels are available should in general not overlap.

88. Whatever the outcome of these architectural considerations, counting should only start after the closure of all the channels.

Standard No. 45. "Remote e-voting may start and/or end at an earlier ..."

89. For various reasons, the period of remote e-voting may be longer than the period during which the polling stations are open. These reasons include providing a better service for citizens and enhancing accessibility.

90. However, remote e-voting should not continue after the end of the voting period at polling stations. In the case of the e-voting system being unavailable (for example in the case of a voter's PC not working due to a power failure), the voter, who is resident or staying within the country where the election or referendum takes place, should still be able to go to the polling station to cast his or her vote. If e-voting continued after polling stations had closed, the voter would not have this possibility. Future developments may, however, demonstrate that this recommendation as to the time at which e-voting should end is unnecessary. This is a matter that may be reviewed when the Council of Europe next considers the effects of this recommendation, and it would be beneficial if member states could include any experience they have of the issue in any reports they make to the Council on their consideration of e-voting or their e-voting experiences.

91. In order to accommodate possible delays in the transmission of electronic information, the acceptance of electronic votes cast before the end of the e-voting period should remain open for a sufficient period of time after the closure of the e-voting period (see Standard No. 96, Appendix III to the recommendation).

Standard No. 46. "For every e-voting channel, support ..."

92. Support and guidance arrangements on voting procedures should be in place regardless of the specific channel used. In the case of electronic voting channels, for each electronic voting channel these arrangements will be available using at least the same electronic voting channel. That is, a website with help information and e-mail facilities should be in place when the Internet is the channel and a telephone hotline should be in place when voting by telephone is possible. Furthermore, fall-back arrangements on a different remote channel should be provided for situations in which one of the electronic voting channels is out of order. For example, a telephone hotline might be a suitable alternative to remote e-voting over the Internet.

93. These support and guidance arrangements should not endanger the secrecy of the vote.

Standard No. 47. "There shall be equality in the manner of presentation ..."

94. Each voting option should be equally accessible to the voter within each channel. Equality of presentation may not be possible or appropriate between different channels. Mobile phone screens, digital TV screens, and PC screens display information in different ways.

95. It should be recognised that, although the arrangement of candidate names on screens might seem to be a purely technical matter, it is of a far more important nature and thus cannot be left solely to the technical designers of the e-voting system.

96. In order to ensure equality, it is also necessary to provide protection measures to prevent the omission of information that should appear on the electronic ballot. In the absence of such measures there would be a risk that the result of the election or referendum would be affected because a possible choice for the voter had been omitted from some or all of the ballots cast by electronic means.

Standard No. 48. "The electronic ballot by which ..."

97. During the casting of the vote, the voter's immediate environment should be free from objects and information that could influence his/her choice in a partisan way. In the case of the Internet, this environment includes, in particular, the screens that are generated on a voter's computer when accessing the e-voting website. These screens should not contain more information about the choices than paper ballots, such as pop-up screens that promote a specific candidate or audio elements that are associated with a particular candidate or point of view.

98. "Other messages" means partisan messages that may influence the voter, other than those allowed by domestic legal provisions. It does not prevent the display of, for example, official information on voting options.

Standard No. 49. "If it is decided that information about voting options will be ..."

99. This standard does not conflict with the previous standard. It deals with the process of decision making, whereas the previous standard deals with the process of casting a vote.

Standard No. 50. "Before casting a vote using a remote e-voting system ..."

100. Voting using the Internet is not currently a common practice. Unless the attention of members of the public is specifically drawn to the fact that Internet voting is real voting at a real election or referendum there is a risk that they may mistakenly imagine that they are taking part in a fake election or referendum or a test. On the other hand, if too little attention is drawn to the fact that people are participating in a demonstration or test version, they could get the impression that they have already voted. Also, an election or referendum might be confused with an opinion poll or vice-versa.

Standards Nos. 51 and 52. "A remote e-voting system ..." and "In a supervised environment ..."

101. In a supervised environment, the e-voting system should include provision for the disappearance of any information that could be used as proof of the content of the vote cast. If the national electoral legislation requires that the e-voting system supplies the voter with a paper proof of his/her electronic vote, this proof should be subject to the same secrecy requirements as a paper ballot. The voter should not be able to show this proof to any other person, or take it out of the polling station. For instance, the voter could be required to deposit the paper proof in a box in the polling station, or in a device which destroys it.

102. In a remote e-voting system using the Internet, the voter has to be able to delete information connected to his or her vote from the device used to cast the vote. One of the features of the most common way to use the Internet, that is by means of a "browser" on the voter's machine and a "server" on the side of the election officials, is that the display and storage of information on the voter's side cannot entirely be controlled by the "server". This makes it necessary to pay specific attention to the way in which the anonymity and secrecy of the vote is realised in e-voting systems. There are at least three layers to be considered. The first one is the web application level. The second level is that of the browser. The third level is that of the utility software on the computer of the voter.

- the web application should not allow the user to retain a copy of his or her vote. This means that the application should not offer the functionality of printing, saving or storing the vote or (part of) the screen on which the vote is visible.

- the browser also should not offer the option of printing the screen on which the vote is visible. It should be noted that browsers can and do retain information in several ways. For example, by using the “back” button on a browser, one or more previous screens can be displayed. As far as possible, this generic functionality of browsers should be disabled by the web application. At the very least, there should be no storing of information after the voter has finished casting the vote.

- the third level that has to be accounted for is pieces of software that can record in some way what actions a specific user of a computer has performed. Three rather common examples are screen shot utilities, utilities that make films of the sequence of screens and utilities that record the key strokes a user makes. The e-voting system may not be able to prevent the use of such utilities.

Standard No. 55. “Any decoding required for the counting ...”

103. The encryption of votes may be necessary to secure the anonymity of voting. In many cases the vote is encrypted before starting the transmission via networks, is held encrypted in the ballot box and is decoded before counting. The counting is carried out with decoded votes, which cannot be related to any voter.

104. However, there are encryption methods that do not require decoding before votes are counted (homomorphic encryption). Counting can then be performed without disclosing the content of encrypted votes. In some cases it may even be necessary for counting to be performed while votes are in the encrypted state, in order to secure anonymity.

Appendix III

Technical requirements

Introduction to technical requirements

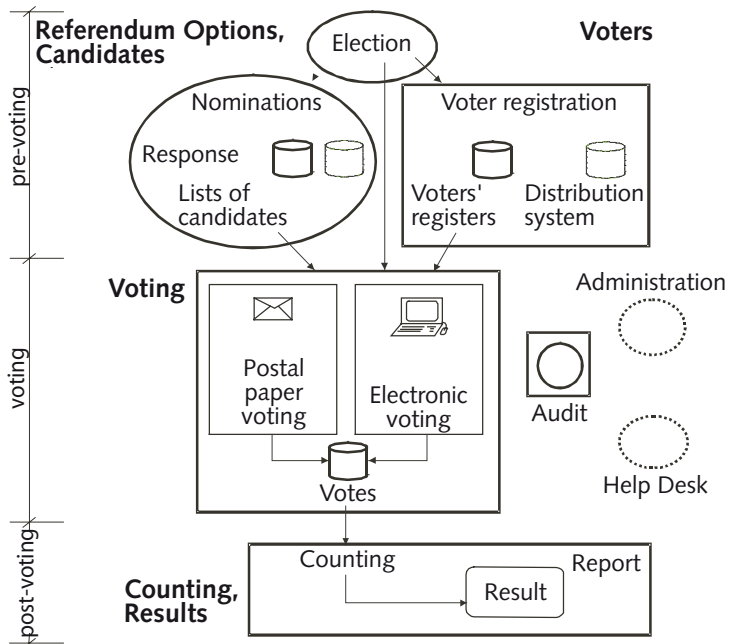
105. Electronic systems can be used to assist one or more of the different stages of an election or referendum. When considering the use of electronic systems for election or referendum purposes, it is necessary to confirm the complete and proper functioning of these systems. To this end, this document provides a set of technical requirements to help those who want to create such a system.

106. It may be that in a given election or referendum, not all stages will be conducted by electronic means. It is therefore important that functionalities are ordered in such a way that the main election or referendum stages are implemented as separate units.

107. Traditionally these main stages, as shown in the following figure, are:

- announcement of election or referendum,
- voter registration,
- candidate nomination and registration, or determination of referendum options,
- voting,
- counting,
- declaration of the result,
- audit.

Figure 1: EML process model (simplified; from EML v4.0a, Figure 2B)



108. The elements displayed above are the fundamental elements of an election or referendum system, which should be ordered in a way that makes it easy to associate them with their traditional counterparts. These elements are:

- the voters' register,
- the candidates list or options list (which the voter may choose from),
- the electronic ballot box,
- the counting of results.

109. The technical requirements cover six different areas: accessibility, interoperability, system operation, security, auditing and certification. Each area is detailed in a separate chapter both in the recommendation and in the explanatory memorandum. After the last one, certification, there is a description of a methodology for risk analysis.

A. Accessibility

Standard No. 61. "Measures shall be taken to ensure ..."

110. In order to guarantee accessibility and ease of use of e-election or e-referendum systems, consideration must be given to different user-related constraints linked to age, language, disability and lifestyle.

111. For example, individuals with a visual impairment or with dyslexia may need screen reading devices, sharply contrasting text and backgrounds, as well as the possibility of adjusting the text size in their Web browsers or on voting machines. Users with communication impairments may prefer graphically presented information. Those with co-ordination impairments may prefer using a keyboard rather than a mouse. Kiosks need to be adapted to the needs of mobility impaired users.

112. Voters should be supplied with appropriate instructions, which are easy to understand and follow.

Standard No. 62. "Users shall be involved in the design of e-voting systems ..."

113. The need for accessibility of e-voting systems means that systems should be designed in such a way that as many voters as possible, and ultimately all voters, can use them.

114. Products and services must be functional, suitably adapted to the age-range and needs of the public, yet without unnecessarily complicated or expensive features that only provide slight benefits.

115. Both these requirements might be achieved with a collaborative approach involving the development team and a users' panel.

Standard No. 63. "Users shall be supplied, ..., with additional facilities ..."

116. The World Wide Web Consortium was created in October 1994 to lead the World Wide Web to its full potential by developing common protocols that promote its evolution and ensure its interoperability. W3C has around 400 member organisations from all over the world and has earned international recognition for its contributions to the growth of the Web. The W3C develops interoperable technologies (specifications, guidelines, software and tools) and is a forum for information, commerce, communication, and collective understanding.

117. To promote a high degree of usability for people with disabilities, the W3C started the Web Accessibility Initiative (WAI). In co-ordination with organisations around the world, the WAI pursues Web accessibility through five main areas of work: technology, guidelines, tools, education and outreach, and research and development. The WAI has already produced a set of standards and guidelines in support of accessibility (for example Web contents accessibility guidelines, authoring tools accessibility guidelines, user agent accessibility guidelines, XML accessibility guidelines, etc.). More information is available from the WAI website: <http://www.w3.org/WAI>.

Standard No. 64. "Consideration shall be given, ..., to their compatibility with existing ..."

118. It is a constant in system development that a new version may be so different from the previous one that they are incompatible. To avoid such a situation, it might be helpful to create and maintain a list of compatible systems, products and specific equipments. International bodies like OASIS (see Interoperability) may be helpful in this respect.

Standard No. 65. "The presentation of the voting options shall be optimised for the voter."

119. Products and services must be adaptable to the users' functional restrictions and specific circumstances without infringing the equality principle. This can be achieved by offering different versions of the same product, changes to key parameters, modular design, ancillaries or other methods.

B. Interoperability

Standard No. 66. "Open standards shall be used ..."

120. In order to be able to use e-voting systems or services from different suppliers, these must be interoperable. Interoperability means that the input and output conform to open standards and especially open standards for e-voting.

121. The main benefits of using open standards are:

- greater choice of products and suppliers,
- less dependency on a single supplier,
- avoidance of proprietary lock-in,
- stability or reduction in costs,
- easier accommodation of future changes.

Standard No. 67. "At present, the Election Markup Language (EML) ..."

122. The Organization for the Advancement of Structured Information Standards (OASIS) set up the Election and Voter Services Technical Committee in the spring of 2001 to develop standards for election and voter services information using XML. Further information about the membership and work of the committee is available at <http://www.oasis-open.org/committees/election>.

123. The Election Markup Language (EML), the first XML specification of its kind, is at present the only standard for the structured interchange of data among hardware, software, and service providers who engage in any aspect of providing election or voter services. Its function is to ensure open, secure, standardised and interoperable interfaces between the components of election systems. EML is a set of data and message definitions described as XML schemas. It is continually evolving to meet the needs of different voting systems based on experience gained from successive e-elections and e-referendums. The newest available version at the time when the recommendation is adopted is the version that is to serve as a reference to every member state that wants to use EML when implementing an e-voting system. The way this reference will be updated in the future should be defined.

124. Technological developments, unforeseeable at the time of the adoption of the recommendation, may mean that any system valid at that time, including EML, may one day not be the most appropriate system for e-elections or e-referendums, and thus not be used by individual or groups of countries.

Standard No. 68. "In cases which imply specific election or referendum data requirements ..."

125. As electoral provisions differ between member states, it must be possible to adapt the standard to local needs. EML, being XML-based, provides for a localisation procedure that allows, for instance, additional data or a particular structure. There are several methods of localising XML schemas, for example Schematron. It should be borne in mind that any localisation should not prevent

an equivalent module from another supplier from working in the localised environment.

C. Systems operation

126. This section refers to equipment, infrastructure and software running in a controlled environment. These include servers, communication devices, kiosk machines and their related operating systems and other pieces of software. This excludes voters' personal devices like PCs, organisers, mobile phones and their related software as well as public network equipment, devices and software.

Standard No. 69. "The competent electoral authorities shall publish ..."

127. Constant development in information and communication technologies makes it necessary for those in charge of the infrastructure to keep up to date with hardware and software. This calls for recurrent adaptations to central systems and voting facilities used in a controlled environment (for example, voting machines). Any adaptation will need to be certified according to the rules in force in each state before it can be brought into operation.

128. It is essential that electronic voting systems remain as transparent as possible for authorities and citizens alike. Exact, full, up-to-date descriptions of the hardware and software components should be published, thus enabling interested groups to verify for themselves that the systems in use correspond to the ones certified by the competent authorities. The results of certification should be made available to the authorities, political parties and, depending on legal provisions, citizens.

Standard No. 70. "Those responsible for operating the equipment shall draw up a contingency procedure ..."

Standard No. 71. "Sufficient backup arrangements shall be in place ..."

Standard No. 72. "Those responsible for the equipment shall use special procedures to ensure ..."

129. An electronic voting system, more so than any other electronic system in public use, must possess reliability to the highest degree – hence the need to formalise the procedures for dealing with special cases and problems and to provide adequate resources for troubleshooting the infrastructure.

130. The electoral authorities must define a specific service level before running the system. Based on the desired service level, a risk analysis should be made and

scenarios should be established. These will imply procedures, backup arrangements, resources reservation and so on.

Standard No. 73. "Before each election or referendum, the equipment shall be checked and approved ..."

131. As it is not possible for every member of the electorate to exercise his/her right to transparency of the ballot personally, the competent authorities, the candidates and any observers (where relevant), should be able to have the whole or part of the system inspected by a specialist entity.

132. A clear distinction should be made between checking done on a regular basis after each election or referendum, and the checking done whenever the system is modified in any respect. In the first case, employees of the entity running the election or referendum system might do the checking. However in the second case an external body should do the checking, as the check is closer to being a certification procedure. See the certification section below for more information.

Standard No. 74. "All technical operations shall be subject to a formal control procedure ..."

133. All work done on hardware or software carries intrinsic technical and human risks, which should be kept to a minimum while an operation is in progress. That is why automatic controls are to be preferred and limits placed on remote manipulations without official supervision. If it is necessary to intervene, these risks (of intrusion, human error, sabotage, etc.) are to be reduced as far as possible. This should be done by establishing a working procedure to be followed and validated, which restricts the number of persons authorised to do the work to a small supervised group and requires the verification of each act through the physical presence of two or more qualified persons. Those persons should comply with the security rules laid down by the competent authority.

134. The electoral authorities must be made aware of all critical changes made on the system in order to anticipate any consequences and choose the appropriate policy to communicate such changes.

Standard No. 75. "Key e-election or e-referendum equipment shall be located ..."

135. For their safekeeping, it is highly desirable that the central systems be installed in secure, controlled locations. Physical access should be restricted. To be able to react after a physical disaster, an alternative location solution should also be planned, with the appropriate equipment pre-reserved.

136. All election or referendum data that has to be stored should be stored in a secure manner. This means several copies of data will be needed on several types of information support (hard disk, tapes, USB memory key, and printout) and they should be stored in different locations.

Standard No. 76. "Where incidents that could threaten the integrity of the system occur ..."

137. It is important that any incident be reported to the competent authorities, who are responsible for specifying communication rules in keeping with the applicable legislation and ensuring that political parties and voters are properly informed.

D. Security

Introduction

138. Appropriate security measures are essential prerequisites for e-voting. As with any technical system, an e-voting system may be exposed to errors and deliberate or unintended attempts to circumvent security measures. Attacks need to be prevented and the cardinal principles of universal, equal, free, secret and direct suffrage need to be maintained. Particular attention is to be paid to possible systematic attacks, as these can particularly affect results. In general, e-elections and e-referendums involving the use of e-voting should be as reliable and secure as elections or referendums which do not involve the use of electronic means (see recommendation, paragraph i.).

139. Technical security requirements of the recommendation follow accepted IT security practices and are based on a risk analysis (see F below). The requirements are based on the following criteria:

- technology neutrality: the purpose is to develop the technical security recommendations in a technology neutral approach, and not to restrict solutions to a limited set of technologies or voting channels (for example solely concentrating on the Internet);
- sustainability: the security requirements are to outlast rapid technological changes. This is closely related to technology neutrality;
- methodology: accepted practices and standards are to be followed to develop the security requirements in order to provide confidence in the result;
- versatility: the requirements are applicable to all forms of e-elections and e-referendums, that is voting machines at polling stations, kiosk voting in controlled environments, and remote e-voting in uncontrolled environments;

– EML: the technical security requirements have been based on the Election Markup Language (EML) process model that is a basis of work carried out in the subgroup on core technical standards.

IT security terms

140. The following IT security terms are frequently used in this section. The definitions have mainly been taken from relevant ISO standards.

Access control	The prevention of unauthorised use of a resource (ISO 7498-2:1989)
Authentication	The provision of assurance of the claimed identity of an entity (ISO/IEC 10181-2:1996)
Availability	The property of being accessible and usable upon demand (TR 13335-1:1996)
Confidentiality	The property that information is not made available or disclosed to unauthorised individuals, entities, or processes (ISO 7498-2:1989) (TR 13335-1:1996)
Protection profile	An implementation-independent set of security requirements for a category of products that meet specific consumer needs (ISO 15408)
User or actor	An entity that is authorised to interact with the e-voting system as a whole or with its components. This includes, <i>inter alia</i> , voters, candidates, auditors, etc.

I. General requirements

Standard No. 77. "Technical and organisational measures shall be taken ..."

141. Service level agreements (SLAs) usually lay down availability and failure rates. A certain level of service degradation may be acceptable during failure periods, for example when a server in a cluster breaks. In registration processes even short periods of service disruptions or maintenance periods may be tolerable. The system developers, however, need to consider deliberate denial of service attacks and shall document the contingency reserve in system performance

that has been designated. Independent penetration tests can reduce the probability of successful deliberate service disruption.

142. The services whose availability must be ensured depend on the stage: pre-voting, voting, or post-voting. In the pre-voting stage, nominations, the registration processes and its services are to be available, in the voting stage the voting processes and its services, and in the post-voting stage the counting and reporting processes and its services. Auditing processes need to be available for all stages. The pre-defined limits for SLAs, tolerable failure rates or service degradation may, however, be different for the various stages or services.

Standard No. 78. "The e-voting system shall maintain the privacy of individuals ..."

143. Depending on national practices there may be further confidentiality requirements with respect to the candidate's decision. In that case those requirements must be met.

Standard No. 79. "The e-voting system shall perform regular checks ..."

Standard No. 80. "The e-voting system shall restrict access ..."

Standard No. 81. "The e-voting system shall protect authentication data ..."

144. The objective refers to all subjects. Services, such as information services for the voter prior to entering the voting process, which clearly do not need authentication, are outside the scope of this document.

Standard No. 82. "Identification of voters and candidates in a way that they can unmistakably be distinguished ..."

145. Unique identification refers to validating the identity of a specific person by means of one or more features so that the person can unmistakably be distinguished from all other persons. The voters' registers therefore need to provide means to avoid digital twins – that is, persons holding the same identification data. In cases where central voters' registers are used, unique identification may implicitly be given by the entry of the person in the database, while with interconnected voters' registers additional means may be necessary.

146. As someone may be both a voter and a candidate or both an administrator and a voter, it is important to prevent the same person having the same identification in the system for all his or her roles. Authentication can be identity-based or role-based. While identity-based authentication is advisable for voters registering or casting a vote, or candidate nomination, it might be sufficient to have role-based authentication for administrators, auditors and others.

Standard No. 83. "E-voting systems shall generate reliable and sufficiently detailed observation data ..."

Standard No. 84. "The e-voting system shall maintain reliable synchronised time sources ..."

147. There may be different accuracy requirements for different consumers of the time source, such as different tolerances for the registration event and casting a vote. This may lead to multiple time sources or a single time source that provides the highest accuracy. The term "time mark" has been used as an indication for marking the data. There are several means depending on the situation. Secure time stamps might be needed for critical events, whereas, for example, continuous sequence numbers or preserving the sequence may be sufficient for log entries. Note that time stamps on votes may jeopardise the confidentiality of the vote, and thus careful consideration should be given as to how and if they should be used in relation to ballots or votes.

Standard No. 85. " Electoral authorities have overall responsibility ..."

148. The electoral authorities have responsibility for ensuring that the e-voting system is in compliance with the security standards. The notion of an independent body to assess compliance with the security standards covers both independence from the system manufacturer or service provider, and independence from political interference. The former shall provide assurance that the technical security measures are effective and correctly implemented. The latter shall provide confidence that there is no inappropriate political influence in the evaluation of the e-voting system. The independent body may be a governmental organisation, such as an agency in charge of national IT security certification, or the electoral authority itself; or a private or international organisation such as evaluation laboratories or certification bodies, for instance those that are accredited for national or international evaluation schemes such as BS7799/ISO17799, Common Criteria, or ITSEC. Designation of an independent body shall be transparent.

149. If evaluated and certified Common Criteria / ISO 15408 Protection Profiles are developed based on these security recommendations, independent assessment is given under the Common Criteria scheme.

II. Requirements in pre-voting stages

Standard No. 86. "The authenticity, availability and integrity of the voters' registers ..."

150. Data-origin authentication can be provided, for example, by electronic signatures in fully electronic processes. In semi-electronic processes, data-origin

authentication may also employ conventional security measures, such as manual signatures, seals and couriers.

Standard No. 87. "The fact that candidate nomination and, ..."

151. This can be ensured by, for example, time marks or by confirmation of a trustworthy system.

Standard No. 88. "The fact that voter registration ..."

152. This can be ensured by, for example, time marks or by confirmation of a trustworthy system.

III. Requirements in the voting stage

Standard No. 89. "The integrity of data communicated from the pre-voting stage ..."

153. Depending on the approach followed, the data actually needed in the voting stage may vary. For example, lists of candidates are required in the voting stage if the ballot is dynamically generated in that stage, whereas an alternative is to generate ballots in the pre-voting stage and to communicate the ballots to the voting stage. Therefore, Standard No. 89 does not list the data whose integrity and authenticity are to be retained, but refers generally to "data communicated".

154. The voters' register may not be required if in two-phase models an anonymous voting token is used to establish the right to vote. Note that voters' registers in the polling station might be needed to prevent multiple votes (electronically and on paper-ballot) or where voting is compulsory and thus a list of those who have voted is essential.

Standard No. 90. "It shall be ensured that the e-voting system presents ..."

155. Aspects to be considered are that fraudulent servers may be introduced, for example faking an official server by tampering with the domain name system (DNS), using a similar domain name to that of the official server, by "man-in-the-middle" attacks, or Trojan horses in the voter's system replacing the original ballot or fading in counterfeit ballots. Electronic signatures applied to the ballot by the electoral authority allow for verification of the ballot. This shall, however, not violate the confidentiality of the vote.

Standard No. 91. "The fact that a vote has been cast ..."

156. This can be ensured by, for example, time marks or confirmation of a trustworthy system. A time mark attached to the vote may not, however, leave data trails that can reveal the vote.

Standard No. 92. "Sufficient means shall be provided to ensure ..."

157. In remote voting environments, such as Internet voting, usually the voter or third parties control the environment. There are limited means by which the e-voting system can control whether a secure environment exists. Provision should be made to enable voters to have confidence in the system, such as measures to ensure that genuine software is used, or recommendations on how to protect the system environment.

Standard No. 93. "Residual information holding the voter's decision ..."

158. During the process of casting a vote, information carrying the voter's decision may be kept in various locations for technical reasons. For example, in Internet voting scenarios using a PC, data carrying the voter's decision may be kept in the PC's memory, the browser cache, the video memory, swap files or temporary files. Depending on the system, other storage locations may need to be considered. The term "residual information" refers to information that remains accessible at the various locations after the vote has been cast and which may reveal the voter's decision. The standard advises the system developers or service providers to design the e-voting system in such a way that this information may be deleted after the vote has been cast. However, technically there may be limited means to ensure this in a remote voting environment. Nevertheless, every measure possible shall be taken to delete such residual information when the vote has been cast.

Standard No. 94. "The e-voting system shall at first ensure ..."

159. In cases where anonymous voting tokens prove that a voter is eligible to vote, identification of the voter may not be required. Multiple votes under anonymous authentication need to be prevented.

Standard No. 96. "After the end of the e-voting period, ..."

160. In remote voting scenarios, a higher load on the services might occur in the short period just before close of the poll. This may lead to increased load and delays before a cast vote enters the electronic ballot box. Votes that have been cast in time, however, shall not be discarded as a result of such delays. Thus, a period of grace shall be given in order to overcome overload periods right before the close of the poll. In other words, the processing of the votes must not be shut down immediately with the closing time of the service, if such increased delays are to be expected.

IV. Requirements in post-voting stages

Standard No. 97. "The integrity of data communicated during the voting stage ..."

161. Data-origin authentication can be ensured, for example by electronic signatures in fully electronic processes. In semi-electronic processes, data-origin authentication may also employ conventional security measures, such as manual signatures and couriers. Cast votes and any results derived from those votes are the most valuable assets in an election or referendum. Thus, technical measures are preferable in order to protect these assets in transfer.

Standard No. 98. "The counting process shall accurately count the votes ..."

162. To gain confidence, it is most important that the counting process can be reproduced and that this can be done with a different system from a different source.

Standard No. 99. "The e-voting system shall maintain the availability and integrity of the electronic ballot box ..."

163. The information kept in the electronic ballot box must be securely saved for as long as this is necessary to permit any recount or legal challenge or for the period after the election required by the electoral process in the member state in question.

E. Audit

I. General requirements

Standard No. 100. "The audit system shall be designed and implemented ..."

Standard No. 101. "End-to-end auditing of an e-voting system ..."

164. Auditing of the election or referendum processes is the means by which, in particular, the processes used to collect and count the vote can be examined, in order to confirm the authenticity of the result.

165. Auditing of the system operation, resources and communication infrastructure is the means by which trust and confidence can be established in operation of the ICT system(s) used for e-voting. This requires integrity and authenticity of the audit information and trust in the deployed auditing systems.

166. The greatest danger to e-voting systems is if attacks on systems are not detected and the attack affects the result of the vote. This is why independent and extensive security monitoring, auditing, cross-checking and reporting are a critical part of e-voting systems.

167. E-voting systems should therefore have audit facilities for each of the main components (for example vote and count). Audit facilities should be present on different levels of the system: logical, application, technical.

168. Audit facilities on the logical level should report upon the use that is being made of the system.

169. Audit facilities on the application level should give information on the activities that the system supports in order to enable reconstruction of the system's operation.

170. Audit facilities on the technical level should provide information on the activities that the infrastructure that is being used supports. This varies from routine information on, for example, specific load information and system malfunction, to specific information on the signals an intrusion detection system (IDS) gives with regard to possible attacks.

II. Recording

Standard No. 102. "The audit system shall be open and comprehensive ..."

171. Audit trails are critical for e-voting systems, so they must be as comprehensive as possible and open to scrutiny by authorised third parties. Audited data shall be provided at various points and levels within an electronic voting system; for example data can be audited at the EML, IT system or communications infrastructure levels.

172. At the EML level there are many standardised open interface points; data flows at these interface points can be easily observed and monitored. Audit systems shall also cover non EML interfaces, for example interfaces within the communications infrastructure, databases and system management functions.

173. There should be procedural requirements specified for the use of audit systems while running election or referendum systems and predetermined procedures for rapid response scenarios.

Standard No. 103. "The audit system shall record times, events and actions ..."

174. Automated tools and system procedures shall enable the data to be analysed and reported on in a fast and accurate manner, thus enabling rapid corrective action.

175. The audit system shall provide verifiable reports on:

- cross-checks of data, including EML-based data,
- system or network attacks,
- intrusion detection and reporting,

- data manipulation,
- fraud and fraud attempts.

176. The audit system shall maintain records of any attacks on the operation of the election or referendum system or its communications infrastructure. The system shall include a functionality that detects and reports attempts at hacking, intrusion or manipulation. Detection of attacks on the voting system shall be logged, reported and acted on immediately.

177. The audit system shall log all counts and recounts, including all decisions made, actions taken, or exceptions made during the counting process.

III. Monitoring

Standard No. 104. "The audit system shall provide the ability to oversee the election ..."

178. The audit system should provide the ability for any observer to monitor the real time progress of the election or referendum without revealing the potential end count/result. For example, observers should be able to see the total number of ballots being cast in real time, so that independent cross-checks can be performed.

Standard No. 105. "Disclosure of the audit information to unauthorised persons shall be prevented."

Standard No. 106. "The audit system shall maintain voter anonymity all times."

179. Audit systems by their very nature gather a lot of information. However, if too much information is kept, the confidentiality of the vote may be compromised. Clearly, an audit system should maintain voter anonymity at all times, except when specifically required otherwise under domestic legal provisions. In all cases the information gathered by the audit system has to be protected against unauthorised access.

IV. Verifiability

Standard No. 107. "The audit system shall provide the ability to cross-check and verify ..."

180. The audit system shall be able to detect voter fraud and provide proof that all counted votes are authentic. All occurrence of attempted voter fraud shall be logged; the audit system logs shall contain data that provides the ability to cross-check credentials giving the right to vote and shall ensure that all counted votes

were cast by a voter with a right to do so and that all authentic votes have been counted as such.

181. The audit system shall include all election or referendum data required by electoral officials to cross reference and account for all cast ballots, thereby verifying the correct operations of the voting system and the legitimacy of the result. A count of ballots is required to match the total votes cast, including valid and invalid votes. The audit system shall give information to facilitate an independent cross-check and verify the correct operation of the e-election or e-referendum system and the accuracy of the result. The audit system shall be able to ensure that no authentic votes are lost and that there are no votes that are unaccounted for.

182. Cross-checking of independent audit information increases the likelihood of detection of hidden attacks on e-voting systems, as the attack has to be hidden in a consistent way on both the e-voting system and the independent audit information.

Standard No. 108. "The audit system shall provide the ability to verify that an e-election ..."

183. The audit system shall provide the ability for any observer to be able to directly or indirectly observe the election or referendum and verify that the number of votes cast is accurate. This, therefore, requires the system to provide open, standard interfaces with comprehensive observation facilities subject to the needs of confidentiality of the vote.

184. The audit system shall be publicly verifiable. It may be necessary to prove to the public that the principles of democratic elections and referendums have been upheld and that the results are correct.

185. This requires the ability to prove to third parties that the results are a true and accurate representation of the authentic votes cast and meet the legal requirements under which the election or referendum was held.

V. Other

Standard No. 109. "The audit system shall be protected against attacks ..."

186. The audit system shall meet the same security requirements specified for the implementation of the e-voting system itself.

187. The audit system shall itself be protected against attacks intended or likely to corrupt, alter or lose records. Detection of any insider or outsider attacks on the audit system shall be reported and acted on immediately.

Standard No. 110. "Member states shall take adequate steps to ensure that ..."

188. It is not enough simply to protect the information gathered by the audit system against unauthorised access. It is also necessary to take legal and organisational measures to control the persons in charge or having access to the audit system. Accordingly, anyone having access to the audit system should be subject to an accreditation process.

F. Certification

Standard No. 111. "Member states shall introduce certification processes ..."

189. Election officials should consider the use of techniques ranging from testing to formal certification in order to ensure, before the election or referendum takes place, that the system does exactly what it is supposed to do.

190. In the future there may be a number of e-voting systems available as well as individual components. It might become very hard for any electoral authority to make sure a particular product is ready to be used, will operate correctly and will produce the right results. A certification process will be very useful in this respect as it should provide evidence as to the effectiveness of the components and thus may reduce the testing required when building a complete system.

Standard No. 112. "In order to enhance international co-operation ..."

191. Where agencies participate in international organisations that provide mutual recognition arrangements, member states can benefit from their work and hence reduce their costs of testing and certification.

Risk analysis – methodology

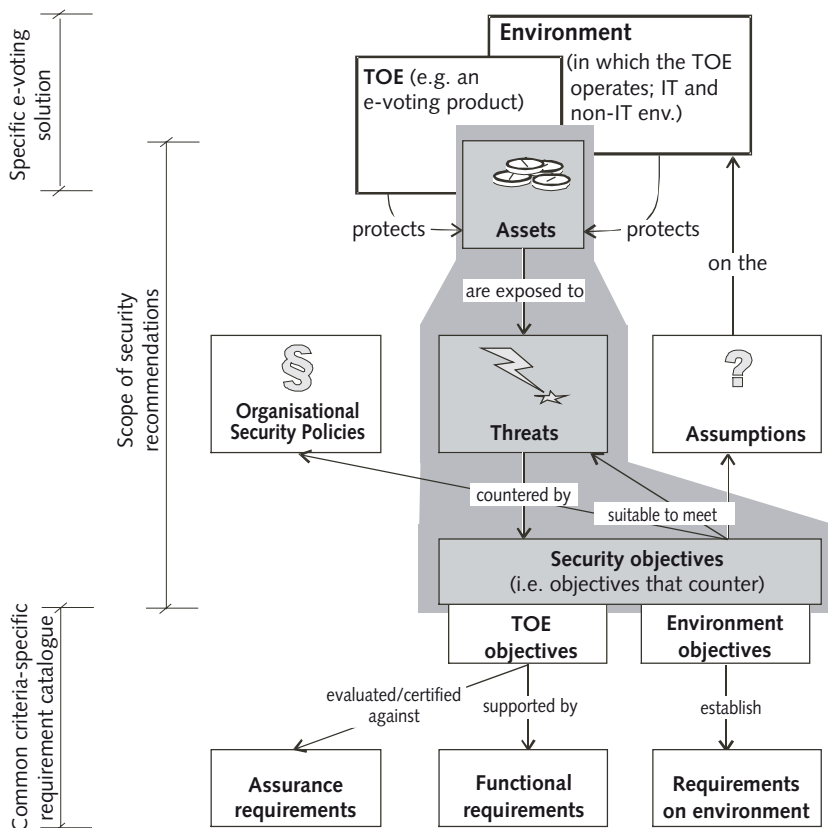
The technical security recommendations have been developed along the Common Criteria CC/ISO 15408. This offers a methodical approach to defining the security objectives in the same way that CC Protection Profiles (PPs) are a means of describing security requirements in a technology neutral manner. Moreover, CC is an IT security product evaluation scheme that is internationally accepted¹ and thus following this standard will enable the security recommendations to be developed into PP's that can be taken up by the industry.

1. The CC Mutual Recognition Agreement (MRA) has been signed by several Council of Europe member states. As of June 2004, the MRA signatory nations are Austria, Australia, Canada, Finland, France, Germany, Greece, Hungary, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Spain, Sweden, Turkey, the United Kingdom, and the United States of America.

The document, however, does not represent an actual complete PP, rather it “borrows” from CC by using that methodology to develop the requirements. This serves to demonstrate the completeness and effectiveness of the principles underpinning technical security recommendations. This methodology is explained in the following paragraphs.

Figure 2 below illustrates the CC basics. This shall introduce the ideas used in developing the technical security recommendations to readers unfamiliar with schemes like CC. Those elements actually used in this document are shaded in grey.

Figure 2: Common Criteria methodology overview and scope of draft security recommendations (shaded grey)



The CC defines a security product (for example an e-election system as a whole or a component of it) to be assessed as a target of evaluation (TOE). The TOE together with its environment protects the “assets”. By clearly defining the assets the elements needing protection are identified. This forms the basis for a comprehensive threat analysis by examining the assets that are stored or communicated. From these threats, security objectives can be derived and an analysis can be made as to whether the objectives are complete and effectively counter the threats (this approach has been used for developing the technical security recommendations for e-voting).

No organisational policies and related objectives have been defined in the current stage.

The distinction between a product and its environment has not been followed, as this is assumed to be too prescriptive for the purpose of Council of Europe recommendations and related rather to the evaluation of actual products. However, it should be noted that usually not all threats can be countered by technical means – leading to assumptions in CC terms. For example, it seems virtually impossible to avoid family voting in unattended remote voting scenarios by technical means.

Moreover, further elaboration of the security objectives by mapping functional requirements and assurance requirements using the CC catalogues has been omitted.

In summary, the methodology that has been “borrowed” from CC will generate a complete set of security objectives that lead to security recommendations. This document adopts some formal constraints from CC, even though only some underlying basics of CC have been used. This will assist developers to develop actual CC Protection Profiles or Security Targets and thus encourages independent evaluations of products.

Assets

Given the process model shown in Figure 1 the following assets can be identified:

General (all stages)

1. *Authentication data*: information used to verify the claimed identity of a user (authentication data must be maintained in confidentiality).
2. *System integrity*: the authenticity of the e-election system or its components that carry out the intended functions (integrity of the e-election system or its components must be maintained).

3. *Verifiability and observability*: the information used to audit the correct functioning of the e-election or e-referendum system or components of it and information to carry out observation of the election or referendum event (availability and integrity of audit logs and observation information must be maintained).

Pre-voting stage

1. *Candidate decision*: the decision to accept/decline a nomination, if provided by domestic law (there might be privacy requirements with respect to the nominee's decision).

2. *List of candidates*: see the main body of the recommendation for a definition of terms (availability and integrity of the list of candidates must be maintained; there might be confidentiality requirements until nominations are accepted or declined).

3. *Voters register*: the list of those eligible to vote at an election or referendum (integrity of the voters' register must be maintained; depending on the domestic legislation there may be confidentiality requirements for privacy reasons).

4. *Nomination process*: the process of nominating candidates, recording the candidate decision, if provided by domestic law, and establishing the lists of candidates (availability of the nomination process must be maintained).

5. *Privacy, data-protection*: the e-election system holds personal data, such as the voters' register or the candidates' decisions. This data may not be disclosed to unauthorised third parties (different domestic legislation may vary between member states as to publication/disclosure of voters' registers).

Application note: one aspect to be considered is the legal requirement of whether the voters' register has to be public (as in the United Kingdom) or not (as in Denmark). However, even if the voters' register is public information, granting unrestricted electronic access has privacy implications (for example a national register of citizens and residences which can be misused). Thus, the means by which public access is granted should be considered.

6. *Registration process*: the process for registration of voters or establishing voters' registers (availability of the registration process must be maintained).

7. *Right to vote*: the voter's right to vote – including any provision preventing multiple voting by one voter (the right to vote must be maintained).

8. *Nomination period*: the period during which nomination can take place (the fact that a nomination has become effective within the eligible time frame shall be ascertainable).

9. *Registration period*: the period during which registration can take place (the fact that a registration has been performed within the eligible timeframe shall be ascertainable).

Voting stage

1. *Ballot*: see definitions in the recommendation (the correct ballot must be presented to the voter, the integrity of the ballot must be maintained).

2. *List of candidates* (if required, for example for generating the ballot): communicated from the pre-voting stage (see Pre-voting stage above, see Glossary for the definition)(availability and integrity of the list of candidates must be maintained).

3. *Vote*: see definitions in the recommendations (availability, integrity and confidentiality of the votes must be maintained until the counting process and beyond for recounting purposes).

4. *Voters' registers*: communicated from the pre-voting stage (see Pre-voting stage above); the list of those eligible to vote at an election or referendum (integrity of the voters' register must be maintained; depending on the domestic legislation there may be confidentiality requirements for privacy/data-protection reasons). Regarding application: the voters' register may not be required if in two-phase models an anonymous voting token establishes the right to vote. Note that voters' registers in the polling station might be needed to prevent multiple votes (electronically and on paper-ballot) or where voters are required to vote.

5. *Right to vote*: the voter's right to vote – including any provision preventing multiple voting by one voter (the right to vote must be maintained).

6. *Voting period*: the timeframe in which voting is permitted (the fact that a vote has been cast in the voting period must be ascertainable).

7. *Voter's decision to vote*: the vote entered in the e-election system (the voter's decision must remain a secret when examining a vote or residual data at the election-system; confidentiality and integrity of the voter's choice must be maintained).

Application note: the data to be protected is, as a minimum, the vote. However, further data may be present while making the choice or after the vote has been cast.

8. *Voter's privacy, data protection*: the e-election system holds voters' personal data, such as the voters' register. This data may not be disclosed to unauthorised third parties (confidentiality of the voters' register, different domestic legislation on publication/disclosure of voters' registers may exist).

Application note: one aspect to be considered is the legal requirement of whether the voters' register has to be public (as in the United Kingdom) or not (as in Denmark). However, even if the voters' register is public information, granting unrestricted electronic access has privacy implications (for example a national register of citizens and residences which can be misused). Thus, the means by which public access is granted should be considered.

9. *Casting of a vote*: the process by which an individual casts a vote (availability of the voting process must be maintained).

Post-voting stage

1. *List of candidates* (if required, for example for generating the election result or the election report): communicated from the pre-voting stage (see Pre-voting stage above); see definitions in the recommendation (availability and integrity of the list of candidates must be maintained).

2. *Vote*: communicated from the voting stage; see definitions in the recommendation (see Voting stage above). The main assets are the votes (availability, integrity and confidentiality of the votes must be maintained until the counting process and beyond for recounting purposes).

3. *Counting process*: the process of turning votes into the results of an election/referendum (availability of the counting process must be maintained).

4. *Election report*: the report generated by the e-election system (integrity of the report needs to be maintained).

5. *Counting result*: the result of counting votes and the prevention of premature partial results (counting needs to be correct, timely, and integrity of the result must be maintained).

6. *Reporting process*: the process generating an election or referendum report (availability of the reporting process must be maintained).

Subject	Definition
Administrator	A person that performs initialisation, operation or other administrative e-election system functions
Auditor	A person, internal or external, responsible for assessing the condition, reliability and security of the e-election system (authenticates as person eligible to access audit logs)
Authority	An entity, both a person or process, authorised by the electoral authority(authenticates to initiate election – or referendum – related events, such as initiating an event, generating voters' registers, generating results, etc.)
Candidate	A voting option consisting of a person and/or a group of persons and/or a political party
Observer	A person authorised to observe an election or a referendum (authenticates as observer)
Proposer	A user – an individual, a group, entities such as political parties or an authority – nominating a candidate or candidates (authenticates as user eligible to nominate)
Voter	A person who is entitled to cast a vote in a particular election or referendum
Threat agent	Definition
Attacker	A human or process, both internal or external, mounting an attack to the e-election system or to parts of it. Also a subject authenticated as such but acting outside its role (internal attack, e.g. an administrator aiming to gain access to the voter's decision) acting outside its role. The main goal of an attacker is to access, modify or insert sensitive information or to disrupt services
Malfunction	An external event that disrupts services or internal failure or breakdown of the e-election system or its services

Threats

This section describes the threats to the assets. The threats are elaborated for each stage (pre-voting, voting and post-voting), as defined in the EML process model, illustrated in Figure 1, respectively. This gives a certain level of modular-

ity, which allows investigation of the threat analysis for each process stage. General threats that are common to all process stages are given in a separate section. Threats that are common to two process stages are indicated as such.

General (all stages)

T.Audit_Forgery – *Forgery of audit data*

An attacker generates, modifies, inserts or deletes audit data. This affects verifiability and observability.

Application note: audit is addressed in Appendix III in a specific audit section, and in a specific audit section in this explanatory memorandum, respectively.

T.Auth_Disclose – *Disclosure of authentication data*

An attacker gains access to authentication data, enabling the attacker to impersonate a legitimate user (administrator, auditor, authority, candidate, observer, proposer, or voter) of the e-election system.

T.Hack – *Hacking of the e-election or e-referendum system*

An attacker, internal or external, interacts with the e-election or e-referendum system, its interfaces or parts of it to exploit vulnerabilities. This may arbitrarily compromise security and affects all assets.

Application note: hacking usually refers to external attackers trying to break into the system. However, an attacker has been defined as internal and external, and an authenticated user such as an administrator acting beyond its legitimate role may also exploit vulnerabilities.

T.Observ_Forgery – *Forgery of observation data*

An attacker generates, modifies, inserts or deletes observation information. This affects verifiability and observability.

T.System_Forgery – *Forgery of system components*

An attacker replaces the e-election system, or parts of it, with counterfeit elements or presents false components as genuine system parts. This threatens system integrity, but may also result in arbitrary compromise of assets.

Application note: the threat is also vital if in remote e-voting scenarios the attacker redirects the voter to counterfeit systems, such as Internet voting servers that look similar to the original official servers. One example is if the attacker controls the domain name service (DNS) and redirects connections to an official server – for example www.voting.official.at – to a different Internet address. A similar situation can occur if the attacker owns a domain name that is spelled similarly – for example www.voting.official.at (note the typo).

Pre-voting stage

T.CandList_Disclose – *Disclosure of list of candidates information*

An attacker prematurely gains knowledge of the list of candidates, or parts of it, or the candidate's decision.

Application note: there may be different domestic requirements governing whether a candidate's decision may be disclosed.

T.CandList_Modify – *Impersonating during candidate nominations*

An attacker impersonates a proposer nominating a candidate. An attacker impersonates a candidate accepting/declining a nomination. An attacker modifies or deletes the list of candidates.

T.Malfunction_pre – *Malfunction of systems or services in pre-voting stage*

A malfunction irrecoverably destroys the list of candidates, or the voters' register or the services provided by the nomination process or the registration process. Destruction of the voters' register also affects the right to vote.

T.Nomin_DOS – *Denial-of-service against the nomination process*

An attacker disrupts the nomination process or its services; therefore the availability of the process during the nomination period is not ensured. An attacker prevents generation of a list of candidates. Disruption of the service also affects the candidate's ability to make a candidate decision.

T.Nomin_Time – *Manipulation of nomination period/time*

An attacker compromises the time source of the nomination process or alters the recorded time when a nomination occurred in such a way that either persons nominated outside the nomination periods are accepted or those nominated within this eligible timeframe are disqualified. This affects the nomination period, the list of candidates, and the timeliness of the candidate's decision.

T.Privacy – *Disclosure of personal data*

An attacker reveals voters' or candidates' personal data.

Application note: different domestic legislation on publication/disclosure of voters' registers or candidates' decisions may exist.

T.Registr_DOS – *Denial-of-service against the registration process*

An attacker disrupts the registration process or its services; therefore, the availability of the process during the registration period is not ensured. An attacker prevents generation of voters' registers. This also affects the right to vote.

T.Registr_Time – *Manipulation of registration period/time*

An attacker compromises the time source of the registration process or alters the recorded time when a registration occurred, in such a way that either those reg-

istering outside the registration period are accepted or registrations within this eligible timeframe are disqualified. This affects the time period, the voters' register, and the right to vote.

T.VotReg_Disclose – *Disclosure of voters' register information*

An attacker gains knowledge of the voters' register or parts of it.

Application note: there may be different domestic requirements governing which entities have access to the voters' register or whether the voters' register is confidential at all.

T.VotReg_Modify – *Impersonating during voter registration*

An attacker impersonates an entity eligible to be registered for voting and registers/de-registers voters. An attacker modifies or deletes the voters' register. This affects the right to vote.

Voting stage

T.Ballot_Forgery – *Forgery of the ballot or the vote*

An attacker forges the vote carrying the voter's decision or presents a forged ballot to the voter. This affects the vote, as an unintended decision is represented in the vote.

T.CandList_Modify (see *Pre-voting stage*)

The threat arises if the list of candidates is required in the voting stage, for example to generate the ballot. If the ballot is generated from a forged or modified list of candidates, the vote and the voter's decision are affected, as a forged ballot is generated (see T.Ballot_Forgery).

T.CommD_Avail_pre – *Availability/Integrity of data from pre-voting stage*

An attacker modifies or disrupts data communicated from the pre-voting stages. This results in incorrect or missing lists of candidates or voters' registers in the election or referendum stage. A modified voters' register affects the voter's right to vote.

Refinement: the threat arises if the list of candidates or option list are required in the voting stage, for example to generate the ballot.

Refinement: the threat arises if the ballot is generated from a forged or modified list of candidates. The vote and the voter's decision are affected, as a forged ballot is generated (see T.Ballot_Forgery).

Application note: the voters' register may not be required if in two-phase models an anonymous voting token establishes the right to vote. Note that voters' registers in the polling station may be needed to prevent multiple votes being cast by the same voter (electronically and on paper-ballot) or in case of a requirement that voters must vote.

T.CommD_Sec_pre – *Confidentiality of communicated data*

An attacker gains knowledge of communicated voters' registers.

Application note: there may be different domestic requirements governing which entities have access to the voters' register or whether the voters' register is confidential at all.

Application note: the voters' register may not be required if in two-phase models an anonymous voting token establishes the right to vote. Note that voters' registers in the polling station might be needed to prevent multiple votes being cast (electronically and on paper-ballot) or in case of a requirement that voters must vote.

T.Malfunction_elect – *Malfunction of systems or services in voting stage*

A malfunction irrecoverably destroys the list of candidates, the voters' register, votes, or the services provided by the voting process. This also affects the voter's right to vote. If the ballot is generated from the modified voters' register, the vote and the voter's decision are affected, as a forged ballot is generated. A malfunction prevents a vote entering the electronic ballot box without the voter being aware or notified of the fact.

Refinement: the threat arises if the list of candidates or option list is required in the voting stage, for example to generate the ballot.

Application note: the voters' register may not be required if in two-phase models an anonymous voting token establishes the right to vote. Note that voters' registers in the polling station might be needed to prevent multiple votes being cast (electronically and on paper-ballot) or in case of a requirement that voters must vote.

T.Vote_Confidentiality – *Confidentiality of the voter's decision*

An attacker gains knowledge of a vote. An attacker discovers the identity of the voter from the vote.

T.Vote_DOS – *Denial-of-service against the voting process*

An attacker disrupts the voting process or its services; therefore, the availability of the process during the voting period is not ensured. An attacker prevents a voter casting a vote using the e-election system, which affects the voter's right to vote. Denial of service attacks or system overload delay the transmission of the vote and prevent the vote entering the electronic ballot box before the end of the voting period.

T.Vote_Modify – *Availability and integrity of votes*

An attacker modifies votes, which results in a vote that does not reflect the voter's decision, or an attacker irrecoverably destroys votes.

T.Vote_Multiple – *Impersonating an eligible voter*

An attacker or a voter casts multiple votes via a particular voting channel or by using multiple voting channels. This affects the right to vote, which also covers the provision preventing multiple votes being cast.

T.Vote_Time – *Manipulation of voting time/period*

An attacker compromises the time source of the voting process or alters the recorded time when a vote has been cast, such that either a vote cast outside the voting period is accepted or a vote cast within the voting period is disqualified. This affects the right to vote.

T.Vote_Trail – *Compromising data trails*

An attacker gains access to data trails that establish a link between a vote and the voter's identity. This compromises the voter's decision.

T.Voter_Impers – *Impersonating an eligible voter*

An attacker impersonates an eligible voter. This affects the right to vote, as well as the voter's decision and the vote, as a vote which is different from the intention of the legitimate voter is cast.

T.Voter_Privacy – *Disclosure of personal data*

An attacker reads a voter's personal data.

Application note: different domestic legislation on publication/disclosure of voters' registers may exist.

T.VotReg_Disclose (see *Pre-voting stage*)

Application note: the voters' register may not be required if in two-phase models an anonymous voting token establishes the right to vote. Note that voters' registers in the polling station might be needed to prevent multiple votes being cast (electronically and on paper-ballot) or in case of a requirement that voters must vote.

T.VotReg_Modify (see *Pre-voting stage*)

Application note: the voters' register may not be required if in two-phase models an anonymous voting token establishes the right to vote. Note that voters' registers in the polling station might be needed to prevent multiple votes being cast (electronically and on paper-ballot) or in case of a requirement that voters must vote.

*Post-voting stage***T.Commd_Avail_elec** – *Availability/Integrity of data from voting stage*

An attacker modifies or disrupts data communicated from the voting stages. This results in incorrect or missing votes – thus an incorrect result – or incorrect or missing lists of candidates.

Application note: the list of candidates or options may be required to generate the result or the election or referendum report.

T.Commd_Sec_elec – *Confidentiality of communicated data from voting stage*

An attacker gains knowledge of communicated votes.

T.Count_DOS – *Denial-of-service against the counting process*

An attacker disrupts the counting process or its services, thus the availability of the counting result is not ensured.

T.Malfunction_post – *Malfunction of systems or services in the post-voting stage*

A malfunction irrecoverably destroys votes, disrupts the counting process or leads to errors in the counting process which affects the result. A malfunction disrupts the ability to generate an election or referendum report or irrecoverably destroys the report.

T.MisCount – *Incorrect counting*

An attacker interferes with the counting process, which leads to incorrect results.

T.Partial_Count – *Partial counting*

An attacker initiates counting of disaggregated sub-sets of the votes which may reveal the vote on the basis of data trails.

T.Premature_Count – *Premature counting or disclosure of partial results*

An attacker initiates counting before the desired time and gains access to partial or premature results. Partial results also affect the confidentiality of votes on the basis of data trails.

T.Report_DOS – *Denial-of-service against the reporting process*

An attacker disrupts the reporting process or its services; therefore, the availability of the election or referendum report is not ensured.

T.Report_Modify – *Modification of the election or referendum report*

An attacker modifies the election or referendum report.

T.Result_Modify – *Modification of the result*

An attacker modifies the result.

T.Vote_Confidentiality (see *Voting stage*)

T.Vote_Duplicates – *Modification of the result*

An attacker or a malfunction generates duplicates of votes that cannot be detected as such, which affects the result.

T.Vote_Modify (see *Voting stage*)

T.Vote_Trail (see Voting stage)

The following Tables 1 to 3 give an overview of which threat affects which asset in each of the process stages. Assets and threats that appear in several process stages (besides the general assets/threats) are marked *.

Table 1: Assets and threats in the pre-voting stage

Assets \ Threats		General			Pre-voting stage								
		Authentication data	Verifiab./Observab.	System integrity	Candidate decision	List of candidates*	Voters' register*	Nomination process	Nomination period	Privacy*	Registration process	Registration period	Right to vote*
General	T.Audit_Forgery		X										
	T.Auth_Disclose	X											
	T.Hack	X	X	X	X	X	X	X	X	X	X	X	X
	T.Observ_Forgery		X										
	T.System_Forgery	X	X	X	X	X	X	X	X	X	X	X	X
Pre-voting stage	T.CandList_Disclose				X	X				X			
	T.CandList_Modify *				X	X							
	T.Malfunction_pre					X	X	X			X		X
	T.Nomin_DOS				X	X		X					
	T.Nomin_Time				X	X			X				
	T.Privacy				X	X	X			X			
	T.Registr_DOS						X				X		X
	T.Registr_Time						X					X	
	T.VotReg_Disclose *						X			X			
	T.VotReg_Modify *						X						X

Table 2: Assets and threats in the voting stage

<div>Assets</div> <div>Threats</div>		General			Voting stage								
		Authentication data	Verifiab./Observab.	System integrity	Ballot	List of candidates *	Voters' register *	Right to vote *	Vote *	Voter's decision *	Voter's privacy	Voting period	Casting of a vote
	T.Audit_Forgery		X										
	T.Auth_Disclose	X											
	T.Hack	X	X	X	X	X	X	X	X	X	X	X	X
	T.Observ_Forgery		X										
	T.System_Forgery	X	X	X	X	X	X	X	X	X	X	X	X
General	T.Ballot_Forgery				X				X	X			
	T.CandList_Modify *				X	X			X	X			
	T.CommD_Avail_pre					X	X	X					
	T.CommD_Sec_pre						X						
	T.Malfunction_elect				X	X	X	X	X	X			X
	T.Vote_Confidentiality*								X	X			
	T.Vote_DOS							X					X
	T.Vote_Modify *								X	X			
	T.Vote_Multiple							X					
	T.Vote_Time							X				X	
	T.Vote_Trail *									X			
	T.Voter_Impers							X	X	X			
	T.Voter_Privacy						X				X		
	T.VotReg_Disclose *						X				X		
	T.VotReg_Modify *						X	X					

Table 3: Assets and threats in the post-voting stage

<div>Assets</div> <div>Threats</div>		General			Post-voting stage					
		Authentication data	Verifiab./Observab.	System integrity	List of candidates*	Counting process	Counting result	Election report	Vote	Reporting process
	T.Audit_Forgery		X							
	T.Auth_Disclose	X								
	T.Hack	X	X	X	X	X	X	X	X	X
	T.Observ_Forgery		X							
	T.System_Forgery	X	X	X	X	X	X	X	X	X
General	T.CommD_Avail_elec				X		X		X	
	T.CommD_Sec_elec								X	
	T.Count_DOS					X	X			
	T.Malfunction_Post					X	X	X	X	
	T.MisCount						X			
	T.Partial_Count								X	X
	T.Premature_Count						X		X	X
	T.Report_DOS							X		
	T.Report_Modify							X		
	T.Result_Modify						X			
	T.Vote_Confidentiality*								X	X
	T.Vote_Duplicates						X		X	
	T.Vote_Modify *						X		X	
	T.Vote_Trail *								X	X

Security objectives

This section identifies and defines the security objectives for e-voting. The objectives reflect the stated intent and counter the identified threats. The security objectives given in this section represent the security requirements that are listed under “Security” in Appendix III.

General objectives

O.Access_Cntrl – Access control

The e-voting system shall restrict access to its services, depending on the user identity or the user role, to those services explicitly assigned to this user or role. User authentication shall be effective before any action can be carried out.

O.Assessment – Independent assessment

Election authorities have overall responsibility for compliance with these security requirements which shall be assessed by independent bodies.

Application note: in case evaluated and certified CC/ISO 15408 Protection Profiles are developed based on these security recommendations, independent assessment is given under the CC scheme.

O.Auth_User – User authentication

The e-voting system shall protect authentication data so that unauthorised entities cannot misuse, intercept, modify, or otherwise gain knowledge of authentication data or part of it. In uncontrolled environments, authentication based on cryptographic mechanisms is advisable.

Application note: the objective refers to all subjects. Services such as information services for the voter prior to entering the voting process, which clearly do not need authentication, are outside the scope of this document.

O.Avail – Availability of the e-election processes

Technical and organisational measures shall be taken to ensure that no data will be permanently lost in the event of a breakdown or a fault affecting the e-voting system. The e-voting system shall contain measures to preserve the availability of its services during the e-voting process. It shall resist, in particular, malfunction, breakdowns or denial of service attacks.

Application note: service level agreements (SLAs) usually lay down availability and failure rates. A certain level of service degradation may be acceptable during failure periods, for example when a server in a cluster breaks. In registration processes short periods of service disruptions or maintenance periods may be tolerable. The system developer, however, needs to consider deliberate denial of service attacks and shall document the contingency reserve in system performance that has been designated. Independent penetration tests can reduce the probability of successful deliberate service disruption.

Refinement: the services to be preserved in availability depend on the stage –

pre-voting, voting, post-voting. In the pre-voting stage, the nomination and the registration processes and its services are to be available; in the voting stage the voting processes and its services; and in the post-voting stage the counting and reporting processes and its services. Auditing processes need to be available in all stages. The pre-defined limits for SLAs, tolerable failure rates, or service degradation may, however, be different for the various stages or services.

O.Ident_User – *Identity-based user authentication*

Identification of voters and candidates in a way that they can unmistakably be distinguished from other persons (unique identification) shall be ensured.

Application note: authentication can be identity-based or role-based. While identity-based authentication is advisable for voters registering or casting a vote, or candidates accepting/declining a nomination, it might be sufficient to have role-based authentication for administrators, auditors, etc.

O.Observation_Data – *Observation data*

E-voting systems shall generate reliable and sufficiently detailed observation data so that election observation can be carried out. The time at which an event generated observation data shall be reliably determinable. The authenticity, availability and integrity of the data shall be maintained.

O.Privacy – *Privacy of voters and candidates*

The e-voting system shall maintain the privacy of individuals. Confidentiality of voters' registers stored in or communicated by the e-voting system shall be maintained.

Refinement: when stored in or communicated to uncontrolled environments, the voters' registers should be sealed.

Application note: depending on domestic practices, there might be further confidentiality requirements with respect to the candidate's decision. In that case confidentiality is required.

O.Reliable_Time – *Reliable time source*

The e-voting system shall maintain reliable synchronised time sources. The accuracy of the time source shall be sufficient to maintain time marks for audit trails and observation data, as well as for maintaining the time limits for registration, nomination, voting, or counting.

Application note: there may be different accuracy requirements for different consumers of the time source, such as different tolerances for the registration event and casting a vote. This may lead to multiple time sources or a single time source that provides the highest accuracy. The term "time mark" has been used as an indication for marking the data. There are several means depending on the situation: secure time stamps might be needed for critical events, whereas continuous sequence numbers, or preserving the sequence, for example, may be sufficient for log entries. Note that exact time stamps on votes may also jeopardise the confidentiality of the voter's decision.

O.Secure_Oper – *Secure operation and system integrity*

The e-voting system shall perform regular checks to ensure that its components operate in accordance with its technical specifications and that its services are available.

Pre-voting stage

O.Data_Sec – *Availability and integrity of the election or referendum, options, lists of candidates*

The authenticity, availability and integrity of the voters' registers and lists of candidates shall be maintained. The source of the data shall be authenticated. Provisions on data protection shall be taken into account.

Refinement: depending on domestic requirements, practice with respect to confidentiality/publication of candidate's decision or the voters' register may differ. Application note: data-origin authentication can be provided by, for example, electronic signatures in fully electronic processes. In semi-electronic processes, data-origin authentication may also employ conventional security measures, such as manual signatures, seals and couriers.

O.Time_Nominate – *Timely nomination*

The fact that candidate nomination and, if required, the decision of the candidate and/or the competent electoral authority to accept a nomination has happened within the prescribed time limits shall be ascertainable.

Application note: this can be provided by, for example, time marks or a confirmation of a trustworthy system.

O.Time_Register – *Timely registration*

The fact that voter registration has happened within the prescribed time limits shall be ascertainable.

Application note: this can be provided by, for example, time marks or a confirmation of a trustworthy system.

Voting stage

O.Authentic_Vote – *Ensure authentic vote*

The e-voting system shall ensure that the voter's choice is correctly represented in the vote and that the sealed vote enters the electronic ballot box.

O.Ballot_Correct – *Present an authentic ballot*

It shall be ensured that the e-voting system presents an authentic ballot to the voter. In the case of remote e-voting, the voter shall be informed about the means to verify that a connection to the official server has been established and the authentic ballot been presented.

Application note: aspects to be considered are that counterfeit servers may be given, such as: faking an official server by tampering the domain name system

(DNS); using a similar domain name to that of the official server; “man-in-the-middle” attacks; or Trojan horses on the voter’s system replacing the original ballot or introducing counterfeit ballots. Electronic signatures applied to the ballot by the electoral authority enable the ballot to be verified. This must, however, not violate the confidentiality of the voter’s decision. Therefore, the data used to prove an authentic ballot shall not lead to uniquely identifiable ballots, nor shall such unique data be removed when the voter casts the vote.

O.Delayed_Vote – *Accept delayed votes*

After the end of the e-voting period, no voters shall be allowed to gain access to the e-voting system. However, the acceptance of electronic votes into the electronic ballot box shall remain open for a sufficient period of time to allow for any delays in the passing of messages over the e-voting channel.

Application note: in remote voting scenarios, there may be a higher load on the services in the short period right before closing the poll. This may lead to increased load and increased delays until a cast vote enters the electronic ballot box. Votes that have been cast in time, however, shall be accepted. Thus, the server shall not be shut down immediately at the closing time of the service, if such increased delays are to be expected.

O.Sec_Transfer_pre – *Secure transfer of communicated data*

Data communicated from the pre-voting stage (for example voters’ registers and lists of candidates) shall be maintained in their integrity. Data-origin authentication shall be carried out.

Refinement: lists of candidates are required in the voting stage, if the ballot is generated in the election stage.

Refinement: the voters’ register may not be required if in two-phase models an anonymous voting token establishes the right to vote. Note that voters’ registers in the polling station might be needed to prevent multiple votes being cast (electronically and on paper-ballot) or in case of a requirement that voters must vote.

Application note: data-origin authentication can be provided, for example, by electronic signatures in fully electronic processes. In semi-electronic processes, data-origin authentication may also employ conventional security measures, such as manual signatures, seals and couriers.

O.System_Secure – *Secure voting system*

Sufficient means shall be provided to ensure that the systems used by the voters to cast the vote can be protected against influence that can modify the vote.

Refinement: in unattended remote voting environments, such as Internet voting, usually the voter or third parties control the environment. There are limited means by which the election or referendum system can control whether a secure environment exists. Means that allow the voters to gain confidence in the system must be provided, such as means to ensure that genuine software is used, or recommendations on how to protect the system environment.

O.Residual_Info – *Destroy residual information*

Residual information holding the voter's decision or the display of the voter's choice shall be destroyed when the vote has been cast. In the case of remote e-voting, the voter shall be provided with information on how to delete, where that is possible, from the device used to cast the vote.

Application note: residual information may be given in the cache of Internet browsers, data swapped to disks, temporary files, etc. There are some means to develop Internet applications in such a way that certain types of residual information can be avoided. However, the effectiveness of such measures is dependent on the application used by the voter, and its configuration. In remote voting environments, such as Internet voting, usually the voter or third parties control the environment. There are limited means by which the e-election system can control whether a secure environment exists. Means that allow the voters to gain confidence in the system may be provided, such as means to ensure that genuine software is used, or recommendations on how to protect the system environment.

O.Time_Vote – *Timely casting of a vote*

The fact that a vote has been cast within the prescribed time limits shall be ascertainable.

Application note: this can be provided by, for example, time stamps or a confirmation of a trustworthy system. A time-stamp attached to the cast vote, however, may not leave data trails that can reveal the voter's decision (see O.Vote_Confidentiality).

O.Vote_Confidentiality – *Confidentiality of a voter*

Votes and voter information shall remain sealed as long as the data is held in a manner where they can be associated. Authentication information shall be separated from the voter's decision at a pre-defined stage in the e-election or e-referendum.

Note: this objective gives rise to technical requirements. It is, however, represented in the "Reliability and security" legal standard 35.

O.Vote_Secure – *Availability, confidentiality and integrity of cast votes*

The e-voting system shall maintain the availability and integrity of the votes. It shall also maintain the confidentiality of the votes and keep them sealed until the counting process. If stored or communicated outside controlled environments, the votes shall be encrypted.

Note: this objective gives rise to technical requirements. It is also, however, represented in the "Reliability and security" legal standard 34.

Application note: encryption is the technology of choice to seal a vote, particularly in remote voting scenarios or when cast votes are transmitted via public channels. For voting machines in polling stations physical protection may also serve to seal a vote. The explanation for sealing (see recommendation)

distinguishes between encryption and, for example, closed channels. In uncontrolled environments the highest level of security measures is required in order to protect the votes, which are the primary asset of an e-election, and the confidentiality of the choice made by voters, which is probably their main concern. Accordingly, this requirement explicitly calls for encryption.

O.Voter_Eligible – *Authentication of a voter eligible to cast a vote*

The e-voting system shall at first ensure that a user who tries to vote is eligible to vote. The e-voting system shall authenticate the voter and shall ensure that only the appropriate number of votes per voter is cast and stored in the electronic ballot box.

Refinement: in cases where anonymous voting tokens are used to prove that a voter is eligible to vote, authentication of the voter may not be required. However, even in such cases it is still necessary to ensure that the casting of multiple votes is prevented.

Post-voting stage

O.Count_Correct – *Correctness and reproducibility of the counting result*

The counting process shall accurately count the votes. The counting of votes shall be reproducible.

O.Result_Secure – *Availability and integrity of ballot box and result*

The e-voting system shall maintain the availability and integrity of the electronic ballot box and the output of the counting process as long as required.

O.Sec_Transfer_vote – *Secure transmission of communicated data*

The integrity of data communicated from the voting stage (for example votes, voters' registers, lists of candidates) shall be maintained. Data-origin authentication shall be carried out.

Application note: data-origin authentication can be provided by, for example, electronic signatures in fully electronic processes. In semi-electronic processes, data-origin authentication may also employ conventional security measures, such as manual signatures and couriers. Cast votes or partially counted results are, however, the most valuable asset in an election or referendum. Thus, it is preferable to provide technical measures to protect these assets during the transmission.

O.Vote_Confidentiality – *see Voting stage*

O.Vote_Secure – *see Voting stage*

The following Tables 4 to 7 map the objectives to the threats that are countered. Threats that appear in several process stages (besides the general assets/threats) are marked *.

Table 4: Mapping of objectives to threats. General objectives – all stages

Objectives Threats		O.Access_Cntrl	O.Assessment	O.Auth_User	O.Avail	O.Ident_User	O.Observation_Data	O.Privacy	O.Reliable_Time	O.Secure_Oper
General	T.Audit_Forgery	X	Independent assessment does not directly counter threats, but provides confidence in the correctness. In other words, threats are indirectly countered.	X					X	
	T.Auth_Disclose	X		X						
	T.Hack	X		X	X					X
	T.Observ_Forgery	X		X			X		X	
	T.System_Forgery	X		X			X			X
Pre-voting stage	T.CandList_Disclose	X		X				X		
	T.CandList_Modify *	X		X	X					
	T.Malfunction_pre				X					X
	T.Nomin_DOS				X					X
	T.Nomin_Time	X		X					X	
	T.Privacy	X		X		X		X		
	T.Registr_DOS				X					X
	T.Registr_Time	X		X					X	
	T.VotReg_Disclose *	X		X				X		
	T.VotReg_Modify *	X		X	X	X				
Voting stage	T.Ballot_Forgery									X
	T.CandList_Modify *	X		X						
	T.CommD_Avail_pre	X		X	X					
	T.CommD_Sec_pre	X		X				X		
	T.Malfunction_elect				X					X
	T.Vote_Confidentiality*									
	T.Vote_DOS				X					X
	T.Vote_Modify *	X		X						
	T.Vote_Multiple					X				
	T.Vote_Time	X		X					X	
	T.Vote_Trail *									
	T.Voter_Impers	X		X		X				
	T.Voter_Privacy	X		X				X		
	T.VotReg_Disclose *	X		X				X		
	T.VotReg_Modify *	X		X						

Post-voting stage	T.CommD_Avail_elec	X		X						
	T.CommD_Sec_elec	X		X						
	T.Count_DOS				X					X
	T.Malfunction_Post				X					X
	T.MisCount									
	T.Partial_Count	X		X						
	T.Premature_Count	X		X				X		
	T.Report_DOS				X					X
	T.Report_Modify	X		X						
	T.Result_Modify	X		X						
	T.Vote_Confidentiality*									
	T.Vote_Duplicates									
	T.Vote_Modify *	X		X						
T.Vote_Trail *										

Table 5: Mapping of objectives to threats. Pre-voting stage

Objectives Threats		General	Pre-voting stage		
			O.Data_Sec *	O.Time_Nominate	O.Time_Register
General	T.Audit_Forgery	See Table 4			
	T.Auth_Disclose				
	T.Hack				
	T.Observ_Forgery				
	T.System_Forgery				
Pre-voting stage	T.CandList_Disclose	See Table 4	X		
	T.CandList_Modify*		X		X
	T.Malfunction_pre				
	T.Nomin_DOS				
	T.Nomin_Time			X	
	T.Privacy		X		
	T.Registr_DOS				
	T.Registr_Time				X
	T.VotReg_Disclose *		X		
	T.VotReg_Modify*		X	X	

Table 6: Mapping of objectives to threats. Voting stage

Objectives Threats		General	Voting stage									
			O.Authentic_Vote	O.Ballot_Correct	O.Delayed_Vote *	O.Residual	O.Sec_Transfer_pre	O.System_Secure	O.Time_Vote	O.Vote_Confidentiality	O.Vote_Secure	O.Voter_Eligible
General	T.Audit_Forgery	see Table 4										
	T.Auth_Disclose						X					
	T.Hack						X					
	T.Observ_Forgery											
	T.System_Forgery						X					
Voting stage	T.Ballot_Forgery	see Table 4	X	X			X	X				
	T.CandList_Modify *						X					
	T.CommD_Avail_pre						X					
	T.CommD_Sec_pre						X					
	T.Malfunction_elect		X				X					
	T.Vote_Confidentiality*		X			X	X		X	X		
	T.Vote_DOS		X		X			X				
	T.Vote_Modify *		X	X			X	X			X	
	T.Vote_Multiple											X
	T.Vote_Time							X				
	T.Vote_Trail *					X		X	X			
	T.Voter_Impers						X					X
	T.Voter_Privacy								X	X		
	T.VotReg_Disclose *						X					
	T.VotReg_Modify *						X					

Table 7: Mapping of objectives to threats. Post-voting stage

<div>Objectives</div> <div>Threats</div>		General	Post-voting stage				
			O.Count_Correct	O.Result_Secure	O.Sec_Transfer_vote	O.Vote_Confidentiality	O.Vote_Secure
General	T.Audit_Forgery	see Table 4					
	T.Auth_Disclose						
	T.Hack						
	T.Observ_Forgery						
	T.System_Forgery						
post-voting stage	T.CommD_Avail_elec	see Table 4			X		
	T.CommD_Sec_elec				X		
	T.Count_DOS						
	T.Malfunction_Post						
	T.MisCount		X				
	T.Partial_Count			X		X	
	T.Premature_Count						
	T.Report_DOS						
	T.Report_Modify				X		
	T.Result_Modify			X	X		
	T.Vote_Confidentiality*					X	X
	T.Vote_Duplicates		X				
	T.Vote_Modify *						X
	T.Vote_Trail *					X	

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Bijlage 12

**The Netherlands Parliamentary Elections 22 November 2006
OSCE/ODIHR Election Assessment Mission Report**



Office for Democratic Institutions and Human Rights

THE NETHERLANDS

PARLIAMENTARY ELECTIONS

22 November 2006

OSCE/ODIHR Election Assessment Mission Report



Warsaw
12 March 2007

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**THE NETHERLANDS
PARLIAMENTARY ELECTIONS
22 November 2006**

OSCE/ODIHR Election Assessment Mission Report

I. EXECUTIVE SUMMARY

In response to an invitation from the Delegation of the Kingdom of the Netherlands to the Organization for Security and Co-operation in Europe, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) for the 22 November 2006 parliamentary elections in the Netherlands.

The Netherlands has a long tradition of conducting democratic elections, as was demonstrated by these parliamentary elections. This practice was underscored by an overall high level of public confidence. The electoral system of proportional representation encourages political diversity and plurality, offering voters a wide and genuine choice. Turnout was reported at 80.35 percent.

The campaign took place in a competitive atmosphere. Largely unregulated, professional and diverse media provided extensive coverage of a broad range of views, at times with a greater focus on personalities rather than issues. Political party and campaign funding are currently unregulated, and regulation is being contemplated by the government.

The legal framework provides a sound basis for democratic elections. It may, however, be timely to review and consolidate the principal instrument for elections, the Elections Act, inter alia, to embrace in primary legislation voting by electronic machine.

Electronic voting has become the method of balloting for 90 percent or more of the electorate. This method of voting is to be reviewed by a committee, as promised by the government following public doubts that arose in the pre-electoral period concerning the integrity of new voting technologies.

The elections were administered by the election administration in an efficient and professional manner. The electoral authorities have undertaken further efforts to enable voters to exercise their right to vote, including the establishing of additional polling stations in places of easy public access, and provisions for internet voting for voters abroad.

The EAM noted the widespread use of proxy voting, which apparently contributes to some 10 percent of the overall turnout. It may be timely to review this practice.

The Ministry of the Interior and Kingdom Relations has considerable executive authority over the conduct and delivery of elections, including the appointment of the election administration. In seeking further improvement to the system of election administration in the Netherlands, consideration could be given to enhancing the role of the Electoral Council.

II. INTRODUCTION

In response to an invitation from the Delegation of the Kingdom of the Netherlands to the Organization for Security and Co-operation in Europe, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) for the 22 November 2006 elections to the House of Representatives (Tweede Kamer), the Lower House of Parliament (the House).

The EAM was deployed from 13 to 25 November 2006. It was led by Mr. Julian Peel Yates, and consisted of nine election experts from eight OSCE participating States. In addition to experts based in The Hague, the EAM deployed teams to Groningen and Eindhoven, and paid visits to Amsterdam, Rotterdam and Utrecht.

The EAM had an extensive series of meetings with government representatives, election officials, political parties, and representatives of the media and civil society in order to form an overview of the electoral process and of specific legislative and administrative issues. In line with OSCE/ODIHR methodology, the deployment of the OSCE/ODIHR EAM did not encompass systematic or comprehensive observation of election day procedures.

III. BACKGROUND

Since 1814, the Kingdom of Netherlands has been a hereditary constitutional monarchy with a parliamentary system of government. Queen Beatrix has been the Head of State since 30 April 1980. The Kingdom consists of the Netherlands, comprising 12 provinces, and territories in the Caribbean (the Netherlands Antilles and Aruba) which constitute a single realm¹. The total population is some 16 million. The official language is Dutch.

The executive branch of government of the Netherlands is exercised by the Council of Ministers appointed and dismissed by the monarch through a royal decree. The Council of Ministers, headed by the Prime Minister, is required to have majority support in parliament.

The Netherlands has a long tradition of conducting democratic elections, commanding an overall high level of public confidence. The Parliament is bicameral and known as the States General (Staten Generaal). The upper chamber, the Senate (Eerste Kamer or First Chamber), comprises 75 members indirectly elected by 12 provincial assemblies. The lower chamber, the House (Tweede Kamer or Second Chamber), consists of 150 members, directly elected for a four year term through a system of proportional representation in a single nationwide constituency without a threshold, little amended after its introduction in 1917. There were 10 parties in total represented in the House prior to these elections.

¹ The EUROPA World Year Book 2002, Volume II; Europa Publications, Taylor & Francis Group; London and New York, 2002, p.2914.

Significant attempts to reform the electoral system were made during the term of the outgoing House, but failed to achieve majority parliamentary support. The prospective reforms were driven primarily by the smallest party in the governing coalition, Democrats 66 (D66), which sought to exploit its pivotal position to strengthen the link between the electorate and their representatives through the introduction of a mixed proportional and first past the post district system.

The largest party of the coalition, the centre-right Christian Democratic Appeal (CDA), together with its other coalition partner, the liberal People's Party for Freedom and Democracy (VVD), had agreed to consider electoral reform as the condition for D66 support in 2003. The coalition was formed against the background of a perceived gap between political representatives and the general public in the aftermath of the 2002 electoral success of the List Pim Fortuyn.

In June 2006 the Prime Minister, Mr. Jan Peter Balkenende, offered the resignation of his government following the withdrawal of support from the coalition by D66. A new Council of Ministers continued in office in a caretaker capacity pending the dissolution of the House by royal decree in accordance with Article 64 of the Constitution, and the setting of the date of 22 November for elections. The dissolution would otherwise have been due to take place in April 2007 under standing legal provisions, with elections in May.

By incremental steps, in recent years, electronic voting had been introduced in municipalities covering some 98 percent of the electorate. In the run-up to the current elections, before the campaign had begun, the traditional high level of public confidence in the voting process was challenged by a citizens' group 'We do not trust voting computers'.

This group raised concerns about the integrity of the electronic voting machines in use in the overwhelming majority of municipalities in the Netherlands. They demonstrated that it was technically feasible, in certain circumstances, to intercept radiation from the machines in such a manner as to undermine the secrecy of the ballot, and complained of inadequate security protection for the machines, and their vulnerability to manipulation.

The government responded to these concerns with a swift and comprehensive series of proposed actions and security measures to limit the risks indicated. Parliament endorsed the actions, requesting that the government establish an external committee after the elections to make recommendations on possible additional measures for the provincial assembly elections due in March 2007.

IV. LEGISLATIVE FRAMEWORK

A. OVERVIEW

The legal framework governing elections in the Netherlands is multi-layered and complex. The current Charter of the Kingdom of the Netherlands, adopted in 1954, with subsequent amendments, contains fundamental provisions concerning elections to the representative assemblies in the Netherlands, the Netherlands Antilles and

Aruba². These constituent entities of the Kingdom have broad competence and discretion to regulate electoral matters in their respective legislation.

The Constitution of the Netherlands³ enshrines the principles of universal and equal suffrage. The Constitution also contains provision for the proportional electoral system and sets out the criteria for active and passive electoral rights⁴. Pursuant to Article 59 of the Constitution, all specific issues pertaining to the right to vote and to elections in general are regulated by Act of Parliament.

The current Elections Act was adopted in 1989 and was largely revised and amended in 1998 and 2005. It governs elections at all levels in the Netherlands⁵. However, the Elections Act does not cover all aspects of the electoral process. It provides for detailed regulation of voting with paper ballots⁶, leaving beyond its scope other methods of voting (for details please see below ‘Legal Regulation of the Existing Methods of Voting’).

A further primary law governing elections is the Online Voting Experiments Act which entered into force in December 2003. It contains interim rules for experiments conducted with new facilities enabling voters to vote in any polling station of their choice within their municipality of residence, and enabling voters abroad to cast their votes ‘with the help of information and communication technology, in a manner other than by post’⁷. The Act is of an interim nature and will expire on 1 January 2008. It is expected that it will by then be replaced by “permanent” law.

These two laws are supplemented by secondary legislation. Voting with electronic voting machines is regulated by the Elections Decree of 19 October 1989 Establishing New Regulations for Implementing the Elections Act. In addition to electronic voting, the Elections Decree regulates some minor aspects of voting with paper ballots that are not covered by the Elections Act.

The Elections Act and the Elections Decree grant the Ministry of the Interior and Kingdom Relations (‘MoIKR’) broad powers for organizing and conducting elections. Accordingly, subsequent ministerial regulations play an important role in the overall legal framework for elections. These include the Regulation on Conditions for Approval of Voting Machines (1997) and the Circular from the Minister for Government Reform and Kingdom Relations⁸ and the Electoral Council of 22

² Article 46 of the Charter.

³ The current Constitution dates back to 1814. Most recently it was revised and amended in 1983, 1989 and 2002.

⁴ Articles 4, 53, 54, 56 and 57.

⁵ These are: elections to the Lower and Upper Houses of the States General, elections to provincial and municipal councils, and to the European Parliament. Of these, only the elections to the Upper House of the States General are indirect.

⁶ This method of voting is now used to a very limited extent (approximately 2 percent in municipal elections in 2006, and some 10 percent when Amsterdam and some other municipalities returned to paper balloting for the current elections).

⁷ The Act mentions voting by internet and by telephone. However, in the current elections only voting by internet took place.

⁸ There are two ministers in the MoIKR, one of the Interior and Kingdom Relations and the other of Government Reform and Kingdom Relations.

September 2006 to the municipal executives and other authorities, which ensure security of voting machines, as well as requirements for their storage and use.

The MoIKR also establishes, by its ministerial orders, various model forms required for the preparation and conduct of elections⁹. Further relevant legislation relating to elections includes, *inter alia*, the General Administrative Law Act, the Aliens Act 2000, the Public Assemblies Act, the Media Act and the Penal Code.

It is noteworthy that many aspects of the electoral process rest solely on a basis of democratic tradition and an overall high level of public confidence, without formal legal regulation. This includes the founding, activities and funding of political parties, the conduct of the pre-election campaign, as well as campaign financing.

Political party and campaign funding are currently unregulated; regulation is being contemplated by the government and is both appropriate and desirable.

B. ELECTORAL SYSTEM

Members of the House are elected through a proportional list system without a threshold. The Netherlands is divided into 19 electoral districts. This division is purely technical, and all votes cast for candidates in each district are added together in the process of tabulation of results at the national level. Parliamentary seats are allocated, for the entire entity, proportionally to the votes cast for the respective electoral subjects on the basis of the quota¹⁰ method, with subsequent allocation of possible residual seats through the method of d'Hondt. Only those lists that have received at least as many votes as the value of the electoral quota are eligible for allocation of seats.

Furthermore, the electoral system is characterized by a strong majoritarian element, as each voter votes for a particular candidate. It is only through the candidate of choice that a vote is attributed to the respective electoral subject. Thus, voters' choices could prevail over political parties' personnel policies as reflected by the order of the names on the respective candidates' lists.

Once the number of seats allocated to each candidate list has been determined as outlined above, the names of the elected candidates are specified in accordance with the numbers of votes cast for each candidate. This procedure begins from the top of the list and moves down until the party's entitlement to seats is filled. However, a candidate who obtains at least 25 percent of the electoral quotient is declared elected automatically regardless of his or her number on the list. The reordered list remains valid between elections and is used to fill possible vacancies in the House. Any elected candidate who subsequently becomes a member of the Council of Ministers

⁹ Pursuant to the Elections Act, the Ministry establishes by its orders such model forms as those for voter registration requests, registers of names of political groupings, lists of candidates, declaration of support by voters, declaration of candidates' consent to run for elections, proof of registration of deposit payment, official reports by election commissions, voter registration cards, instructions for voters at polling sites, and ballot papers.

¹⁰ The electoral quota is determined as the quotient of the total number of valid votes cast for all lists (please see the Annex) and the number of seats that have to be allocated. For the 22 November elections, the electoral quota was $9,838,683/150 = 65591 + 33/150$.

must resign his or her seat, to be filled in line with the order of the possibly reordered candidate list of the same party.

A party may have up to 30 names on its list on the ballot, or twice the number of its incumbent representatives in parliament if greater, up to a maximum of 80. The candidate lists of the competing political parties appear on the ballot in sequence according to the size of their party representation in the House prior to the election. The ballot order for parties not represented in parliament is determined by lot.

C. RESTRICTIONS ON SUFFRAGE

For elections to the House, suffrage is granted to all Dutch nationals who have reached the age of 18, with the single reservation below. The Elections Act¹¹ envisages two possibilities for ineligibility. First, if there is a final court decision disqualifying an individual from voting¹² and second, if a person has been recognised as lacking legal capacity.

There is a special restriction on the suffrage applicable to Dutch nationals residing in the Netherlands Antilles or Aruba. They are not entitled to vote in Dutch parliamentary elections unless they have resided in the Netherlands for at least 10 years, or are Dutch public servants, or a spouse, partner or child of a Dutch public servant and form part of the same household as that person.

This restriction is rooted in the Charter of the Kingdom of the Netherlands, according to which ‘the representative assemblies shall be elected by Netherlands nationals who are residents of the respective entities, and it is at the discretion of the relevant entity to decide whether Dutch nationals who are not residents of the respective entity should be granted the right to vote in such elections.

This issue raised some controversy, as a case was brought before the Council of State by a Dutch national residing in Aruba claiming discrimination. The Council of State rejected the complaint. It ruled that Dutch nationals residing in the Netherlands Antilles or Aruba already have the opportunity to influence ‘Kingdom laws’ applicable to them through participation in elections to their entity’s parliament and therefore they could not claim to be deprived of their right to influence legislation. Those voters meeting the special conditions effectively enjoy a dual suffrage.

Although the right to vote may be subject to a residence requirement, it should be applied in an equitable and non-discriminatory manner.

Consideration might be given to seeking a more inclusive approach by reviewing the length of the residency requirement, more closely in line with the principle of universal suffrage, a matter within the discretion of the country¹³ concerned¹⁴.

¹¹ Section B5, para 1.

¹² With regard to the 22 November 2006 elections, there was not a single person disqualified from voting under this provision.

¹³ In the context of a member State of the Council of Europe.

¹⁴ European Commission for Democracy through Law (Council of Europe’s Venice Commission), Opinion no. 190/2002, Code of Good Practice in Electoral Matters, 1.1.c.

D. RIGHT TO STAND FOR ELECTIONS

An unusual feature of the Dutch electoral framework is that whilst the law provides a customary minimum age requirement of 18 years to vote and be entitled to become a member of the States General¹⁵, there is no such restriction on the right to stand for election. There are therefore no legal impediments to preclude a person below 18 from running in the elections. As a result, there have been instances when minors were registered as candidates, who, if elected, remain on a 'reserve list' and assume the right to membership of the assembly on reaching the age of 18.

E. LEGAL REGULATION OF THE EXISTING METHODS OF VOTING

There is a range of voting methods currently in use for voters in the Netherlands. While such diversity may have been introduced to enhance voter participation, it requires regulation by different methods by separate legal instruments of differing nature and status.

Voting is possible either in a polling station relating to one's place of residence, or elsewhere ('remote voting')¹⁶. Both options can be implemented either with a ballot paper and pencil, or electronically by voting machine¹⁷.

The Elections Act provides for the traditional method of paper balloting. Voting by electronic machine, which has incrementally become the majority method of voting, is not regulated in primary legislation¹⁸. The legal basis of such voting is confined to the Elections Decree of 1989, the Regulation on Approval of Voting Machines of 1997 and the Ministerial Circular on Security of Use and Storage of Voting Machines of 2006'. Its regulation at the level of secondary legislation can be explained by the wish to allow flexibility in terms of facilitating amendment to keep abreast of technological advance. The Elections Act regulates voting by post, whilst the Online Voting Experiments Act provides for voting via the internet. The interim nature of the latter recognises the need for trial and cost effectiveness evaluation before any introduction nationwide.

Though the reasons are clear for the existing variable structure of regulation of the different methods of voting, it would appear to be useful to review and consolidate the legal provisions by amendments to primary legislation, whilst still allowing developing technologies to be regulated by secondary legislation.

F. PROXY VOTING

There is a long established tradition of proxy voting in the Netherlands, commanding a high level of public support, based largely on trust rather than legal regulation¹⁹. The Elections Act provides for proxy voting when 'a voter does not expect to be able to

¹⁵ Art 56 of the Constitution.

¹⁶ Voting by post or via the internet is permitted only for Dutch voters residing abroad.

¹⁷ The method is chosen by the municipality concerned, not the voter.

¹⁸ With the exception of minimum requirements in Sect J 33, para 2 of the Elections Act.

¹⁹ Voting 'by authorization' was introduced in the Netherlands in 1928.

vote'²⁰, permitting the authorization of another voter to cast a vote on his or her behalf.

A voter may only cast up to two proxy votes, and must vote himself or herself. Military personnel serving abroad usually have to vote by proxy, and proxy voting is the only option for those in prison not on day release. As a mark of serious concern, cases of fraud with proxy voting have been proven in past municipal elections. The EAM was informed by the MoIKR that proxy voting appears customarily to account for between 10 percent and 20 percent of overall turnout in elections.

It would be useful to consider a review of the regulation and practice of proxy voting, in order to further enhance consistency with the principles of the equality and secrecy of the ballot, in line with paragraph 7.4 of the 1990 OSCE Copenhagen Document.

G. CAMPAIGN FUNDING

The Netherlands' legislation is silent on campaign funding, although preparatory work is underway to introduce some legal regulation in this regard. It is also envisaged that there should be an independent body, probably the Electoral Council (see below) to have responsibility for the control of funding of political parties.

In order to ensure transparency of campaign funding, consideration should be given to introducing legal requirements that oblige political parties and independent candidates to disclose the size and sources of campaign funds received.

V. ELECTION ADMINISTRATION

A. OVERVIEW

The framework for elections in the Netherlands provides for several levels of election administration, including the MoIKR, the Electoral Council, the Credentials Committee of the House, 19 principal electoral district committees, the mayor (burgemeester) and municipal executive, municipal electoral councils, and polling station committees. Electoral officials must be ready to administer elections at short notice.

The overall system for managing elections is decentralised, giving local administrations substantial discretion as to how elections are conducted in their municipalities. There is thus considerable diversity, enhanced by voting process experiments permitted by law. Whilst voters acting in sufficient time could arrange to vote in any municipality, 303 of the 458 municipalities in the current elections allowed voters to vote at any polling station within the municipal boundary without prior notice.

The MoIKR oversees the overall conduct of elections at national level. It establishes the regulations for the various voting experiments permitted by law, such as the remote voting programme for domestic voters, and voting via the internet for those

²⁰ Sect L 1 of the Elections Act.

abroad. The MoIKR oversees the setting of standards for all electronic voting machines, their testing, certification and decertification, and the promulgation of the rules and procedures for their use. The MoIKR also has the authority to appoint the electoral committees in the 19 principal electoral districts, in addition to the 458 mayors, the heads of local government administration, each of whom serve a 6 year term and who are ex officio the chairs of their local municipal electoral committees.

It is the responsibility of the municipal executives to administer elections in their jurisdictions, both local and national, to maintain at municipal level computerized voter registers, and to send by mail to every registered voter a voter registration card, which the voter is required to present for polling. The municipal executive decides what method is to be used for polling, and the location of polling stations.

Each of the 19 districts has a Principal Electoral Committee (PEC) consisting of 5 members and 3 alternates who serve a 4 year term. The mayor of the main municipality of the district is chairman of the PEC, and the members are often appointed following recommendation by the mayor or his staff to the MoIKR, which has the power of appointment and dismissal. Beneath the district level are the individual municipalities, whose municipal executives appoint the members of each polling station electoral committee, consisting of a chair and 2 members, together with sufficient alternates. In most cases, it appears that staff are civil servants who work for the municipality and who receive training before each election. Each polling station tends to average some 1200 voters. The OSCE/ODIHR EAM noted some variation in practices among polling station committees in the same municipality²¹.

It could be useful that the PEC and/or the municipalities provide additional training to polling stations personnel to ensure uniformity of action in conformity with guidelines.

The PEC registers candidates' lists for the district, each of which must be supported by a statement of at least 30 voters residing in the district. Supporting signatures are not required from parties represented in parliament. Provisions allow parties elected in the previous parliament, and running with the same list in all districts, to register centrally with the Electoral Council. For the current elections 24 political groups or parties registered candidate lists countrywide. The total number of candidates throughout the country was 683. A party may submit different lists in different districts, so the lists between districts are not necessarily identical. No reports of denial of registration of lists were received by the EAM.

After polling, the municipalities submit details of votes cast to the PEC, which determines the votes for each candidate and the total for each party, and announces the results at 10 a.m. at a public meeting on the second day following polling. An official report is sent the same day to the Electoral Council.

B. ELECTORAL COUNCIL

The Elections Act of 1989 provides for the Electoral Council ('EC'), a central electoral body based in The Hague. The EC is a committee of 7 experienced members

²¹ E.g. in stamping or not stamping used voter cards as 'not useable' (onbruikbaar).

appointed by the government for terms up to 12 years, with representation for major political parties, although there is no legal requirement to this effect. The EC acts as a Central Electoral Commission for elections to the House. The EC acts as an advisory body on elections to the government and parliament, and may provide advice to municipalities, parties and public on electoral reform. The EC meets on average once a month, in meetings that are closed to the public.

The EC has responsibility to determine if political parties seeking to offer candidates have full legal capacity. The EC has the ultimate authority to decide on eligibility, and on occasion has rejected a party name on the grounds of its similarity to another. The EC also numbers candidate lists. Its other principal function regarding elections to the House is to receive the vote protocols from each of the electoral districts, and within 5 days of polling to announce the results. Protocols from each polling station are not made public by the EC. There is no right of appeal against decisions of the EC regarding results, the final validation of which is made by the Credentials Committee of the House.

To promote more transparency and further encourage public interest and involvement in its work, the EC could hold public hearings on reform issues, and permit some form of observation of the process of its deliberations.

The EC budget is approximately 1 million euros, and it has a limited capacity to contracted research. There have been initiatives to task the EC with the responsibility to regulate party funding, and it has been suggested that the EC should have overall authority for certifying and validating voting machines.

In seeking possible further improvement to the system of election administration in the Netherlands, consideration could be given to enhancing the role of the EC, and its utility as a clearing house for best practices, with a view to further enhancing independence, transparency and accountability in the delivery of elections.

C. PARLIAMENTARY COMMITTEE OF CREDENTIALS

The Parliamentary Committee of Credentials (CC) is a committee of 3 parliamentarians appointed by the House which recommends to parliament the certification of those elected to the House and to the European Parliament. The CC has 2 permanent and up to 35 temporary staff, and reviews the protocols from the 19 districts and 10,000 polling stations to check for accuracy and completeness. The CC verifies the qualifications of those elected against constitutional and legal requirements, including age and nationality. It may recommend to parliament a recount, or repeat voting. It can make recommendations to the MoIKR for improvements to voting

VI. ELECTRONIC VOTING

A. OVERVIEW

Electronic voting was first introduced in the Netherlands in the early 1990s. In the current elections two distinct electronic voting technologies were used: direct

recording electronic (DREs) voting machines covering some 90 percent of the electorate, and internet voting for some 20,000 voters abroad who registered to vote by internet.

In both cases, votes are tabulated by computer systems, making it difficult to audit the tabulation. Each system incorporates elements that are understood by a limited number of experts, and a number of these elements are not available for public scrutiny.

B. DIRECT RECORDING ELECTRONIC VOTING MACHINES

DREs are produced by the company *Nedap of Groenlo* and have become the most widely used system in the Netherlands. Some 8290 machines of the model ES3B have been sold or leased to Dutch municipalities. All machines currently in use run on firmware²² certified for use in 2002. In addition, 364 Nedap ESN machines were used, providing audio headphones so that people with impaired sight can vote without assistance.

In order to vote, a voter touches the spot on the surface of the machine labelled for a particular candidate, which is interpreted by the machine as a tentative vote for that candidate. The surface is touch sensitive and covered by a ballot label²³. To confirm the vote, which is displayed on a small screen, the voter pushes a large red button, at which time the vote is ultimately incorporated into the results. At the close of polling, the machine prints out vote totals from a small internal printer, on a long strip of paper which becomes the official record of results for the polling station. From the time ballots are cast until the moment the paper is printed, the ballots only exist in electronic form within the machine. During this time, there is no way in which an observer can verify that the votes inside the machine are not being altered.

The designs of the Nedap machines are proprietary, seen only by Nedap and Brightsight (formerly TNO), a testing laboratory that certifies the systems for the government. The citizens' group 'We do not trust voting computers', based in Amsterdam, demonstrated in early October that despite the lack of public information about the system, it is possible for technically capable individuals to understand enough about it, in order to make it behave fraudulently, altering votes between the time they were cast and the official record is printed.

The government response to this challenge to public confidence was swift and largely appropriate. The weaknesses documented by this Amsterdam group were independently confirmed by the state security service. Safeguards were introduced, notably the substitution of read-only memory (PROM) for erasable memory (EPROM) for the firmware sealing of the hardware compartment, and various procedural measures for the safekeeping of the machines.

²² The term *firmware* refers to control software installed in read-only memory within a computer system. As such, in contrast to other software, it is difficult to alter. The distinction between firmware and software becomes vague when erasable programmable read-only memory (EPROM) or flash memory are used, since they allow alteration.

²³ The term *ballot label* refers to an image of the conventional ballot, with representation of the parties and candidates on the touch-sensitive surface of the DRE screen.

A second DRE system, built by the company SDU, was to be used in the elections, but the government banned its use following testing by the security service.

Both the Nedap and SDU machines were found to be susceptible to “Tempest” problems²⁴, allowing a remote observer with appropriate equipment to determine how voters were voting. For the Nedap machines, a simple measure²⁵ was sufficient to solve the problem. In the case of SDU machines, no similar short-term solution was found. As a result, the use of the machines was banned in 35 municipalities, less than a month before the elections. Some of these municipalities, including Amsterdam, returned to paper ballots, whilst others switched to Nedap machines.

In the context of introducing new voting technologies, the issues of transparency and observability remain a priority. The Nedap and SDU machines are based on proprietary firmware, and voters, election officials and observers cannot examine their operation. There is no possibility for a meaningful recount. Although the firmware in the Nedap machines is inspected by Brightsight, it is not possible to check that the firmware in any particular machine is the authorized firmware. Whilst some municipalities do perform a degree of pre-election testing, such tests are not mandatory, and there is no parallel testing²⁶.

The OSCE/ODIHR EAM found in discussion amongst developers of electronic voting systems in the Netherlands, that there was a general acknowledgement of the technical competence and responsible approach of the citizens’ group ‘We do not trust voting computers’ in their criticisms of electronic voting.

C. INTERNET VOTING

As an experiment and alternative to postal voting for voters abroad, the government opted for these elections to use an internet voting system known as RIES (Rijnland Internet Election System). A total of 19,815 valid ballots were cast in this way. The system was developed for the Rijnland District Water Board elections in 2004.

Voters abroad opting to use RIES must register their request no later than 4 weeks before the elections. They then receive by post an instruction booklet and a sealed authorization code. The booklet directs voters to the RIES website, where the authorization code is used to begin voting up to 4 days before the elections. After voting, each voter is given a “technical vote” so that voters can verify on the web, after the closure of polls, that their votes were counted. This technical vote does not disclose for whom the voter voted, but it can be decoded by the state to reveal the vote. After the polls close, the codebook relating technical votes to candidates’ names is published, along with all the technical votes received. Thus anyone who cares to download these may independently count the votes.

²⁴ Electromagnetic emissions, due to time-varying current flowing in electrical or electronic circuits, propagated outward from the source. If time variations of the source current are related in any way to the information content of the signals, it may be possible to reconstruct the original data by analysis of such unintentional emissions.

²⁵ The elimination of diacritical marks.

²⁶ *Parallel testing* involves testing of random voting machines after they have been configured for an election, to simulate as far as possible the workload typical for a real polling station.

Most of the RIES technology is publicly available. If a voter, however, discloses his authorization code and his technical vote, anyone can determine his/her actual vote by simply trying all the candidate identities until a match is obtained. To prevent this, the RIES booklet suggests that voters destroy their authorization codes after use. The designers of RIES have effectively opted to surrender protection against coercion of a voter in favour of greater transparency. It is important to note that this feature is inherent in many internet voting systems and in most postal voting, where voters can surrender secrecy by simply allowing observation of their actions whilst voting.

The security of RIES also requires that the list of authorization codes be destroyed after they are printed and sealed for posting, but this step conflicts with the legal provision that if a voter's code is lost, he or she can request a replacement. This requires that it be possible to invalidate codes that have been issued, and that spare codes are held in reserve. It would appear to be possible to cancel certain votes or issue additional authorizations to favoured voters. It is difficult to prove either that this sensitive code information has been destroyed, or not improperly copied. The detailed specification for the invalidation mechanism that has been adopted has been deemed security sensitive and classified confidential.

The security of RIES also relies on the safe storage of the codebook until polls close. RIES contains transparency mechanisms to prevent any possible unauthorised changing of the codebook after all the technical votes have been received. It is difficult for an observer to ascertain the theoretical possibility that the custodian has not released the codebook, or borrowed codes to produce possible unauthorised interference.

The EAM found broad consensus amongst both developers and critics of electronic voting that RIES would not be a suitable system for the possible expansion of internet voting to the general population if this is to be considered.

Development of an open source version of RIES, free of proprietary issues and secret components, should be encouraged.

D. FURTHER DEVELOPMENTS

Currently, in the Netherlands, electronic voting is overwhelmingly the preferred method, and it has broad public support based on a high degree of trust in government and the electoral authorities.²⁷ Whilst there have been no suggestions that trust at any level has been abused, the OSCE/ODIHR EAM believes that there is now a timely opportunity to further enhance transparency of implementation of new voting technologies, and public confidence, in an increasingly questioning and sceptical public environment. In particular:

Electronic voting systems should be monitored by an independent entity distinct from the authorities responsible for conducting elections. Such an entity should have broad

²⁷ Thus, *Brightlight* is trusted to certify the correctness of proprietary electronic voting systems, the government is trusted to ensure that no tampering takes place, and RIES custodians of key security information are trusted to hold it properly and to destroy it promptly.

technical expertise, and should be also responsible both for formulating and reviewing voting system standards.

There should be routine testing of voting machines before elections, and randomly selected machines should be subject to testing by an entity other than local election authorities. Mechanisms should be considered to verify that voting machines, as used on election day, are configured with the approved firmware and ballot definition.

In order to enhance public confidence in DRE voting machines, and to provide for meaningful audits and recounts, legislation regulating use of such systems should include provisions for a Voter Verified Paper Audit Trails (VVPAT) or an equivalent verification procedure.²⁸ Software dependent vote recording mechanisms which do not permit an independent check on their operation should be phased out.

Voting system standards should not permit the use of systems which depend for their security on the secrecy of any part of their technical specifications. Reliance on proprietary systems should be reduced, where neither citizens, nor electoral officials, nor observers can determine how they operate.

VII. CAMPAIGN

The election campaign was generally characterized by a tradition of open debate and fair-minded competition amongst candidates. It was widely considered that the campaign environment for these elections was more vibrant than recent previous campaigns. But it also exhibited a trend towards a media driven democratic environment, where politics and entertainment are increasingly intermingled, and traditional forms of campaigning such as rallies and street canvassing are on the decline. There was a notable absence of incidents of personal insults, in keeping with national custom that disapproves of excessively personal attacks on political competitors, both by politicians and the media.

Campaign funding is not regulated. Historically, there has been little interest in the business community in making political donations. The subsidies parties receive from the state budget are modest (15 million Euros per annum based on seats in parliament).

Influenced in large part by the role of the media, the campaign was substantially personality driven, and tended to be dominated by simple slogans. This was accentuated by the nature of most television debates, which included cheering

²⁸ Council of Europe's standards on e-voting require that (1) Art.107: The audit system shall provide the ability to cross-check and verify the correct operation of the e-voting system and the accuracy of the result, to detect voter fraud and to prove that all counted votes are authentic and that all votes have been counted; and (2) Art. 108: The audit system shall provide the ability to verify that an e-election or e-referendum has complied with the applicable legal provisions, the aim being to verify that the results are an accurate representation of the authentic votes. *See also* "Legal, Operational And Technical Standards For E-Voting "Recommendation Rec(2004)11 adopted by the Committee of Ministers of the Council of Europe on 30 September 2004 and explanatory memorandum, available at [www.coe.int/t/e/integrated_projects/democracy/02_activities/02_e-voting/01_recommendation/Rec\(2004\).](http://www.coe.int/t/e/integrated_projects/democracy/02_activities/02_e-voting/01_recommendation/Rec(2004).)

supporters for each debater, and short speaking slots for the candidates. One of the consequences of limited funding available for political parties is that parties have come to depend largely for exposure on general news and entertainment programs.

In terms of substance, the campaign was driven by domestic social and economic issues such as growth, poverty, ageing and social security. The environment, the wars in Iraq and Afghanistan and the future of the EU were largely absent from debate.

Immigration and integration were not principal factors in the current campaign. Generally, politicians tried to avoid these sensitive issues. However, there were statements by the Minister for Integration, and VVD candidate, Rita Verdonk, emphasising difficulties on integration some days before the election.

Additionally, after the Dutch parliament had adopted a resolution to declare the 1915 deportations and murders of Armenians in the Ottoman Empire 'genocide', the CDA and the PvdA urged their candidates of Turkish origin to declare publicly their agreement with this qualification, or lose candidacy. A number of candidates who refused were expelled from both lists.

There are no limits or restrictions on campaigning before or even on election day. Consequently, television debates were conducted until the eve of the election, followed by appearances by politicians on talk-shows until the early hours. Campaign activities continued during election day and the first post-electoral debate among key party leaders on public television took place only hours after the close of the polls.

Previously maintained gentlemen's agreements banning campaigning during election day seem to have eroded, and could be more formally regulated.

VIII. MEDIA

The media in the Netherlands are characterized by a long tradition of free expression and diversity of opinion. There is a strong feeling amongst the public against overregulation of the sector, and a high level of ethical standards and professionalism is found among journalists. Generally, media in the Netherlands is vibrant and pluralistic, and allows the electorate to be duly informed of the political process.

A. REGULATORY FRAMEWORK

The Dutch Media Authority, the Commissariat for the Media (Commissariaat voor de Media), is tasked with a variety of functions specified in the Dutch Media Act.²⁹ The activities of the Commissariat focus on both public service and commercial broadcasters and on cable operators. Founded in 1988, the Commissariat is an independent administrative body situated in Hilversum. Its three commissioners are each appointed by the Queen upon recommendation by the Ministry of Culture. The

²⁹

The Dutch Media Act is available in English at the *Commissariaat's* website:
<http://www.cvdm.nl/pages/english.asp?m=a&>

Commissariat includes divisions for Broadcasting Time and Cable Issues; Program Supervision; Legal Affairs; and Financial Supervision.³⁰

A recent report showed that media in the Netherlands are increasingly owned by a smaller number of consortia.³¹ It is, however, often stressed by media interlocutors that this concentration of ownership has little if any influence on editorial independence which has a strong tradition in the Netherlands.

One of the main functions of the Commissariat during elections is the allocation of free airtime to political parties on a fair and equitable basis.³² The Commissariat carries out media monitoring, although not specifically focusing on elections or the campaign. Each party which fields candidates in all 19 electoral districts receives a share of free airtime of 20 minutes on radio and 18³³ minutes on television during the two weeks preceding the election. As primetime slots are significantly more valuable for parties than other slots, they are allocated by lot. This allocation is in addition to the free airtime political parties represented in parliament have throughout the year.

This regulatory framework is limited to transmissions by cable and air, but does not extend to public broadcasters, or for example, via the internet. Commercial advertising is not regulated. Furthermore, the media act states that political messages in regular programs are not to be seen as advertisement.

For journalists, a Press Council (*Raad voor de journalistiek*) provides a self-regulatory ethics board, which hears complaints. The Council is charged with the examination of complaints against violations of good journalistic practice. It used to be a disciplinary council, but now serves as a council of opinion. The Press Council can no longer impose a sentence on a journalist; nor can it assure the complainant of financial compensation. Nevertheless, its opinions are published.³⁴

B. MEDIA LANDSCAPE

The Netherlands has a rather unique landscape of public broadcasting with a total of 23 national public broadcasters and a large variety of regional and local public broadcasters. In addition to the general state broadcasters, *MaxTV* is addressed to senior citizens, *VPRO* to secular liberals, *BNN* to youth, *TROS* to families, *Avro* to Liberals, *KRO* to Catholics, *Vara* to Socialists, *AO* to Protestants, and so on. Jews, Muslims, Hindus and Buddhists also have their own public broadcasters.³⁵ These broadcasters must have a minimum membership of 50,000 to qualify for the status of public broadcasters and receive state subsidies.³⁶ Only the public (state) broadcasters *NOS* and *NPS* do not function according to the model of membership-supported

³⁰ The *Commissariat* has no authority over commercial broadcasters. In particular, RTL, a program watched by many in the Netherlands, does not fall under the Dutch Media Act.

³¹ The report, '*Mediaconcentratie in Beeld: Concentratie en Pluriformiteit van de Nederlandse Media 2005*', November 2006, is available at www.mediamonitor.nl

³² This is regulated in Media Act Art. 39g.

³³ Six time slots, three minutes each.

³⁴ See: www.rvdj.nl

³⁵ Given the fact that Muslim votes are equivalent to at least 8 seats in parliament, the Muslim public broadcaster organized a separate political TV debate focusing on Muslim issues.

³⁶ An overview including ownership and management is provided by the *Commissariaat* on its website.

public broadcasters. Instead, they receive direct subsidies from the state. In 2005, public broadcasting had a television market share of 33.3 per cent, as well as 28.3 per cent of the radio market.

On television, three channels are available to public broadcasters (*Nederland 1, 2 and 3*), while on radio broadcasters have to share five channels. The Board of Directors of each of the three public broadcasting networks appoints a network coordinator, who is in charge of determining the allocation of slots on the channels. One consequence of such pluralism in the media is that campaigning politicians have to cover as many of the various programs as possible. Debates and political talk-shows are offered by a great variety of programs.

The commercial broadcasting media are vibrant and diverse. The Commissariat's website lists 618 television, radio and cable broadcasters.³⁷ A large diversity of media also exists in the print sector.³⁸ Significantly, newspapers distributed free of charge (*'gratis kranten'*) which are mainly available in public places such as train stations, maintain a 15 per cent share of the market. Generally, a trend in Dutch media is the growing cross-media diversification of the key actors in particular towards the internet and other new media, and the sharp competition among providers.

C. MEDIA IN ELECTIONS

Dutch television, radio and print media played the primary role in informing the electorate in the run-up to the elections. A large number of special publications and programs were devoted to the electoral contest, the candidates, and the political parties. Many papers ran detailed overviews of political platforms, and offered in-depth interviews with candidates. A number of newspapers also offered advice and encouragement to first-time voters. Many also made use of the internet for specific election related information.

The media do not ordinarily insert sensitive issues into the campaign by themselves, and politicians in the Netherlands are largely in a position to shape the agenda of public debate. While there is investigative journalism, no major scandals were disclosed by the media during this campaign.

During the electoral campaign, so-called internet "vote matchers" served as web voter choice advisories, and played a significant role. These websites aimed to provide advice for undecided voters to clarify their political preference and make a choice on the basis of simple questionnaires. Processing voters' answers to the questions included in the questionnaires resulted in advice to voters which parties or candidates would best correlate to their views.

These web-based tools were increasingly popular and consulted by voters who were undecided until the very last day. The Dutch Centre for Political Participation

³⁷ However, it should be noted that only a few networks are of national significance. In 2005, *RTL Nederland* held 23.5 per cent of the viewers market, and *SBS Broadcasting* another 17.1 per cent.

³⁸ Three media organizations together controlled almost three quarters of the daily newspaper market. These include the *Telegraaf* Media Group with 34.2 per cent, the *Koninklijke Wegener* with 22.2 per cent and the PCM Holding with 19.5 per cent.

(*Stemwijzer* of the *Instituut voor Publiek en Politiek*, IPP)³⁹ website was originally supported by the MoIKR. The website *Kieskompas*⁴⁰ was supported by the newspaper *Trouw* and the *Vrije Universiteit Amsterdam*. *Stemwijzer* reported that it had been visited, prior to election day, by some 4.8 million users.⁴¹ On election day itself, around 300,000 “vote match” advisories were issued.

Up to 20 such websites exist, and can provide different advice to voters based on the input of similar information. It is difficult to reduce a political platform into some 30 simplified questions which allow for ‘yes/no/don’t-know’ answers. These “vote matchers” have accordingly been labeled ‘infotainment’ by some commentators.

While political parties are not known to participate themselves in preparing the input for these “vote matchers”, a number of them were said to have presented their platforms in such a way as to convert them easily to questions and answers applicable to “vote matcher” formats. Several parties have expressed their discontent with the most popular “vote matchers”, as they felt that they gave an incorrect weighting to certain issues, or misrepresented the position of the parties.

The selection of politicians for participation in debates or talk-shows is left entirely to the various networks and programs. This leaves a large degree of discretion to the editorial boards of the networks, which can align themselves with prevailing poll figures, but can also choose participants and give exposure to politicians who are simply ‘good on television’ from an entertainment perspective. While unease about this has been expressed by several interlocutors, nobody has suggested compromising the editorial independence of the media.

Mainstream media (television and newspapers) made frequent references to opinion poll results and to the emerging phenomenon of “vote matchers”. During the two weeks before the election, an abundance of election related information of varying quality was available to voters, and some interlocutors complained about “over-exposure” to politicians and their electoral slogans.

IX. PARTICIPATION OF WOMEN

Since 1992, government in the Netherlands has launched a series of policy initiatives with qualified success to enhance the representation of women in politics. The first initiative of 1992 entitled ‘Women in politics and public service’ was followed by another one, in 1996 under the same title, which set a target of raising the percentage of female politicians in all decision making bodies by five percent in successive elections. The target was confirmed in 2000 in a policy document of the Ministry of Social Affairs ‘Emancipation Policy’ N 30420, setting goals for 2010, equal representation of men and women in assemblies at all levels. There were, however, no sanctions for parties when quotas were not met.

³⁹ www.stemwijzer.nl

⁴⁰ www.kieskompas.nl

⁴¹ In 2003, some 2.2 million users were registered.

The OSCE/ODIHR EAM was informed that reports from the parties put women's proportion of membership in the region of 30 to 40 percent or more. The percentage of representation of women on the lists of the major parties for the current elections to the House varied substantially.⁴²

In the composition of the outgoing House there were 58 women (38.6 percent). The proportion fell slightly to 55 (37 percent) in the results for the current elections⁴³. This indicated that women were generally placed on lists with realistic chances of being elected. Participation by women in politics from ethnic minorities, however, amongst the larger parties is below the national average.⁴⁴

If the stated goals of equality of representation are to be met, priority could be given to seeking ways to substantially increase political participation by women from national and ethnic minorities.

X. NATIONAL MINORITIES

The Frisian minority in the Netherlands inhabits the northern Friesland (*Fryslân*) province, where a majority of the population of some 630,000 considers itself Frisian. Linguistically, the Frisians are closely related to the majority population of the Netherlands, and the two languages, while distinct, are mutually understandable. In the provincial assembly of Friesland, Frisian can be spoken and is recorded. Regional media provide information in Frisian, which is also taught in schools.⁴⁵ The rights of the Frisian minority have been extended following the ratification⁴⁶ by the Netherlands of the Council of Europe's 1992 Charter for Regional or Minority Languages and have been laid out in an agreement between the Netherlands' government and the province of Friesland, as well as regular legislative acts.⁴⁷ The Frisian language is the only minority language enjoying such status.

There are no specific provisions to guarantee the political participation of Frisians in national or regional governments⁴⁸. In regional and local elections, the Friesland National Party (*Fryske Nasjonale Partij*), which strives for more autonomy for the

⁴² CDA had 37 percent female candidates, PvdA 49 percent, SP 34 percent, VVD 33 percent, GroenLinks 43 percent, Christian Union 35 percent and D66 28 percent. Of these only GroenLinks is led by a woman. PvdA ensured equality by placing a woman in every other slot on its list. Some parties did not include women candidates, in the case of one party with a strongly protestant ethos, on theological grounds.

⁴³ Percentages of women representatives elected from the leading parties were: CDA 30 percent, PvdA 49 percent, SP 36 percent, VVD 37 percent, GroenLinks 58 percent, Christian Union 34 percent, and D66 34 percent.

⁴⁴ Data provided by E-quality, an information centre for gender issues funded by the Ministry of Social Affairs, showed that CDA had 1.4 percent minority women candidates, PvdA 9 percent, SP 4 percent, VVD 4 percent, GroenLinks 13 percent, and D66 12.5 percent.

⁴⁵ According to 2001 figures of the provincial administration, over 90 percent of the province's inhabitants understand Frisian, almost three quarters are able to speak the language, 65 percent can read Frisian, but only 17 percent are able to write in Frisian. Source: Theo Brinkel, *The status of indigenous and minority people in the Netherlands*, Tilburg University. In 1996.

⁴⁶ For a more detailed overview, see *Frisian – The Frisian language in education in the Netherlands*, 3rd ed., Mercator Education, Leuwarden, 2001.

⁴⁸ See Brinkel, above.

region, currently holds 7 of 55 seats in the regional assembly. In the elections to the House, the Frisian National Party did not field candidates.⁴⁹ However, most political groups in Friesland support the protection of Frisian language and culture. For these elections, 18 parties competed in Friesland. Many parties included candidates of Frisian origin, and at present, some 6 members of the House and one member of the Senate belong to the Frisian minority.

In addition, a considerable number of the Dutch population have an immigrant background, and are thus distinguished from the *autochthonous* population of the Netherlands. These immigrants as well as their descendants, and people originating from the non-European parts of the Kingdom of the Netherlands (who are, formally speaking, not immigrants), form ethnic minority communities, and are often referred to as *allochtonen*.⁵⁰ Together, they constitute a section of Dutch society numbering about one and a half million.⁵¹

Geographically, the *allochtonen* live across the Netherlands, but reside in higher concentrations in the so-called *randstad*.⁵² A large number of the *allochtonen* possess Dutch citizenship, and many including former guest workers and their offspring, have been in the Netherlands for decades. Therefore, political participation both in the form of voting as well as through representation in municipal and regional bodies is common, and constitutes a visible sign of largely successful integration of such communities in wider society.

It is estimated that *allochtone* or ethnic minority voters total more than a million.⁵³ The Government, in cooperation with the national association of minority organizations, sponsored a special get-out-the-vote campaign for immigrants.⁵⁴ However, voter turnout among those with an *allochtone* background is lower than the national average, and turnout significantly differs among the various national groups. Politically, the *allochtone* electorate does not form one electoral block, and it would appear that most *allochtone* voters do not vote specifically for *allochtone* candidates.⁵⁵ For the first time in national elections, a list with a particular *allochtone* character participated as blank list 21.⁵⁶ That list competed in 8 of the 19 districts and received 5,000 votes, which was not sufficient for a seat.

⁴⁹ For national parliament elections, the Province of Friesland forms one of the 19 electoral districts.

⁵⁰ Statistics Netherlands (www.cbs.nl) uses the term *allochtoon* for a 'person with at least one parent born abroad, who lives in the Netherlands and is registered with a municipality'. Mostly, however, this term refers to non-Western *allochtone* people originating from Africa, Latin America, Asia (except Indonesia and Japan) or Turkey.

⁵¹ The largest groups originate from Turkey (some 300,000), Morocco (some 250,000) and the Dutch Antilles as well as Surinam (some 300,000).

⁵² The larger cities in the west of the Netherlands.

⁵³ The Instituut voor Publiek and Politiek gives a figure of 1,120,000 non-western *allochtone* voters (report of 30 November 2006). Two thirds of people of Turkish origin are estimated to possess Dutch citizenship. 98 percent of those are said to also have Turkish citizenship. Source: *Inspiraakorgan Turken*.

⁵⁴ See also: www.minderheden.org

⁵⁵ *Allochtone* elected candidates received a total of 274,351 preferential votes, while an estimate of 780,000 votes were cast by *allochtones*. Source: IPP, 30 November.

⁵⁶ "*Islamdemokraten*", the group's name had been rejected by the EC, but it nevertheless campaigned under this name.

XI. CIVIL SOCIETY AND YOUTH PARTICIPATION

The Netherlands has a highly developed non governmental and civil societal sector. Although any voter can be an observer, presumably due to the overall high level of confidence, there is no organized NGO effort to observe elections. The law allows voters to observe voting, but rarely do individuals exercise such rights.

As noted above, the citizen's group 'We do not trust voting computers', in conjunction with the media, had a substantial impact on the pre-election environment, raising concerns about the security and integrity of electronic voting machines. The group informed the OSCE/ODIHR EAM that they would continue their campaign after the elections until their concerns were duly addressed.

A significant NGO focusing on youth involvement in politics, *Coolpolitics*, aimed to enhance civic participation of young people and their engagement in public life. This NGO ran a 'get out the vote campaign' aimed at the audience of 'The Box' television channel, and organized a debate focusing on issues of concern to young voters on MTV. The NGO estimated young voter turnout to be some 60 percent.

XII. POLLING

In line with standard OSCE/ODIHR practice, the EAM did not observe election day proceedings in a systematic or comprehensive manner. Nonetheless, the EAM visited a variety of polling stations in the areas of its deployment, in The Hague, Amsterdam, Rotterdam, Eindhoven and Groningen.

Separate procedures apply for domestic voters and those abroad. Domestic voters are required to present their voter cards⁵⁷ to vote in a polling station whether by paper ballot or electronic machine. Voters abroad are registered at the municipality of The Hague, and vote by post or internet according to their choices made at registration.

Polling took place in approximately 10,000 polling stations, from 7.30 a.m. to 9 p.m., and appeared well organized and well conducted in those polling stations visited. Voters are permitted to cast their ballot at any polling station within their municipality, which could have potentially been a challenge to predict how many voters may choose to vote at a particular polling station. However, there was flexibility built into the preparations by municipal authorities, to provide reserve ballot papers, voting machines and staff, and the system appeared to work effectively. Polling stations set up in railway stations or large shopping areas seemed a popular extension of the opportunity to vote. Polling hours in the latter were adjusted to match business hours.

Authorization of proxy voting is simple where both voter and proxy are registered at the same polling station or municipality if the latter permits. Both need to sign the back of the proxy's registration card. In other circumstances, authorization of a proxy vote is handled by the municipality upon written request. Voter cards of proxies are collected separately by polling station committees. Figures for proxy votes are entered

⁵⁷ Voter cards are issued by municipalities based on civil registers data.

in the polling station protocols, but not released afterwards by municipalities. According to the MoIKR, the proxy votes cast in previous elections have amounted to some 10-20 percent.

Transparency could be further enhanced through publication of the data related to proxy voting, as part of a possible review of relevant provisions.

In 34 out of 458 municipalities the vote was carried out by paper ballot. The remaining municipalities used electronic voting machines, one per polling station. The capacity of the memory cartridges in the machines is approximately 2,000 votes. The organization of polling allows more than 2,000 votes to be cast without problems.

Although any voter can be an observer, the OSCE/ODIHR EAM did not witness any domestic observation.

Turnout in the Netherlands was reported at 80.35 percent, varying by municipalities from 70.87 percent to 94.32 percent, including the contribution of proxy voting.

XIII. COUNTING AND TABULATION

Counting in polling stations with electronic voting machines takes place on-line. The totals are printed after the closure of polls and the print-out is then attached to the protocol. The print-out shows the number of votes obtained by each list, the votes cast for each candidate and the number of blank votes. The protocol also contains statistical data such as the numbers of voter cards and proxies. The total number of cards collected should equal the total number of votes recorded by the machine. The chairman of the polling station committee takes the protocol together with the remaining voting material to the municipal electoral committee. The memory cartridges are delivered to the municipality either by the committee chairman or are collected by municipal employees.

In the municipal headquarters the memory cartridges are read by a computer, and an automatic tabulation is done. If the cartridge is unreadable, results for the paper print-out are manually entered into the computer.⁵⁸ Additionally, tabulated results are checked in the respective municipality against the print-outs after election day.

The counting and tabulation in polling stations using paper ballots are conducted under similar rules, but take substantially longer. Polling station committees initially sort the votes cast by candidate list, and count the votes for each list. Invalid and blank ballots are counted separately. The ballots for a given list are subdivided by candidates' preferential votes and counted, and the totals entered in the protocol.

The aggregation of results in the PECs of the electoral districts is carried out on the second morning after the election, and the results passed to the EC. Three days later the EC establishes the election results for the entity based on the protocols from the PECs, and translates the votes into seats. All stages of the allocation process are well

⁵⁸ There were two such instances in Groningen.

documented, and posted on the internet. All meetings of the election administration bodies involved in the aggregation of results are public. The results by polling stations are announced only at municipal level.

In order to further enhance transparency, it could be useful to publish all election results by polling station in electronic form, including invalid votes, votes cast for each candidate, votes cast for no candidate and the number of proxy votes.

On election night, each municipality reports its unofficial totals to the Netherlands News Agency (ANP), which in turn makes them public and produces an unofficial distribution of seats in parliament. In these elections, there was a subsequent adjustment between the unofficial and subsequent official results, with the PvdA gaining one seat and the SP losing one, due to revised data for the municipalities of Eindhoven, Obdam and Sevenum, and the final results of voting abroad.⁵⁹.

XIV. COMPLAINTS AND APPEALS

There is a strong tradition in Dutch legal culture of handling complaints informally. A so-called ‘notice of objection’ procedure implies internal review by the administration. In the electoral context, such a procedure is applicable in polling stations on election day, when voters may lodge a note of objection with the polling station committee.

The only official venue for seeking legal redress is the Administrative Jurisdiction Division of the Council of State, where complaints on a limited number of issues may be filed⁶⁰. The Council of State considers complaints as a first instance court, and its decisions are final. The cases are adjudicated by a panel of three judges, in expedited proceedings in a public hearing.

In these elections, the Council of State received 18 complaints, mostly on registration of names of political groups (11 cases) and validation of candidate lists (six cases). One case concerned the restriction of the suffrage of a Dutch national residing in Aruba.⁶¹ Most complaints were rejected as groundless. In five cases the complaints were dismissed as inadmissible because of the applicant’s failure to pay the court fee.

Certain electoral issues are explicitly excluded from the complaints’ process. According to the General Administrative Law Act, no complaints may be filed against orders ‘concerning the numbering of lists of candidates, the validity of electoral pacts,

⁵⁹ Human error explains the changes in two of the municipalities. The Sevenum results were entered as zeros in ANP, whilst only the results from one polling station in Obdam were transmitted to ANP instead of those from the whole municipality. The reason reported for the Eindhoven error was that municipal employees made a mistake by counting the results of one specific polling station twice, and omitting the data from another polling station. While the Eindhoven case indicates that the system of checking tabulated results against print-outs is working, it also indicates a flaw in the aggregation phase, because either the software did not warn of an improper entry, or its warning was too easily ignored.

⁶⁰ On voter registration, registration of a name for a political group, and validation of candidate lists.

⁶¹ Described in the Legal Framework section.

the conduct of voting, the counting of votes, and the determination of the result of elections of members of representative bodies'.⁶²

*It would be useful to review of the legal framework for electoral complaints, so as to provide possible complainants with opportunities to submit complaints concerning all aspects of the electoral process, to have their complaints heard by a competent administrative or judicial body, and to appeal to the relevant court, in line with broadly accepted practices.*⁶³

The Constitution vests in the House the final word in resolving election disputes and validating election results.⁶⁴ No judicial review of such decision is envisaged.

*Notwithstanding the established legal basis for the existing complaint procedure, the new parliament should consider measures to provide for impartial and timely resolution of electoral disputes, including the possibility of an appeal to a court.*⁶⁵

Legal provisions regulating the handling of election disputes are found in a variety of sections throughout the Elections Act and General Administrative Law Act, with numerous cross references.

It might therefore be useful to consider codification of all provisions relating to election disputes in the Elections Act.

XV. ACKNOWLEDGEMENTS

The OSCE/ODIHR wishes to express its appreciation to the Ministries of Foreign Affairs and the Ministry of Interior and Kingdom Relations for their assistance and support, as well as to the Electoral Council and all electoral authorities, organizations and individuals for their co-operation throughout the duration of the OSCE/ODIHR EAM. The OSCE/ODIHR stands ready to discuss any of the issues contained in this report in the context of a follow-up dialogue.

⁶² Section 8:5 (h) of the General Administrative Law Act.

⁶³ Para 10.3, page 23, Existing Commitments for Democratic Elections in OSCE participating States.

⁶⁴ Art. 58 of the Constitution.

⁶⁵ See CDL Guidelines II, 3.3a.

ANNEX

OFFICIAL RESULTS⁶⁶

The total number of registered voters for the 2006 elections to the House was 12,264,503. Of these, 9,854,998 participated in the elections, a turnout of 80.35 percent. Blank or invalid votes amounted to 16,315, while valid votes were 9,838,683. The votes and seats for the candidate lists are shown in the following table.

Candidate Lists	List Number	Valid votes	Seats	+/-
Christen Democratisch Appèl (CDA)	1	2,608,573	41	-3
Partij van de Arbeid (PvdA)	2	2,085,077	33	-9
Socialistische Partij (SP)	4	1,630,803	25	+16
VVD	3	1,443,312	22	-6
Groep Wilders / Partij voor de Vrijheid	13	579,490	9	+9
GroenLinks	6	453,054	7	-1
ChristenUnie	8	390,969	6	+3
Democraten 66 (D66)	7	193,232	3	-3
Partij voor de Dieren	11	179,988	2	+2
Staatkundig Gereformeerde Partij (SGP)	9	153,266	2	0
Fortuyn	5	20,956	0	-8
Nederland Transparant	10	2,318	0	
EénNL	12	62,829	0	
[no name]	14	2,181	0	
PVN - Partij voor Nederland	15	5,010	0	
Continue Directe Democratie Partij (CDDP)	16	559	0	
Liberaal Democratische Partij	17	2,276	0	
VERENIGDE SENIOREN PARTIJ	18	12,522	0	
Ad Bos Collectief	19	5,149	0	
Groen Vrij Internet Partij	20	2,297	0	
[no name]	21	4,339	0	
Tamara's Open Partij	22	114	0	
SMP	23	184	0	
LRVP - het Zeteltje	24	185	0	
Total		9,838,683	150	0

Thus 10 parties entered the House. The last column labelled "+/-" indicates the deviation of the current number of seats compared to the numbers of seats allocated to the respective list for the term of the outgoing parliament elected in 2003.

The following figures for the vote abroad were reported: The number of voters who registered to vote abroad for the 22 November election was 32,126. The number of valid votes cast was 28,170, of which 19,929 were via the internet and the remaining ones were mailed by post.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (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 Document).

The 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 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It coordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The ODIHR implements a number of targeted assistance programmes annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

Within the field of **tolerance** and **non-discrimination**, the ODIHR provides support to the participating States in implementing their OSCE commitments and in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The 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 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. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

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).

Bijlage 13

Overzicht van geconsulteerde organisaties

De Adviescommissie inrichting verkiezingsproces heeft de volgende organisaties geconsulteerd:

- Chronisch zieken en Gehandicapten Raad Nederland (CG-Raad)
11 juni 2007
Aanwezig: dhr. P. Budding
- Kiesraad
19 juni 2007
Aanwezig: dhr. Kummeling (voorzitter), dhr. Schutte, (ondervoorzitter) en mw. Schipper-Spanninga (secretaris-directeur)
- Nederlandse Vereniging voor Burgerzaken (NVVB)
29 januari 2007
Aanwezig: dhr. C. Meesters (voorzitter bestuur), dhr. S.A.J. Rijsdijk (vicevoorzitter bestuur en voorzitter afd. Noord Br.) en mw. A. van Vierzen (directeur Bureau NVVB)

24 augustus 2007
Aanwezig: mw. A. van Vierzen (directeur bureau), dhr. J.C. Noord (penning meester bestuur en voorzitter afd. Noord-Oost), dhr. H. Tankink (voorzitter commissie Kiesrecht), dhr. R. Zijlstra (beleidsmedewerker bureau), dhr. H. Klijsen (commissie Kiesrecht) en dhr. J. Smit (commissie Kiesrecht)
- Burger@Overheid.nl
29 januari 2007
Aanwezig: dhr. M. Poelmans (directeur) en dhr. P. Nieuwenburg (medewerker)

21 augustus 2007
Aanwezig: dhr. M. Poelmans (directeur) en dhr. X. van der Linde (adviseur)
- Stichting "Wijvertrouwenstemcomputersniet"
29 januari 2007
Aanwezig: dhr. L. Kruijswijk, dhr. R. Gonggrijp, dhr. M. Wessling en mw. A. Oostveen
- Taskforce Handicap en Samenleving
11 juni 2007
Aanwezig: dhr. S.M. da Costa (secretaris)
- Viziris
11 juni 2007
Aanwezig: mw. M. van den IJssel

Bijlage 14

Gespreksverslagen

BEKNOPT WEERGAVE GESPREK MET STICHTING BURGER@OVERHEID.NL

Maandag 29 januari 2007

Willem van Oranjezaal: Ministerie van Binnenlandse Zaken

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter), dhr. J.C. de Jager, M.J.C. van Wel, mw. M. Gonzalez (secretariaat) en G.J. Houterman (secretariaat)

Aanwezig namens de stichting Burger@Overheid.nl

Dhr. M. Poelmans (directeur) en dhr. P. Nieuwenburg (medewerker)

De voorzitter dankt de stichting Burger@Overheid.nl voor hun komst, stelt de aanwezigen voor en vraagt om een beknopte uiteenzetting van het standpunt van de stichting.

Dhr. Poelmans deelt mede dat mw. Van Zuilen, de voorzitter, door privé omstandigheden is verhinderd.

Vragen die in de annotatie zijn opgenomen en door de leden van de commissie zijn gesteld:

1. Op welke onderzoeken baseert Burger@Overheid.nl precies dat de verkiezingen veilig en betrouwbaar kunnen verlopen via het internet?
2. Burger@Overheid.nl spreekt over percentages waaruit zou blijken dat een meerderheid van de kiezers voor elektronisch stemmen is. Aan hoeveel kiezers is die vraag voorgelegd? Met andere woorden hoe representatief zijn de enquêtes?
3. Op welke wijze denkt Burger@Overheid.nl dat met internetstemmen voldaan kan worden aan waarborgen zoals stemvrijheid, stemgeheim, toegankelijkheid, controleerbaarheid, transparantie, etc.? Waarop is dat oordeel gebaseerd?
4. Voldoet de inrichting van het verkiezingsproces via internetstemmen aan de waarborgen die van belang zijn om te kunnen spreken van transparante en betrouwbare verkiezingen?
5. Heeft Burger@Overheid.nl een idee van de kosten die gepaard gaan met de invoering van internetstemmen in geheel Nederland?
6. Hoe kijkt Burger@Overheid.nl aan tegen de verhouding overheid – markt als het gaat om de inrichting van het verkiezingsproces?
7. Heeft Burger@Overheid.nl suggesties c.q. aanbevelingen voor de toekomstige inrichting van het verkiezingsproces?

De stichting Burger@Overheid.nl is een onafhankelijk forum, ingesteld door de voormalige minister voor Grote stedenbeleid en integratie (Van Boxtel). Het forum, waarin gezaghebbende personen zitting hebben, stuurt de stichting Burger@Overheid.nl aan. Burger@Overheid.nl pleit voor de stimulering van de digitale overheid vanuit het burgerperspectief. Het inventariseert de wensen van burgers, geeft advies aan overheden en evalueert de voortgang van de digitale projecten en initiatieven. Het forum maakt gebruik van een burgerpanel dat 1500 leden telt.

De stichting Burger@Overheid.nl ziet het gebruik van Internet als een communicatiemiddel van en met de overheid in een moderne samenleving. Burger@overheid.nl is ervan overtuigd dat stemmen via internet meer mogelijkheden biedt om de burger bij het besluitvormings-proces te betrekken. De participatie van de burger wordt er door bevorderd waardoor burgerschap toeneemt.

Wat het verkiezingsproces betreft is de stichting Burger@Overheid.nl voorstander van de zogenaamde 'multichannel' benadering. De kiezer moet de keuze krijgen om zijn/haar stem uit te brengen via internet of in het stemlokaal al dan niet met behulp van een stemmachine. Het probleem van 'family voting' (stemvrijheid) wordt door de stichting onderkend, maar zou geen hindernis moeten zijn om deze benadering te implementeren. Doordat de kiezer een keuze heeft kan hij/zij zich aan dwang onttrekken en in een stemlokaal stemmen. Een andere mogelijkheid kan zijn dat de kiezer meerdere malen kan stemmen. Alleen de laatste stem wordt echter meegeteld voor de uitslag. De introductie van internetstemmen leidt er wel toe dat de stemming over meer dagen moet worden uitgestreken. Bij internetstemmen kun je het gebruik van volmachtstemmen loslaten. Immers iedereen kan relatief eenvoudig, plaatsonafhankelijk, een stem uitbrengen.

De 'multichannel' benadering wordt steeds meer gevolgd. Banken bijvoorbeeld hebben het internetbankieren opgezet met onder andere de gedachte dat ze kantoren konden sluiten. Toch zie je banken weer kantoren openen om het contact met hun klanten te herstellen. Aanbod en vraag worden via deze 'multichannel' benadering op elkaar afgestemd. De 'multichannel' benadering brengt zeker extra kosten met zich mee. Burger@Overheid.nl is er echter van overtuigd dat de extra kosten beperkt kunnen worden. In de gedachte van een 'paper trail' voor stemmachines ziet Burger@Overheid.nl niet veel. Het zal leiden tot administratieve problemen die de controleerbaarheid ondermijnen.

De overheid moet richting de kiezer meer vertrouwen in het verkiezingsproces gaan uitstralen. De overheid dient verantwoordelijk te zijn voor de inrichting van het verkiezingsproces en moet daarover de regie blijven voeren. Vertrouwen in het proces kan worden gegenereerd door een onafhankelijke commissie in het leven te roepen die toezicht houdt op het verkiezingsproces.

Het standpunt van de stichting Burger@Overheid.nl komt kort samengevat neer op het volgende:

1. de overheid moet een 'multichannel' benadering kiezen voor de inrichting van het verkiezingsproces;
2. internetstemmen moet een onderdeel zijn van de 'multichannel' benadering;
3. de overheid moet de regie voeren over het verkiezingsproces. Dat hoeft echter niet te betekenen dat de overheid ook alles zelf moet doen.

voldoen aan de hiervoor genoemde waarborgen, uitsluitend toegepast kan worden voor kiezers die anders niet of zeer moeilijk aan het verkiezingsproces zouden kunnen deelnemen. Een voorbeeld hiervan zijn de kiezers die vanuit het buitenland mogen stemmen.

Burger@Overheid.nl ontraadt alle systemen die gebruik maken van een printer daar deze storingsgevoelig zijn.

De commissie geeft aan dat er in het dagelijks leven in tal van situaties probleemloos gebruik gemaakt wordt van printers. De commissie noemt hier het printen van parkeerbonnetjes als voorbeeld.

Samenvattend: De voorkeur van Burger@Overheid.nl voor het stemmen per internet in Nederland blijft bestaan. Zij is van mening dat de geuite bezwaren tegen het stemmen per internet oplosbaar zijn, dan wel op andere wijze moeten worden aangepakt (zoals family voting). De stichting betwijfelt of het systeem dat de commissie voorstelt voor het stemmen in het stemlokaal de huidige problemen oplost.

BEKNOPTE WEERGAVE GESPREK MET BURGER@OVERHEID.NL

Dinsdag 21 augustus 2007

Thorbeckezaal: Ministerie van Binnenlandse Zaken

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter), M.J.C. van Wel, mw. C. Laurent (secretariaat)

Aanwezig namens de stichting Burger@Overheid.nl

Dhr. M. Poelmans (directeur) en dhr. X. van der Linde (medewerker)

Op 21 augustus 2007 heeft de Adviescommissie inrichting verkiezingsproces een tweede gesprek gevoerd met vertegenwoordigers van Burger@Overheid.nl. In dit gesprek heeft de commissie delen van haar advies op grote lijnen aan de stichting gepresenteerd en toegelicht. Hieronder volgt een beknopt verslag.

Burger@Overheid.nl dankt de commissie voor de uitnodiging en spreekt waardering uit voor het ingenieuze systeem dat door de commissie bedacht is. Burger@Overheid.nl betwijfelt echter of dit systeem (voor het stemmen in het stemlokaal) gezien de complexiteit ervan vertrouwen bij de kiezer zal kweken. Het zal naar het oordeel van Burger@Overheid.nl niet eenvoudig zijn om dit systeem aan de kiezer uit te leggen. Het biedt weliswaar meer waarborgen dan de huidige stemmachines maar het is erg ingewikkeld, en het lost naar alle waarschijnlijkheid niet alle problemen op. Zo wordt *'family voting'* niet voorkomen. Ook bij het stemmen in het stemlokaal kan namelijk niet gegarandeerd worden of de kiezer niet onder (morele) druk zijn of haar stem uitbrengt.

De commissie benadrukt dat alleen bij het stemmen in een stemlokaal de stemvrijheid en het stemgeheim gegarandeerd zijn, hetgeen voor de commissie cruciaal is. Daarnaast heeft de discussie die zich sinds medio 2006 ontsponnen heeft, aangetoond dat een verkiezingsproces dat niet transparant en niet controleerbaar is, leidt tot ondermijning van het vertrouwen.

Volgens Burger@Overheid.nl is men in Nederland gewend aan tal van elektronische handelingen. De overheid moet de betrouwbaarheid van deze elektronische handelingen kunnen garanderen. Dat geldt ook voor het stemmen per internet. Burger@Overheid.nl is van mening dat de kiezer zelf moet kunnen bepalen waar en wanneer hij of zij stemt. De overheid moet daarvoor verschillende kanalen open stellen: de *'multi-channel'* benadering. De kiezer bepaalt dan zelf welk systeem hij of zij vertrouwt. Burger@Overheid.nl betwijfelt of het probleem van *'family voting'* zo groot is dat het een bezwaar moet vormen voor het stemmen per internet. De problemen met de huidige stemmachines hebben de discussie in Nederland bepaald, echter deze problemen hebben naar het oordeel van de stichting niets met internetstemmen te maken. Het systeem dat de commissie nu voorstelt geeft volgens Burger@Overheid.nl onterecht het signaal af dat elektronische processen niet te vertrouwen zijn. De techniek kan volgens Burger@Overheid.nl correct werken zonder dat een individuele kiezer daar inzicht in heeft. Ook een externe audit door een gecertificeerde instelling kan zekerheid bieden. Men kan nooit incidenten uitsluiten of aan alle eisen voldoen.

De commissie geeft nogmaals aan dat bij het stemmen per internet het stemgeheim en de stemvrijheid niet gewaarborgd zijn. Daarnaast is er nog geen internetstemsysteem beschikbaar dat in voldoende mate kan voldoen aan de waarborgen van transparantie en controleerbaarheid. De commissie is niet tegen internetstemmen maar vindt wel dat internetstemmen, zolang het niet kan

BEKNOPT WEERGAVE GESPREK MET STICHTING “WIJVERTROUWENSTEMCOMPUTERSNIET”

Maandag 29 januari 2007

Willem van Oranjezaal: Ministerie van Binnenlandse Zaken

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter), dhr. J.C. de Jager, M.J.C. van Wel, mw. M. Gonzalez (secretariaat) en G.J. Houterman (secretariaat)

Aanwezig namens de stichting “Wijvertrouwenstemcomputersniet”

Dhr. L. Kruijswijk, dhr. R. Gonggrijp, dhr. M. Wessling en mw. A. Oostveen¹

De voorzitter dankt de stichting voor hun komst, stelt de aanwezigen van de commissie voor en vraagt om een beknopte uiteenzetting van het standpunt van de stichting.

Deze vragen zijn in de annotatie opgenomen en hebben de leden van de commissie in het gesprek gesteld:

1. Wat vindt de Stichting van de huidige inrichting van het verkiezingsproces in Nederland?
2. Wat zijn volgens de Stichting de belangrijkste waarborgen/ijkpunten voor de inrichting van het verkiezingsproces?
3. Voldoet de huidige inrichting van het verkiezingsproces aan de waarborgen die van belang zijn om te kunnen spreken van transparante en betrouwbare verkiezingen?
4. Hoe zouden de waarborgen/ijkpunten voor de inrichting van het verkiezingsproces het beste kunnen worden verankerd in de wet- en regelgeving?
5. Heeft de Stichting opvattingen c.q. meningen over het stemmen met potlood, stemmen met een stemmachine, stemmen met een stemmachine vergezeld van een paper trail, stemmen via internet en stemmen via de telefoon? Heeft de Stichting opvattingen over de dreigingen c.q. risico's die zich kunnen voordoen bij het stemmen? Wordt aan dergelijke risico's door de overheid (voldoende) aandacht besteed?
6. Hoe kijkt de Stichting aan tegen de verhouding overheid – markt, als het gaat over het organiseren en uitvoeren van verkiezingen?
7. Heeft de Stichting suggesties c.q. aanbevelingen voor de toekomstige inrichting van het verkiezingsproces?

De stichting heeft voor dit gesprek haar gedachten laten gaan over de waarborgen waar het verkiezingsproces aan dient te voldoen. Centraal daarin staan de waarborgen controleerbaarheid en transparantie.

1. Controleerbaarheid. Dit geldt zowel voor de kiezer als voor anderen. Ook bij gebruik van stemmachines moet hieraan voldaan worden. Een oplossing hiervoor kan zijn het gebruik van een stemmachine met een 'paper trail'. Steekproefsgewijs kan de telling van stemmachine worden vergeleken met de telling van de 'paper trail'.
De verhouding tussen privaat en publiek is nu volkomen uit balans. Feitelijk is de verantwoordelijkheid niet overgedragen aan de leveranciers van de stemmachines.

¹ Mw. Oostveen biedt een exemplaar haar proefschrift aan de commissie. "Context matters, A Social Informatics Perspective on the Design and Implications of Large-Scale e-Government Systems".

2. Transparantie. Nu is er sprake van een gesloten systeem waarbij cruciale onderdelen geheim zijn en daardoor niet transparant. Dat moet veranderen, ook waar het de programmatuur van stemmachines aangaat. Het proces moet open worden waardoor iedereen kan weten hoe het is ingericht en hoe het werkt.

De stichting wil de commissie ook wijzen op een aantal mogelijke valkuilen, te weten:

1. Welk probleem wordt er nu opgelost door het stemmen met stemmachines;
2. Nieuwe technieken moeten pas geïntroduceerd worden als de betrouwbaarheid daarvan is bewezen;
3. Elektronisch stemmen is niet goedkoper, maar duurder dan het stemmen met papieren stembiljetten. In Amsterdam werd tot en met 2003 gestemd met potlood. De kosten bedroegen circa € 1,5 mln. In 2006 werd in Amsterdam met stemcomputers gestemd. Kosten circa € 2,6 mln.
4. Elektronisch stemmen werkt niet opkomstverhogend. Dat heeft onderzoek uitgewezen.

De stichting is van mening dat een “multichannel-benadering” niet voldoende is om het gevaar van family voting (stemvrijheid) weg te nemen. Een vergelijking met de bankwereld gaat niet op. De banken maken een commerciële afweging van de risico's en wentelen die risico's ook af op de klanten. Klanten van banken hebben ook de mogelijkheid om naar een andere bank te gaan als ze geen vertrouwen hebben.

Als er met papieren stembiljetten in Nederland gestemd zou worden is fraude praktisch onmogelijk is. Circa 50.000 mensen zijn bij het verkiezingsproces betrokken. Die zorgen met elkaar voor een nagenoeg sluitende (sociale) controle. Bij elektronisch stemmen is dat beduidend anders. Alleen daarom is het stemmen met papieren stembiljetten te prefereren.

Internetstemmen vindt de stichting geen aanvaardbare optie. De controle die er nu in het stembureau is valt dan volledig weg. Bovendien moet er zeer ingewikkelde en kostbare beveiligingsmaatregelen worden genomen.

In Nederland is geen sprake van een concurrerende markt voor stemmachines. Daarvoor is het afzetgebied gewoon te klein. De NewVote van het Sdu mag dan gebruiksvriendelijk zijn, maar uit oogpunt van beveiliging is deze machine ver beneden de maat. Windows XP en een draadloos modem maken deze machine per definitie kwetsbaar.

De overheid moet het primaat hebben als het over de inrichting van het verkiezingsproces gaat. De overheid moet de kaders en de eisen stellen en controleren of daaraan wordt voldaan. De programmatuur moet in handen zijn van de overheid. Er mag geen afhankelijkheid bestaan ten opzichte van de leveranciers.

De problematiek van de stempassen in SWS-gemeenten kan naar de mening van de stichting opgelost worden door verplicht te stellen dat de kiezer zich in het stembureau moet legitimeren en door een positief kiezersregister te gebruiken in plaats van een lijst met de nummers van de ingetrokken stempassen.

De stichting is bereid, indien de commissie dat wenselijk acht, op een later tijdstip nader met de commissie verder van gedachten te wisselen en waar nodig de commissie bij te staan bij het beantwoorden van vragen ten behoeve van het advies van de commissie.

BEKNOPT WEERGAVE GESPREK MET NEDERLANDSE VERENIGING VOOR BURGERZAKEN (NVVB)

Maandag 29 januari 2007

Willem van Oranjezaal: Ministerie van Binnenlandse Zaken

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter), dhr. J.C. de Jager, M.J.C. van Wel, mw. M. Gonzalez (secretariaat) en G.J. Houterman (secretariaat)

Aanwezig namens de Nederlandse Vereniging voor Burgerzaken (NVVB)

Dhr. C. Meesters (voorzitter bestuur), dhr. S.A.J. Rijsdijk (vicevoorzitter bestuur en voorzitterz afd. Noord Br.) en mw. A. van Vierzen (directeur Bureau NVVB)

De voorzitter dankt de leden van het NVVB voor hun komst, stelt de aanwezigen van de commissie voor en vraagt om een beknopte uiteenzetting van het standpunt van de NVVB.

1. Wat vindt de NVVB van de huidige inrichting van het verkiezingsproces in Nederland? Worden er knelpunten onderkend met name ten aanzien van de verdeling van verantwoordelijkheden voor het verkiezingsproces?

Volgens de NVVB was tot oktober 2006 het algemeen gevoelen dat het verkiezingsproces in Nederland goed verliep. Er waren geen massale klachten c.q. protesten van de burgers. Met het aansnijden van de betrouwbaarheid van de stembalies is het vertrouwen in het verkiezingsproces ter discussie gesteld. De politiek heeft zich daarin ook niet onbetuigd gelaten.

2. Wat zijn volgens de NVVB de belangrijkste ijkpunten voor de inrichting van het verkiezingsproces?

Transparantie van het verkiezingsproces is naar de mening van de NVVB een belangrijk uitgangspunt. Het is van belang dat de overheid het vertrouwen van de kiezer (her)wint. Tot oktober 2006 vertrouwden de gemeenten en de kiezer de stembalie. Om het vertrouwen terug te winnen zal de overheid duidelijke kaders en voorwaarden moeten stellen betreffende de inrichting en de organisatie van het verkiezingsproces. Ten aanzien van de waarborgen waar de verkiezing aan moet voldoen, dragen de gemeenten een eigen verantwoordelijkheid. Daarop kunnen ze ook aangesproken worden.

3. Voldoet de huidige inrichting van het verkiezingsproces aan de waarborgen die van belang zijn om te kunnen spreken van transparante en betrouwbare verkiezingen?
4. Heeft de NVVB opvattingen c.q. meningen over het stemmen met potlood, stemmen met een stembalie, stemmen met een stembalie vergezeld van een paper trail, stemmen via internet en stemmen via de telefoon? Heeft de NVVB opvattingen over de dreigingen c.q. risico's die zich kunnen voordoen bij het stemmen. Wordt aan dergelijke risico's door de gemeenten (voldoende) aandacht besteed?

Gemeenten zijn in het verleden (massaal) overgegaan tot het stemmen met stembureaus uit efficiency-overwegingen. De gemeenten hebben daarbij geen oog gehad voor de beveiligingsaspecten van het gebruik van de stembureaus. Ook de betrouwbaarheid van andere elektronische diensten die de leveranciers van stembureaus zijn gaan leveren aan de gemeenten is niet kritisch beoordeeld vanuit de gemeenten.

De organisatie van de verkiezing is met stembureaus makkelijker en met minder mensen te organiseren. Daarnaast voorkomt het stemmen met stembureaus het probleem van de hertellingen. Dit deed zich (met name bij gemeentelijke verkiezingen) veelvuldig voor toen er werd gestemd met papieren stembiljetten. Een relatief gering aantal stemmen kan immers wel of geen (rest) zetel inhouden. De praktijk leerde ook dat een hertelling per definitie een andere uitslag opleverde. De NVVB beschikt niet over cijfers over het aantal gevallen waarin tot een hertelling moest worden overgegaan. Mogelijk heeft de Kiesraad dergelijke historische cijfers wel.

Volgens de NVVB is uit onderzoek gebleken dat met het stemmen met een stembureau de stembureau capaciteit in een stembureau met ongeveer 50% kan toenemen. Dit biedt de mogelijkheid om het aantal stembureaus te verkleinen. De NVVB heeft de indruk dat dit laatste niet in grote mate is gebeurd. Het aantal leden van het stembureau is bij het stemmen met een stembureau kleiner dan bij het stemmen met papieren stembiljetten. Dat is belangrijk, omdat het steeds lastiger is om vrijwilligers te vinden.

De NVVB is er geen voorstander van om terug te gaan naar stemmen met papieren stembiljetten. Het betekent weer extra stembureaus regelen terwijl scholen, verzorgingstehuizen steeds moeilijker gaan doen. Het aantal hertellingen zal weer toenemen. Kortom het vergt meer capaciteit en het kost geld. De NVVB vindt dat de burgers zoveel mogelijk de keus moeten krijgen om te bepalen op welke wijze zij stemmen. De “multichannel” gedachte spreekt hierbij erg aan.

5. Hoe kijkt de NVVB aan tegen het implementatietraject indien zou worden besloten over te gaan tot de inzet van nieuwe stembureaus, stembureaus met een paper trail, internetstemmen etc.?

De zogenaamde “paper-trail” lijkt op het eerste gezicht een goede optie, maar de consequenties hiervan zijn nog te weinig onderzocht. De nadelen zijn grofweg hetzelfde als bij het potloodstemmen. De NVVB heeft de overtuiging dat het mogelijk moet zijn om stembureaus te hebben die controleerbaar zijn en transparant. De burger mag van de overheid verwachten dat al deze aspecten op een ordelijke manier zijn geregeld.

De NVVB zou graag zien dat de weg naar het stemmen per internet wordt geopend. Het voordeel van stemmen per internet is dat de noodzaak van de volmachten komt te vervallen. Internetstemmen zal uiteindelijk wel consequenties hebben voor de organisatie van het verkiezingsproces. Men kan overal internetstemmen waardoor de (organisatorische) grenzen zullen vervagen.

De NVVB ziet de beveiligingsrisico's van het stemmen per internet wel maar is van mening dat daar op termijn oplossingen voor zullen worden gevonden bijvoorbeeld door gebruik te maken van de zogenaamde eNIK (de Nederlandse identiteitskaart met elektronische handtekening).

Met betrekking tot de knelpunten met de stempas (stemmen in een willekeurig stemlokaal) is de NVVB van mening dat een legitimatieplicht zou moeten gaan gelden.

6. Zou een meer centrale organisatie dan wel een meer decentrale organisatie van verantwoordelijkheden in het verkiezingsproces effectiever en efficiënter kunnen zijn? Is differentiatie in de organisatie van verantwoordelijkheden gewenst naargelang het soort verkiezing? Bijvoorbeeld de verantwoordelijkheden bij de Tweede Kamer verkiezingen centraler organiseren en de verantwoordelijkheden bij de gemeenteraadsverkiezingen decentraler organiseren?

De overheid dient verantwoordelijk te blijven voor het totale verkiezingsproces. Duidelijke kaders moeten gesteld (bijvoorbeeld voor de eisen waaraan de stembalies moeten voldoen) worden en dat kan alleen de rijksoverheid doen. De lokale overheid is het beste in staat om de verkiezingen te organiseren omdat die het dichtst bij de kiezer staat. De decentrale aanpak moet dus worden gehandhaafd.

7. Hoe kijkt de NVVB aan tegen de verhouding overheid – markt als het gaat over de ontwikkeling, beheer en onderhoud, opslag en transport en controle van de stembalies?

De rijksoverheid moet veel meer dan voorheen de kaders en de eisen stellen voor de inrichting van het verkiezingsproces. De markt moet daaraan voldoen. De NVVB verwijst daarbij naar de systematiek die wordt gehanteerd in het kader van de GBA.

Resumerend stelt de NVVB dat:

1. Stemmen met stembalies op basis van een transparant verkiezingsproces mogelijk moet blijven;
2. De 'multichannel' benadering gevolgd zou moeten worden zodat de burger zoveel als mogelijk wordt gefaciliteerd bij het stemmen;
3. In die benadering past ook dat verder gewerkt wordt aan internetstemmen, zij het dat internetstemmen op de korte termijn voor de kiezers in Nederland geen optie kan zijn;
4. De (rijks)overheid duidelijke kaders, eisen en voorwaarden dient te stellen waaraan verkiezingen moeten voldoen;
5. Geen ingrijpende verandering nodig is van de verdeling van verantwoordelijkheden voor de organisatie van verkiezingen noodzakelijk is. De gemeenten dienen een verantwoordelijkheid te houden in de inrichting van het verkiezingsproces;
6. De NVVB verder betrokken zou willen blijven bij de werkzaamheden van de commissie.

De NVVB zegt (waar mogelijk) de commissie de volgende informatie te zullen zenden:

- Een vergelijking van de kosten van potloodverkiezingen en verkiezingen met de stemcomputer;
- De antwoorden van de NVVB op de vragen die de commissie moet beantwoorden.

BEKNOPT WEERGAVE GESPREK MET NEDERLANDSE VERENIGING VOOR BURGERZAKEN (NVVB)

Vrijdag 24 augustus 2007

Willem van Oranjezaal: Ministerie van Binnenlandse Zaken

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter), dhr. C. Meesters, mw. M. Gonzalez (secretariaat) en mw. C. Laurent (secretariaat)

Aanwezig namens de Nederlandse Vereniging voor Burgerzaken (NVVB)

dhr. J.C. Noord (penningmeester bestuur en voorzitter afd. Noord-Oost) en mw. A. van Vierzen (directeur Bureau NVVB), dhr. H. Tankink (voorzitter NVVB-commissie Kiesrecht), dhr. R. Zijlstra (beleidsmedewerker Bureau NVVB)

Op 24 augustus 2007 heeft de Adviescommissie inrichting verkiezingsproces een tweede gesprek gevoerd met vertegenwoordigers van de Nederlandse Vereniging voor Burgerzaken (NVVB). In dit gesprek heeft de commissie enkele onderdelen van haar advies op grote lijnen aan de NVVB gepresenteerd en toegelicht. Hieronder volgt een beknopt verslag.

De NVVB dankt de commissie voor de uitnodiging. De NVVB geeft aan dat zij door enkele voorstellen wat overvallen is en dat zij meer tijd nodig heeft om hier een oordeel over te kunnen vellen. Het stemapparaat met het papieren controlebewijs acht men werkbaarder dan de variant met de stemprinter. Een dergelijk systeem is reeds door Nedap ontwikkeld.

Het voordeel het stemapparaat met het papieren controlebewijs is dat het tellen na afloop van de stemming even snel kan verlopen als thans het geval is met de stemmachines. Tegenover dit voordeel staan echter nadelen. In deze variant moet worden vertrouwd op de integere werking van het elektronische apparaat. De kiezer krijgt wel op papier de gemaakte keuze te zien, maar er valt tijdens de stemming niet te controleren of het apparaat de stem correct elektronisch opslaat. Een ander (praktisch) bezwaar is dat de mogelijkheid zich kan voordoen dat er een verschil is tussen de elektronische en de papieren uitkomst bij eenzelfde apparaat. Het belangrijkste voordeel van de variant met de stemprinter is dat de werking van de stemprinter volledig transparant en controleerbaar is. De stemprinter presenteert uitsluitend de keuzemogelijkheden en drukt de gemaakte keuze af. Er is dan ook bij deze variant geen sprake van elektronische opslag van de gemaakte keuze. De papieren afdruk is de enige vastlegging van de uitgebrachte stem.

De NVVB plaatst vraagtekens bij een aantal voorstellen van de commissie die samenhangen met de landelijke invoering van het stemmen in een willekeurig stemlokaal buiten de eigen gemeente, zoals de centrale voorziening voor de distributie van de stemmen. Het moet voor gemeenten wel mogelijk blijven om tussentijds uitslagen door te geven. De NVVB stelt voor – om het niet te complex te maken – SWS alleen uit te breiden tot het gebied waarvoor de stemming wordt gehouden, d.w.z. voor de gemeenteraad alleen in de eigen gemeente, voor de provinciale staten alleen in de eigen provincie, enz. De NVVB vraagt ook aandacht voor het tijdverlies dat de distributie van de stemmen door een centrale voorziening met zich mee kan brengen. Wanneer er per gemeente slechts één stemlokaal voor SWS buiten de eigen gemeente ingericht wordt (bijvoorbeeld op treinstations), kan de distributie van de stemmen vereenvoudigd worden. Het systeem dat de commissie aanbeveelt

stelt aanvullende eisen aan de locaties voor stemlokalen – zoals toegang tot het internet. De NVVB benadrukt dat het voor gemeenten reeds lastig is om geschikte locaties te vinden.

De commissie benadrukt dat het stemmen in een willekeurig stemlokaal buiten de eigen gemeente een wens is die al langer leeft. Om dit mogelijk te maken, zal er een systeem moeten komen waarmee de stemmen snel en eenvoudig gedistribueerd kunnen worden. De commissie zal de invoering van het stemmen in een willekeurig stemlokaal buiten de eigen gemeente op de langere termijn voorstellen, zodat gemeenten en de burgers voldoende tijd hebben om aan de nieuwe wijze van stemmen te wennen. Dan is er tevens voldoende tijd om voorbereidingen te treffen.

Het voorstel van de commissie om SWS buiten de eigen gemeente pas na een aantal jaar in te voeren, wordt door de NVVB ondersteund. De gemeenten hebben in dat geval tijd om de nodige voorbereidingen te treffen. De aanbeveling van de commissie om SWS op korte termijn binnen de eigen gemeente landelijk in te voeren wordt door de NVVB ondersteund.

In reactie op de aanbeveling van de commissie om in penitentiaire inrichtingen een stemplaats te openen, waar zowel de gedetineerden als het personeel van de inrichting kunnen stemmen, stelt de NVVB voor om ook in ziekenhuizen dergelijke stemplaatsen in te richten.

De NVVB benadrukt dat de snelheid die nu bereikt wordt in het doorgeven van de uitslag afhankelijk is van de elektronische middelen die gebruikt worden. Zij staat niet positief tegenover een verplichte handmatige telling als dit door burgers in een stembureau wordt verlangd.

De NVVB benadrukt dat er eisen gesteld moeten worden aan de kwaliteit van het papier waarop de stemprinter de keuze van kiezer afdrukt.

De commissie heeft daar oog voor. Bij de implementatie van de voorstellen van de commissie zal daar verdere uitwerking aan moeten worden gegeven.

De NVVB is van mening dat er bij het onderzoek naar de geloofsbrieven zowel op lokaal niveau als door de Tweede Kamer serieus gekeken wordt naar de opmerkingen die in de processen-verbaal gemaakt worden.

De hoofden stembureaus en het centraal stembureau bepalen wat er met de inhoud van de processen-verbaal van de stembureaus gebeurt. Daarbij wegen deze organen af of incidenten in een stembureau van invloed kunnen zijn op de uitkomst van de verkiezing. De commissie is van mening dat deze structuur in beginsel voldoet, maar voor verbetering vatbaar is in het bijzonder wat de transparantie en controleerbaarheid betreft. Toezicht op de voorbereiding van de verkiezing is thans niet geregeld. De commissie is van mening dat er op deze fase van het verkiezingsproces een vorm van toezicht moet komen. De commissie adviseert bij elke verkiezing een externe audit te laten plaatsvinden die door onafhankelijke experts wordt uitgevoerd.

De NVVB vraagt de commissie waarom zij niet overweegt om aanbevelingen te doen voor de periode tot aan de implementatie van het advies. De huidige stemmachines worden immers door de commissie buiten spel gezet. De voorzitter van de commissie deelt mede dat het adviseren over overgangsmaatregelen niet in de taakstelling van de commissie is inbegrepen.

WERKBEZOEK AAN DE GEMEENTE AMSTERDAM TIJDENS DE PROVINCIALE STATENVERKIEZINGEN OP 7 MAART 2007

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter) en dhr. M.J.C. Van der Wel

Aanwezig namens de Dienst Persoonsgegevens van de Gemeente Amsterdam

Dhr. R. Kalse, dhr. E. Geuzinge en dhr. R. Hoff

Op de avond van de provinciale statenverkiezingen op 7 maart 2007 bracht de Commissie een werkbezoek aan de gemeente Amsterdam om de stemopneming (van stemming met papieren stembiljetten en handmatige telling) waar te nemen. Daarbij bezochten zij het kantoor van de Dienst Persoonsgegevens aan de Stadhouderskade 85, waar de verkiezingsorganisatie en het hoofdstembureau zijn gevestigd. Vervolgens bezochten zij twee stembureaus in het Stadhuis aan het Waterlooplein, waar de stemopneming plaatsvond. Het bezoek werd besloten bij de Dienst Persoonsgegevens, waar op dat moment de uitslagen van de stembureaus binnenkwamen en werden verwerkt.

BEKNOPT WEERGAVE GESPREK MET DE CHRONISCH ZIEKEN EN GEHANDICPATEN RAAD NEDERLAND EN DE TASKFORCE HANDICAP EN SAMENLEVING

Maandag 11 juni 2007

Willem van Oranjezaal: Ministerie van Binnenlandse Zaken

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter), dhr. J.M. Barendrecht, dhr. B.K.F. Jacobs, dhr. C. Meesters, dhr. M.J.C. van der Wel, mw. M. Gonzalez (secretariaat) en mw. C. Laurent (secretariaat)

Aanwezig namens de Chronisch zieken en Gehandicapten Raad Nederland (CG-Raad)

Dhr. P. Budding

Aanwezig namens de Taskforce Handicap en Samenleving

Dhr. S.M. da Costa (secretaris)

Aanwezig namens Viziris (Netwerkorganisatie van mensen met een visuele beperking)

Mw. M. van den IJssel

De voorzitter dankt de afgevaardigden van de verschillende organisaties voor hun komst en stelt de aanwezigen van de commissie voor.

1. Wat zijn de ervaringen van kiezers met een beperking in het huidige verkiezingsproces?

Uit onderzoeken blijkt dat er zich o.a. situaties hebben voorgedaan waarin stembureaus op het laatste moment verhuisd werden naar minder toegankelijke locaties, dat er onduidelijkheid bestond over de toegankelijkheid van stembureaus, dat er op verzoeken om informatie gereserveerd gereageerd werd door stembureaus en dat kiezers met een verstandelijke beperking onterecht geweigerd werden. Dit soort situaties komen volgens de organisaties voornamelijk voort uit onwetendheid. Zo zijn stembureauleden niet altijd op de hoogte van het feit dat zij kiezers met een lichamelijke beperking in het stembokje mogen helpen. Het is ook voorgekomen dat een kiezer met een verstandelijke beperking door de voorzitter van het stembureau werd geweigerd.

2. Dient het verkiezingsproces zo ingericht te worden dat deze hulp niet langer nodig is?

De organisaties spreken een voorkeur uit voor een verkiezingsproces waarin kiezers zo veel mogelijk zelfstandig kunnen stemmen. Het uitgangspunt voor deze organisaties is dat iedereen kan deelnemen aan de verkiezingen.

3. De commissie overweegt te adviseren om stemmen in een willekeurig stembureau landelijk in te voeren. Per gemeente zouden er een aantal stembureaus zo ingericht kunnen worden dat zij toegankelijk zijn voor mensen met een beperking bijvoorbeeld m.b.v. aangepaste stemapparatuur. Hoe kijkt u hier tegen aan?

Uit onderzoek¹ blijkt dat aangepaste stemapparatuur door kiezers met een beperking positief gewaardeerd wordt. Echter, het gebruik van deze apparatuur dient vooraf aangekondigd te worden.

¹ Het rapport is door mw. Van den IJssel aan de commissie overhandigd.

Informatie en instructiemateriaal dienen voor de stemming beschikbaar te worden gesteld. De organisaties benadrukken dat 12 tot 15 % van de Nederlandse bevolking een functiebeperking heeft. Het overgrote deel van deze groep brengt in het stembureau zijn stem uit. Er is bij de stembureaus echter vaak sprake van onkunde. Aangepaste stemapparatuur zou hier een uitkomst bieden. Voor kiezers met een beperking is het lastig om aan de andere kant van de stad te moeten stemmen.

4. Heeft u suggesties/aanbevelingen voor de toekomstige inrichting van het verkiezingsproces?

De criteria voor toegankelijkheid moeten vastgelegd zijn in de Kieswet. De stembureaus (locatie, inrichting, bewegwijzering) moeten voor iedereen toegankelijk zijn (de organisaties verwijzen naar de wenkenbladen voor de inrichting van stembureaus). Dat geldt ook voor de stemapparatuur (m.b.v. audio, voelbare knoppen). Een aangepaste stemmachine kan door alle kiezers gebruikt worden. Helaas worden deze machines door de gemeenten nu niet standaard aangeschaft, terwijl de extra kosten te overzien zijn. Voor rolstoelgebruikers is aangepaste stemapparatuur alleen - in de zin van auditieve aanpassingen - niet voldoende. Er zal tevens gebruik gemaakt moeten worden van verstelbare stemtafels.

Gemeenten moeten voorafgaand aan de verkiezingen informatie geven over de toegankelijkheid van stembureaus. De stembureauleden moeten goed geïnstrueerd en opgeleid worden. Er zijn tips voor stembureauleden beschikbaar, en in sommige gemeenten worden er bijeenkomsten georganiseerd. De houding van de gemeenten ten opzichte van kiezers met een beperking zal moeten veranderen. Verkiezingen worden niet jaarlijks gehouden. Daarom is het belangrijk dat de toegankelijkheid van de stembureaus in de draaiboeken opgenomen wordt.

Verstandelijk gehandicapten moeten in het stemhokje geholpen kunnen worden. Dat is nu niet toegestaan tot grote ontevredenheid van deze kiezers. Er zijn instellingen voor mensen met een verstandelijke handicap die zich bewust met verkiezingen bezig houden, maar over het algemeen ontbreekt er bij dit soort instellingen een beleid. Om de stemming door verstandelijk gehandicapten soepel te laten verlopen, zouden instellingen afspraken kunnen maken met het stembureau.

Kiezers met een beperking moeten in de gelegenheid gesteld worden om te oefenen. Kiezers met een beperking laten oefenen via het internet (zoals op de website www.steffie.nl waar men kan oefenen met een NS-kaartautomaat) wordt door de organisaties slechts als een aanvullende mogelijkheid beschouwd.

Websites moeten toegankelijk zijn (m.b.v. audio, braille). De organisaties benadrukken dat het een misvatting is dat blinden geen gebruik maken van het internet (en verwijzen naar de richtlijnen voor toegankelijke websites).

5. De commissie overweegt voor een beperkte groep kiezers een aparte regeling (bijvoorbeeld briefstemmen) te adviseren. Wie zouden hiervoor in aanmerking moeten komen en biedt de gehandicaptenparkeerkaart P hier uitkomst?

Volgens de organisaties bestaat bij het gebruik van de gehandicaptenparkeerkaart het gevaar dat er een groep kiezers uitgesloten wordt. De criteria zijn namelijk streng. Bovendien moet men door het proces van de aanvraag heen terwijl een kiezer alleen wil stemmen en geen behoefte heeft aan een parkeerkaart. De groep kiezers met een beperking is volgens de organisaties niet goed identificeerbaar. Uit angst voor stigmatisering vindt er geen standaardisering plaats. Er bestaat naast de gehandicaptenparkeerkaart tevens een WVG-verklaring (Wet Voorziening Gehandicapten, nu Wet Maatschappelijke Ondersteuning). Deze verklaring wordt door de gemeenten afgegeven. Echter, de

gemeenten hanteren bij de uitvoering van de WMO niet allemaal dezelfde criteria. Bovendien wordt een degelijke verklaring ook al afgegeven als het uitsluitend om een thuis te treffen voorziening gaat.

6. Welke manier van stemmen zou u voor deze beperkte groep kiezers aanbevelen?

De organisaties spreken een voorkeur uit voor telefonisch stemmen wanneer het gaat om ouderen en zwaar gehandicapten.

7. Wat acht u bezwaarlijker, het risico van ronselen (bij stemmen per volmacht) of het risico van beïnvloeding (bij hulp in het stembokje)?

De organisaties achten de negatieve effecten van hulp ter plaatse kleiner. Bovendien moet ook de menselijke waardigheid in acht worden genomen.

Resumerend stellen de organisaties dat:

- alle stemapparatuur aan de toegankelijkheidseisen zou moeten voldoen;
- wanneer het gaat om de afweging tussen een volwaardige deelname aan de verkiezingen en (bijvoorbeeld) de problematiek van de compromitterende straling, het eerste zwaarder weegt;
- voor een beperkte groep kiezers (ouderen en zwaar gehandicapten) telefoonstemmen de voorkeur heeft;
- mensen met een beperking al op veel terreinen in de compromissfeer terecht komen en er reeds bij de ontwikkeling van een stelsysteem rekening moet worden gehouden met toegankelijkheid.

BEKNOPT WEERGAVE GESPREK MET DE KIESRAAD

Maandag 19 juni 2007

Willem van Oranjezaal: Ministerie van Binnenlandse Zaken

Aanwezig namens de Adviescommissie inrichting verkiezingsproces

Dhr. F. Korthals Altes (voorzitter), dhr. J.M. Barendrecht, dhr. B.K.F. Jacobs, dhr. C. Meesters, dhr. M.J.C. van der Wel, mw. M. Gonzalez (secretariaat) en mw. C. Laurent (secretariaat)

Aanwezig namens de Kiesraad

Dhr. H.R.B.M. Kummeling (voorzitter), dhr. G.J. Schutte, (ondervoorzitter) en mw. J. Schipper-Spanninga (secretaris-directeur)

De voorzitter van de Adviescommissie inrichting verkiezingsproces verwelkomt de delegatie van de Kiesraad. De commissie heeft een aantal vragen die zij de Kiesraad wil stellen. De vragen hebben met name betrekking op de verdeling van taken en verantwoordelijkheden. De commissie stelt de transparantie en controleerbaarheid in het verkiezingsproces centraal en is daarom van mening dat er een controlerende taak moet zijn die toeziet op de juiste naleving van de wet en regelgeving bij verkiezingen. Controle en toezicht zijn nodig om risico-analyses te kunnen maken en die actueel te houden. De commissie vraagt zich af waar deze taak moet worden belegd. Een optie daarvoor is de Kiesraad. De vraag is echter of deze taak te verenigen is met de andere taken van de Kiesraad. Verder is de vraag of de Kiesraad geëquipeerd (deskundigheid) is voor een dergelijke taak waarbij ook controle van elektronische voorzieningen noodzakelijk is.

Van de zijde van de Kiesraad wordt aangegeven dat er al lange tijd nagedacht wordt over het takenpakket van de Kiesraad. Het vertrouwen van de samenleving in de Kiesraad is groot en de Kiesraad wil dat zo houden. De Kiesraad erkent dat de digitalisering van het verkiezingsproces zich de afgelopen jaren heeft uitgebreid. De deskundigheid op het terrein van ICT is thans nog beperkt (de vervulling van de vacature voor een ICT-medewerker is aangehouden totdat meer duidelijkheid bestaat over de eventuele taken van de Kiesraad op dit vlak). Voor de toekomst zal dat moeten veranderen.

De Kiesraad onderschrijft de aanbevelingen van de OVSE op het punt van het toezicht. De Kiesraad begrijpt de wens tot een zekere scheiding van taken te komen. In de praktijk is dat echter niet altijd mogelijk, nu ook het aantal organen dat betrokken is in het verkiezingsproces naar het oordeel van de Kiesraad niet zou moeten toenemen. In dergelijke situaties zou men meer transparantie en 'checks and balances', zoals beroep op de rechter, kunnen inbouwen. Bovendien, in sommige gevallen ontkomt men niet aan een uitvoerende rol, nu bepaalde taken in onafhankelijkheid moeten worden uitgevoerd. Desgevraagd meldt de Kiesraad dat als hij zou moeten kiezen tussen uitbreiding met toezichthoudende taken en of verdere uitbreiding van uitvoerende taken dan vooralsnog te kiezen voor het eerste. Een aantal taken, zoals de registratie van politieke partijen en de kandidaatstelling behoren, gelet op de noodzaak tot onafhankelijke beoordeling, niet bij een politiek-bestuurlijk orgaan zoals de minister neergelegd worden volgens de Kiesraad. Er zal bij een toedeling van een toezichthoudende taak aan de Kiesraad inderdaad een andere samenstelling, mogelijk een andere inrichting van de Kiesraad en een andere ondersteuning nodig zijn. De Kiesraad meldt desgevraagd dat voor de huidige taken van de Raad voor 2007 10 fte aan ondersteuning (totaal budget € 1,2 mln) beschikbaar is.

De commissie vraagt om een toelichting over de controles die thans in het verkiezingsproces worden uitgevoerd en met name om de rol van de Kiesraad daarin.

De Kiesraad geeft aan een beperkte controlerende rol te hebben, aangezien hij nu niet beschikt over bevoegdheden ter controle van het gehele proces. De Kiesraad kan wel afwegen of eenmaal bekende incidenten van invloed zouden moeten zijn op de uitslag. Het verkozen orgaan besluit uiteindelijk over de geldigheid van de verkiezing. De informatie hiervoor komt uit processen-verbaal, en informatiepunt (waar burgers en gemeenten zich kunnen wenden voor informatie, opmerkingen en kritiek) en/of door eigen waarnemingen. De Kiesraad zoekt in voorkomende gevallen contact met het OM of doet aangifte. De ervaring is echter dat dergelijke initiatieven niet altijd resultaat hebben. Het OM stuit veelal op bewijsproblemen. De preventieve werking van strafbaarstelling is volgens de Raad gering. Bij de voorbereiding van de verkiezing door gemeenten heeft de Kiesraad geen formele rol (ook niet controlerend). De Kiesraad probeert, in samenwerking met het ministerie van BZK, wel preventief op te treden (circulaires). De Raad wijst erop dat controle op controle niet gewenst is in het verkiezingsproces.

De commissie informeert of de Kiesraad van mening is dat transparantie in het verkiezingsproces nodig is. De Kiesraad meent dat het inderdaad noodzakelijk is transparanter te opereren.

Het verdient volgens de Kiesraad aanbeveling om de door de stembureaus in te vullen processen-verbaal beter in te richten, en het proces te voorzien van ICT-ondersteuning zodat deze eenvoudiger en sneller doorzocht kunnen worden. Een audit zou er op moeten toezien dat de processen verbaal correct worden ingevuld. Dit zal de controlebaarheid en betrouwbaarheid vergroten. Controle en toezicht (en de gevolgen daarvan) zullen wel zeer goed verankerd moeten worden in de wet- en regelgeving.

De commissie overweegt de telling uit de stembureaus te leiden langs een centraal geautomatiseerd punt (onder verantwoordelijkheid van de minister van BZK). De tellingen worden vervolgens op het internet gepubliceerd zodat deze voor iedereen na te rekenen zijn. De Kiesraad vraagt aandacht voor het moment van openbaarheid van deze gegevens in relatie tot het moment van de vaststelling van de uitslag. De commissie is van mening dat de vaststelling van de uitslag onherroepelijk moet blijven. Wel vindt de commissie dat de processen-verbaal en andere documenten beschikbaar zouden moeten blijven, bijvoorbeeld voor wetenschappelijk onderzoek.

De Kiesraad wijst erop dat voor het vaststellen van de uitslag de telling maar één element is. De inhoud van de processen-verbaal zijn evenzeer bepalend voor het kunnen vaststellen van de uitslag. Het centraal stembureau stelt de uitslag vast en kan tot een hertelling besluiten. Het vertegenwoordigende orgaan verricht het geloofsbrievenonderzoek en besluit over de toelating van de leden. Bij ernstige incidenten kan het vertegenwoordigend orgaan tot een herstemming besluiten. Het zou volgens de Kiesraad aanbeveling verdienen bij de besluitvorming van het vertegenwoordigend orgaan over de geldigheid van de verkiezing meer checks in te bouwen. Het is een kwetsbaar proces. Het verdient aanbeveling om de Kiesraad hierin een formeelwettelijke, adviserende rol toe te bedelen.

De commissie vraagt welke concrete knelpunten de Kiesraad nu ervaart in zijn eigen functioneren?

De Kiesraad moet zoals eerder gesteld afgaan op signalen die worden ontvangen. De Kiesraad heeft zelf geen bevoegdheden om te sturen.

De commissie is van mening dat de verantwoordelijkheid voor het stellen van eisen aan de middelen die worden gebruikt voor het voorbereiden en uitvoeren van de verkiezingen moet liggen bij de minister van BZK. Vraag is of de Kiesraad dit standpunt deelt?

De Kiesraad acht deze lijn helder. Gezien de gedecentraliseerde inrichting van Nederland zal dit goed in de formele wetgeving moeten worden vastgelegd.

De voorzitter dankt de delegatie van de Kiesraad voor de gegeven antwoorden. Het is mogelijk dat de heer Van Twist, die door de commissie is gevraagd om te adviseren over mogelijke keuzes voor het onderbrengen van de taken en verantwoordelijkheden in het verkiezingsproces, nog een gesprek zal hebben met de Raad. Als dat gewenst wordt geacht zal hierover vooraf contact worden opgenomen met het secretariaat van de Kiesraad.

De Kiesraad wacht dit af en meldt verder dat binnenkort een advies zal worden uitgebracht over de invoering van een legitimatieplicht bij het stemmen. De Kiesraad zal het secretariaat van de commissie een exemplaar van dit adviesdoen toekomen.

Bijlage 15

Brieven

ing. F.J.J.M. Andriessen
Johan Willem Frisostraat 30
2713 CE Zoetermeer

Aan de heer mr. F. Korthals Altes,
voorzitter adviescommissie inrichting verkiezingsproces,
p/a Ministerie voor Bestuurlijke Vernieuwing en Koninkrijksrelaties,
Schedeldoekshaven 200,
2511 EZ 's-Gravenhage.

Zoetermeer, 20 maart 2007

Geachte heer Korthals Altes,

Zijdelings uit mijn werk heb ik met het verkiezingsproces te maken. Hierdoor signaleerde ik enkele terminologische zaken in de Kieswet die tot ernstige verwarring kunnen leiden. Hiervan informeer ik u graag op persoonlijke titel.

In de Kieswet wordt in de artikelen B1, 2 en 3 bepaald wie kiesgerechtigd zijn. Verder wordt in de Kieswet de term **kiezers** gebezigd, zonder in definitievorm of verwijzing aan te geven dat kiezers de kiesgerechtigden zijn.

Vooraf in hoofdstuk J, de stemming, wordt vaak de term kiezer gebezigd maar in combinatie met de tekst in het artikel leidt dat tot verwarring. Enkele voorbeelden:

Kieswet art J7: "... *ontvangt elke kiezer die bevoegd is aan de stemming deel te nemen....*" dit lijkt dubbelop, er vanuit gaande dat de kiezer hetzelfde is als kiesgerechtigde.

Kieswet art J24: "... *degenen die bevoegd is aan de verkiezing deel te nemen...*" hier is het begrip kiezer en kiesgerechtigde geheel losgelaten.

Kieswet art J35 lid 1: "... *zijn de kiezers bevoegd...*" en lid 2: "... *aanwezige kiezers...*" in relatie met het Besluit art J6: "... *In elk stemlokaal is een voor het publiek bestemde ruimte...*" in deze en volgende artikelen zal met kiezers waarschijnlijk publiek bedoeld worden. De strekking is toch dat de stemming en stemopneming openbaar zijn en derhalve voor publiek te volgen moeten zijn.

Daarom zijn de volgende artikelen verrassend. Hier gaat het namelijk over de stemopneming: Kieswet art N8 lid 3: "... *een van de aanwezige kiezers....De kiezers kunnen mondeling bezwaren...*". Dit is na de sluiting van het uitbrengen van de stemmen en gedurende het telproces. In principe is er op dat moment niet meer sprake van een kiezer omdat er geen gelegenheid meer is de stem uit te brengen. Daarnaast is er een belangrijk praktisch probleem. **Hoe is te bepalen dat iemand een kiezer is?** Hij heeft al gestemd en heeft daarvoor de kiezerspas in moeten leveren en kan zich derhalve niet meer als zodanig legitimeren. Heden ten dage is er geen kiezersregister meer aanwezig, terwijl dat alleen maar voor kiezers van dat stembureau uitkomst zou bieden. En wat te denken van een 17 jarige die in het kader van de

2007-03-20

openbaarheid dit proces wil volgen? Of een volwassene die door de rechter als beperking het kiesrecht ontnomen is? Alles lijkt erop dat met kiezer in deze artikelen eigenlijk, net zoals eerder met publiek, bedoeld wordt de term: "*de burger*".

Ook in hoofdstuk P dat over de verkiezingsuitslag gaat, bestaat deze spraakverwarring. Kieswet art P20 lid 3: "...*De aanwezige kiezers kunnen...*". Zeker hier, waar de voorzitter van het centraal stembureau de uitslag bekend maakt is geen sprake meer van het stemlokaal maar meestal een andere locatie en al helemaal niet van kiezers.

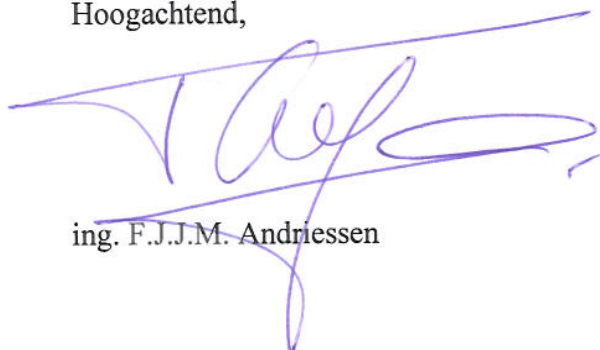
Dit zijn slechts enkel voorbeelden.

Waar het om gaat is dat onderscheid gemaakt dient te worden tussen kiesgerechtigden -als personen die mogen deelnemen aan de verkiezing-, kiezers -als degene die daadwerkelijk de handeling van het stemmen aan het uitvoeren is- en burgers/publiek -als degenen die het proces wel mogen bijwonen en volgen. De laatste kan eventueel ook minderjarig zijn.

Hopelijk kan dit tot hulp dienen indien bij de u voor ogen staande acties één daarvan zou zijn de Kieswet aan te passen.

Indien gewenst ben ik uiteraard bereid dit in een mondeling gesprek toe te lichten.

Hoogachtend,



ing. F.J.J.M. Andriessen

Aan de voorzitter van de commissie
Inrichtingverkiezingsproces,
de heer mr F. Korthals Altes,
Postbus 20011
2500 EA Den Haag

Groenlo, 14 maart 2007

Hooggeachte heer Korthals Altes,

Een actiegroep met dubieuze doelstellingen wil nadrukkelijk de indruk vestigen dat het kiesproces in Nederland te wantrouwen valt.

Dat dit gevoel in de samenleving niet breed gedragen wordt, ook na alle overdreven en onoordeelkundige publiciteit, is vastgesteld in het kiezersonderzoek, waarvan onlangs het resultaat bekend werd.

Ook bij het eerst betrokken echelon, de organiserende gemeenten, is van wantrouwen geen sprake; noch jegens het systeem van elektronische stem-uitbrenging noch jegens ons bedrijf.

Ter adstructie hierbij de uitkomst van een onderzoek, gehouden na de TK-verkiezing van 22 november j.l.

Met de meeste hoogachting,



Bureau voor Verkiezingsuitslagen J.W. Groenendaal B.V.
A.W. Hoeflaak



CG-Raad

Chronisch zieken en Gehandicapten Raad Nederland

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Ministerie van Binnenlandse Zaken en
Koninkrijksrelaties
dhr. mr. F. Korthals Altes, voorzitter van de
Commissie Inrichting Verkiezingsproces
Herengracht 17-19
2511 EG DEN HAAG

Utrecht 20 februari 2007
Kenmerk: S07-0218/pb/nc
Betreft: toegankelijkheid verkiezingsproces
Inlichtingen bij: Pascal Budding

Geachte heer Korthals Altes,

De start van uw Commissie Inrichting Verkiezingsproces betekent een belangrijke stap in de richting van herziening van het verkiezingsproces in Nederland. Wij – de Chronisch zieken en Gehandicapten Raad Nederland (CG-Raad), het Overleg Lichamelijk Gehandicapten Amstelland (OLGA), de Stichting Gehandicapten Overleg Amsterdam (SGOA), het Stedelijk Overleg Lichamelijk Gehandicapten Utrecht (Solgu), de Landelijke Federatie van Belangenbehartigers 'Onderling Sterk' (LFB OS), Viziris (voorheen de Federatie Slechtienden- en Blindenbelang) en Dovenschap – zijn verheugd over de instelling van uw commissie. De minister voor Bestuurlijke Vernieuwing en Koninkrijksrelaties heeft bij het formuleren van de opdracht aan de commissie terecht als vereiste gesteld dat de verkiezingen voor iedereen op gelijke wijze toegankelijk moeten zijn. Voor ons is de toegankelijkheid van het verkiezingsproces een zeer belangrijk thema. Met deze brief vragen wij hiervoor uw aandacht.

Toegankelijkheid van het verkiezingsproces zou in elk democratisch stelstel vanzelfsprekend moeten zijn. Stemmen is immers een burgerrecht. Toch wordt er in het verkiezingsproces in Nederland nog onvoldoende rekening gehouden met mensen met een functiebeperking. Hierdoor kan een aanzienlijke groep burgers nog steeds niet zelfstandig zijn stem uitbrengen. Maar het verkiezingsproces is meer dan stemmen alleen. Ook de toegang tot politieke informatie (verkiezingsprogramma's) en deelname aan het politiek-maatschappelijk debat moet voor iedereen mogelijk zijn om ten volle te kunnen participeren in de democratie.

Bij alle verkiezingen is dit opnieuw een punt van zorg, waarvoor wij herhaaldelijk aandacht hebben gevraagd. Mede naar aanleiding van onze oproep aan gemeenten om de verkiezingen van 2006 toegankelijk te maken, vroeg ook de Kiesraad medio 2006 aandacht voor dit onderwerp. In zijn brief van 1 juni 2006 aan de minister

-2-

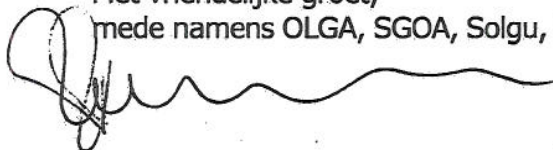
voor Bestuurlijke Vernieuwing en Koninkrijksrelaties vroeg de Kiesraad om de inzet van aangepaste stemapparatuur. Ook vroeg de Kiesraad om aanvullende regels ten aanzien van de toegankelijkheid van stembureaus. De minister voor Bestuurlijke Vernieuwing en Koninkrijksrelaties reageerde daarop met een verwijzing naar de voorgenomen herziening van de Kieswet, waarbij het element van toegankelijkheid betrokken zal worden. De herziening van de Kieswet zou een aanzienlijke verbetering betekenen in de toegankelijkheid van het verkiezingsproces.

Gelukkig is er veel mogelijk. Dat bewijzen de vele goede initiatieven die op lokaal niveau genomen worden. Doordat het echter ontbreekt aan landelijke, in de Kieswet opgenomen bepalingen ten aanzien van toegankelijkheid, is het onnodig moeilijk om te komen tot een integrale aanpak waarin alle relevante aspecten ten aanzien van toegankelijkheid zijn meegenomen. Voor onze organisaties is dit aanleiding geweest om de handen ineen te slaan. Wij hebben de beste voorbeelden uit de praktijk en de vele, veelal op lokaal niveau in de vorm van handreikingen en richtlijnen beschikbare informatie verzameld en gebundeld.

Die gezamenlijke inspanningen hebben geleid tot een overzicht van voorwaarden waaraan het verkiezingsproces zou moeten voldoen zodat ook daadwerkelijk toegankelijkheid wordt gerealiseerd. Dit overzicht treft u aan bij deze brief. Het betreft hier een opsomming van de hoofdlijnen, waarachter dikwijls een nadere uitwerking en meer gedetailleerde informatie schuilgaat. Om de voorwaarden inzichtelijk te maken zijn deze in een bijlage geïllustreerd met voorbeelden uit de praktijk. Wij hopen en verwachten dat we hiermee een bijdrage kunnen leveren aan de werkzaamheden van uw commissie en dat u onze door de praktijk gedragen voorstellen wilt overnemen.

De in deze brief genoemde partijen, gesteund door de Taskforce Handicap en Samenleving, vragen u om ons te laten weten hoe u over de punten in de bijlage denkt. Ook horen wij graag van u of en op welke wijze u deze in uw advies wilt betrekken. Uiteraard zijn wij graag en te allen tijde bereid u van een nadere toelichting of informatie te voorzien, op uw verzoek een nadere uitwerking van een of meerdere voorwaarden te geven of anderszins een constructieve bijdrage aan uw werkzaamheden te leveren.

Met vriendelijke groet,
mede namens OLGA, SGOA, Solgu, LFB OS, Viziris en Dovenschap,



A.A.R.G. Poppelaars,
directeur

i.a.a.

- de minister van Binnenlandse zaken en Koninkrijksrelaties
- de Kiesraad

Gezamenlijke voorwaarden voor een toegankelijk verkiezingsproces

1. Toegankelijke informatie

- Verkiezingsprogramma's en kandidatenlijsten moeten beschikbaar zijn in aangepaste leesvormen (grootletter, audio, braille) en toegankelijke digitale leesvormen (HTML en bestanden in Wordformaat) en beschikbaar zijn op een Internetsite die voldoet aan de bestaande normen voor toegankelijkheid.
- De kandidatenlijsten moeten voorzien zijn van logo's van de partijen en foto's van de kandidaten.
- Programma's in de zendtijd voor politieke partijen dienen te zijn ondertiteld.

2. Deelname aan politiek debat

- Politieke bijeenkomsten en openbare debatten moeten altijd op toegankelijke en voor iedereen zelfstandig te bereiken locaties worden georganiseerd.
- Op deze locaties moeten voorzieningen voor toegankelijkheid aanwezig en beschikbaar zijn (inclusief informatie in toegankelijke leesvormen en doventolk)

3. Oproep verkiezingen

- Met de oproep moet altijd duidelijke en gedetailleerde informatie worden meegestuurd over de toegankelijkheid van de stembureaus en de stemcomputers (mate van toegankelijkheid per stembureau), zodat mensen weten waar zij zelfstandig kunnen stemmen. Deze informatie moet op verzoek beschikbaar worden gesteld in aangepaste leesvormen.
- Bij de oproep moet informatie worden meegestuurd over waar de kandidatenlijsten en verkiezingsprogramma's (toegankelijk) bekeken kunnen worden. Deze informatie moet op verzoek beschikbaar worden gesteld in aangepaste leesvormen.
- Maak overal gebruik van een stempas waarmee kiezers zonder aankondiging vooraf op elk willekeurig stembureau kunnen stemmen, zodat het mogelijk is naar een toegankelijk stembureau te gaan. Het uitgangspunt moet zijn dat elk stembureau toegankelijk is.

4. Stembureaus en stemhokjes

- Stembureaus moeten zelfstandig bereikbaar en toegankelijk zijn voor iedereen met een functiebeperking.
- In elk stembureau moet ten minste één stemhokje bereikbaar en toegankelijk zijn voor mensen met een functiebeperking.

5. Stemcomputers

- De stemcomputer dienen te voldoen aan de eisen ten aanzien van bruikbaarheid en toegankelijkheid. Daarbij moeten de betrouwbaarheid en controleerbaarheid van de stemcomputers natuurlijk niet in het geding zijn.
- De belangrijkste eisen:
 - bedieningspaneel instelbaar (hoog/laag, kantelbaar)
 - alternatief voor touch screen: tactiele en auditieve informatie en feedback (met waarborg privacy, dus met hoofdtelefoon en tactiele toetsen)
 - logo's/foto's partijen/kandidaten toevoegen

6. Assistentie

- Maak het mogelijk om kiezers voorafgaande aan de verkiezingen in de praktijk te laten oefenen in het gebruik van de stemcomputer.
- Zorg voor assistentieverlening en begeleiding op het stembureau voor mensen die dat nodig hebben.
- Maak assistentie bij het stemmen (in het stemhokje) ook mogelijk voor mensen met een verstandelijke beperking.

Praktijkvoorbeelden

De geformuleerde voorwaarden worden hieronder per onderdeel geïllustreerd met praktijkvoorbeelden. Deze voorbeelden zijn niet uitputtend en illustreren slechts een deel van de gestelde voorwaarden. Zij zijn bedoeld om inzicht te bieden in wat er in de praktijk mogelijk is en gebeurt. De voorbeelden tonen ook het belang aan van landelijke normen en regie: in de praktijk richt men zich vaak op een of enkele onderdelen van toegankelijkheid en is slechts zelden sprake van een integrale benadering.

Ad 1. Toegankelijke informatie

- Voor de Tweede Kamerverkiezingen van 22 november 2006 hebben 12 politieke partijen een luisterversie beschikbaar gesteld van hun verkiezingsprogramma's voor mensen die blind, slechtziend of dyslectisch zijn of een andere leesbeperking hebben.
- De stemmachinefabrikanten bieden als service aan gemeenten aan om te regelen dat de kandidatenlijsten worden omgezet in aangepaste leesvormen. Een groot aantal gemeenten maakt hier gebruik van (zie ook onder 3).
- De provincie Gelderland bereidt voor de aanstaande Provinciale Statenverkiezingen in overleg met cliëntenorganisaties een stemhulp voor, bedoeld voor mensen die moeite hebben met lezen. Daarbij zal gebruik gemaakt worden van symbolen, tekeningen en zeer eenvoudig taalgebruik.
- Voor meer informatie over toegankelijke websites kunt u terecht op de website www.drempelvrij.nl.
- Producenten van aangepaste leesvormen zijn Dedicon te Grave, CBB te Ermelo, Proson te Ermelo en LSB te Nijmegen.

Ad 2. Deelname aan politiek debat

- Met medewerking van het Stedelijk overleg lichamelijk gehandicapten Utrecht (Solgu) werd in het kader van de gemeenteraadsverkiezingen in april 2006 een toegankelijk verkiezingsdebat georganiseerd in Utrecht, waarbij onder meer ook een doventolk aanwezig was.
- In aanloop naar de Tweede Kamerverkiezingen kreeg dhr. Balkenende van de actiegroep 'Makkers Unlimited' een doventolk aangeboden tijdens een politiek debat op 13 november 2006 in Doetinchem. Doven- en slechthorenden konden daardoor het debat bijwonen én meepraten.

Ad 3. Oproep verkiezingen

- In de gemeente Purmerend werd in een openbare kennisgeving duidelijke informatie verstrekt voor mensen met een functiebeperking:

Voorzieningen voor mindervaliden en visueel gehandicapten

Voor visueel gehandicapten ligt uiterlijk 3 maart 2007 een kandidatenlijst in grote letters en in braille ter inzage bij de Centrale Balie Publieksvoorlichting en de Centrale Bibliotheek. Op verzoek kan een kandidatenlijst in gesproken vorm naar u worden gestuurd. Hiervoor kunt u contact opnemen met de gemeente via nummer 0299-452911 tussen 09.00 en 15.00 uur.

Nieuw is dat op het stembureau in het stadhuis voor visueel gehandicapten en analfabeten een speciale stemmachine beschikbaar is. Omdat u een stempas ontvangt kunt u in ieder stembureau in Purmerend stemmen, dus ook in het stadhuis.

Het lukt niet overal even goed om de stembureaus toegankelijk te maken voor mindervaliden. De stemlokalen 1, 2, 4, 5, 8, 9, 17, 31 en 37 zijn zowel toegankelijk voor rolstoelen als voor scootmobielen. Bij alle stembureaus is een aanwijsstok beschikbaar voor mensen die problemen hebben bij het indrukken van de knoppen op de stemmachine. Tevens is een vergrootglas beschikbaar. U kunt ook gebruik maken van het stemmen bij volmacht.

Ad 4. Stembureaus en stemhokjes

- De gemeente Gouda heeft laten weten dat bij de komende Provinciale Statenverkiezingen alle stembureaus toegankelijk zullen zijn voor mensen met een functiebeperking.
- Er zijn diverse handreikingen, wenkenbladen en checklists beschikbaar waarin tips over toegankelijke stembureaus zijn opgenomen. Genoemd kan bijvoorbeeld worden het wenkenblad "toegankelijkheid van stembureaus" van Cliëntenbelang Utrecht (zie www.batutrecht.nl).

Ad 5. Stemcomputers

- In maart 2007 zijn er in verschillende gemeenten stemapparaten die toegankelijk zijn voor mensen met een visuele beperking; het gaat onder meer om Alkmaar, Arnhem, Bergen op Zoom, Bussum, Cuijk, Den Haag, Enschede, Ermelo, Groningen, Houten, Lelystad, Moerdijk, Nieuwegein, Nijmegen, Purmerend, Renkum, Schouwen Duiveland, Sneek, Utrecht, Utrechtse Heuvelrug, Venray, Zoetermeer, Zwolle.
- De producent Debu heeft een toegankelijke en instelbare stemtafel ontworpen die overal kan worden gebruikt. Verschillende gemeenten maken inmiddels gebruik van deze tafel (zie www.debu.nl).

Ad 6. Assistentie

- In Wolfheze (gemeente Renkum) is er gelegenheid geboden om te oefenen met de toegankelijke stemcomputer van de firma Nedap, die voorzien is van een hoofdteléfono met gesproken informatie en tactiele toetsen.
- Het Amsterdamse stadsdeel Oost-Watergraafsmere heeft meerdere instructie-avonden georganiseerd op diverse locaties waarbij de stemcomputer van SDU beoordeeld kon worden.

Noordwijk, 10 april 2007.

Aan Het Ministerie van Binnelandse zaken en Koninkrijksrelaties
t.a.v. Commissie inrichting verkiezingsproces
Postbus 20011
2500EA 's-Gravenhage

Geachte Dames en Heren,

Mijn naam is Aad van der Geest. Ik ben zelfstandig product ontwikkelaar op het gebied van elektronica, mechanica en software. Eerder door mij ontwikkelde producten zijn onder andere, regelcomputers voor de tuinbouw, rekenmachines voor medicijndosering en 3D printers.

Naar aanleiding van de publiciteit rond de stemmachines heb ik een idee uitgewerkt voor een ander type stemmachine. Deze machine heeft het voordeel dat stemprocedure en de wijze waarop de stemmen worden geteld voor de kiezer inzichtelijker is. Deze stemmachine is ook uit te voeren als een eenvoudig aanpassing van de bestaande stemcomputers.

Gaarne zou ik in de gelegenheid gesteld willen worden om mijn prototype stemmachine bij U in vertrouwen te kunnen demonstreren.

Indien U nog vragen heeft kunt U via e-mail of telefonisch contact met mij opnemen.

Met vriendelijke groet,
Aad van der Geest



Aad van der Geest
(Van der Geest Spitstechniek)
Pr bernhardstr 59A
2202 LG Noordwijk
tel 017 3616056
email: spitstec@wxs.nl

11042007

KIESRAAD



De heer mr. F. Korthals Altes,
Voorzitter commissie Inrichting Verkiezingsproces
Postbus 20011
2500 EA Den Haag

Onderwerp
Onderzoek commissie

Datum
12 februari 2007

Ons kenmerk
2007-0000046760

Onderdeel
Kiesraad

Inlichtingen
mw. mr. R. Hoorweg
T (070) 426 7201
F (070) 426 6489

Uw kenmerk

Blad
1 van 1

Aantal bijlagen
0

Bezoekadres
Herengracht 21
2511 EG Den Haag

Geachte heer Korthals Altes,

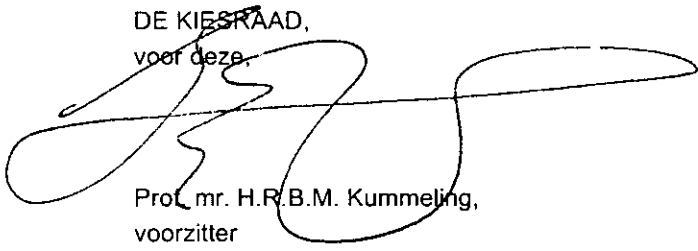
Met grote belangstelling volgt de Kiesraad het onderzoekswerk van uw commissie naar de inrichting van het verkiezingsproces en de stemb machines.

Ik heb begrepen via mijn secretariaat dat u op korte termijn geen aanleiding ziet tot overleg tussen de commissie en de Kiesraad. Zoals ook ambtelijk reeds is uitgewisseld tussen het secretariaat van uw commissie en het secretariaat van de Kiesraad, herhaal ik hier de bereidheid van de Kiesraad om zijn diensten beschikbaar te stellen aan het onderzoek door uw commissie, bijvoorbeeld door het aandragen van een zienswijze op één of meerdere deelonderwerpen van het onderzoek. Vanzelfsprekend ben ik ook bereid in een persoonlijk onderhoud met u nader te bezien of en zo ja op welke wijze de Kiesraad u bij uw onderzoek behulpzaam zou kunnen zijn.

Tenslotte vraag ik u eventuele verzoeken om informatie schriftelijk aan het secretariaat van de Kiesraad voor te leggen, zodat steeds duidelijk is hoe de informatievoorziening vanuit de Kiesraad aan uw commissie is (geweest). Mevrouw J. Schipper-Spanninga fungeert in deze vanuit het secretariaat als contactpersoon.

Hoogachtend,

DE KIESRAAD,
voor deze,


Prof. mr. H.R.B.M. Kummeling,
voorzitter

15022007

Bezoekadres
Herengracht 21
2511 EG Den Haag

Datum
10 mei 2007

Ons kenmerk
2007-0000172780

Onderdeel
Kiesraad

Blad
2 van 2

belegd en of er voldoende toezicht is op het goede verloop van het verkiezingsproces.

Beide vragen zijn nogal veelomvattend en complex van aard. De beantwoording van deze vragen is niet eenvoudig, want het gaat hierbij uiteraard naast de technische mogelijkheden ook om de staatsrechtelijke verhoudingen tussen verschillende lagen van overheidsbestuur, alsmede de wenselijk geachte omvang van de ministeriële verantwoordelijkheid. Gelet op het nogal complexe en veelomvattende karakter van de vragen vraagt de Kiesraad zich dan ook af of zij in een mondelinge gedachtewisseling van een uur afdoende diepgaand kunnen worden behandeld.

Voorafgaand aan een gesprek met uw commissie zou de Kiesraad daarom graag duidelijkheid willen hebben over het onderwerp, de functie en het perspectief van het gesprek, waaronder begrepen of het de bedoeling is dat er vervolggesprekken plaatsvinden. Ook verneemt de Kiesraad graag welke stukken hij uwerzijds mag verwachten. Voor de Kiesraad is duidelijkheid hierover mede van belang om te kunnen beoordelen of, en zo ja wanneer, er ten aanzien van één of meer onderwerpen aanleiding bestaat de regering en/of de Staten-Generaal van advies te dienen op grond van artikel A 2 van de Kieswet, uiteraard onder respectering van de verantwoordelijkheden van uw commissie.

Hoogachtend,

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

H.R.B.M. Kummeling,
voorzitter

Commissie Inrichting Verkiezingsproces
T.a.v. de heer F. Korthals Altes
P/a Ministerie van Binnenlandse Zaken en Koninkrijksrelaties
Postbus 20011,
2500 EA Den Haag

Groenlo, 12 april 2007.

Betreft: Afschrift Nedap brief OVSE aan staatssecretaris Bijleveld-Schouten.

Geachte heer Korthals Altes,

Bijgaand treft u een afschrift van een brief aan de staatssecretaris mevrouw Bijleveld –Schouten.

In de brief wijst Nedap op een aantal opvallende punten uit het OVSE rapport over de Tweede Kamer verkiezingen van 22 november 2006. Aangezien de OVSE ook aanbevelingen geeft voor de toekomstige inrichting van het verkiezingsproces, zouden wij deze informatie niet aan u willen onthouden.

Met vriendelijke groet,



M. Schippers
Nedap Election Systems
NV Nederlandsche Apparatenfabriek 'Nedap'

Specials

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16042007

Ministerie van Binnenlandse Zaken en
Koninkrijksrelaties
DE STAATSSECRETARIS
T.a.v. drs. A.Th.B.Bijleveld-Schouten
Postbus20011
2500 EA Den Haag

Groenlo, 13 april 2007
Betreft: OVSE rapport 12 maart 2007

Geachte Mevrouw Bijleveld-Schouten,

In uw brief aan de Tweede Kamer der Staten Generaal geeft u aan grote waarde aan het rapport van de OSVE te hechten. U wijst in het bijzonder op de opmerkingen die in het rapport gemaakt worden over het elektronisch stemmen.

Ook Nedap, als belanghebbende in het elektronisch stemmen, heeft zorgvuldig kennis genomen van het OVSE rapport m.b.t. de Tweede Kamer verkiezingen.

Het viel ons op dat de OVSE het onderwerp 'open source' versus 'secret proprietary systems' ambivalent en onzorgvuldig behandelt.

De conclusies en aanbevelingen uit het rapport¹ staan haaks op de bevindingen over dit onderwerp in het OVSE rapport² m.b.t. de 'Mid Term Congressional Elections' in de VS, van 7 november 2006.

Het rapport geeft geen heldere toelichting wat met 'open source' wordt bedoeld. Daardoor kan de indruk worden gewekt dat de in Nederland in gebruik zijnde systemen niet gebaseerd zouden zijn op 'open source' software. Dit is pertinent niet juist.

De firmware van de Nedap systemen zijn ontwikkeld in een algemeen beschikbare programmeertaal 'C', waardoor de broncode van de firmware een 'open source' basis heeft. In samenhang met het monolithisch karakter³ van de Nedap stemmachines bestaat de unieke mogelijkheid de complete broncode, die de volledige werking van het systeem bepaalt, door aangewezen deskundige en onafhankelijke keuringsinstellingen te laten beoordelen.

De aanbevelingen t.a.v. dit onderwerp van het OVSE rapport, m.b.t. de 'Mid Term Congressional Elections' in de VS van 7 november 2006, is dan ook volledig in overeenstemming met de huidige

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Nederlandse praktijk. De op pagina 16 van het OVSE rapport, m.b.t. de Tweede Kamer verkiezingen, genoemde bezwaren zijn derhalve niet van toepassing in Nederland.

Wellicht dat het misverstand over dit onderwerp is ontstaan doordat verschillende systeemleveranciers in de VS hun broncodes niet ter beschikking willen stellen aan aangewezen keuringsinstellingen.

Tevens wordt voorbijgegaan aan de ervaringen die in andere landen reeds op dit vlak is opgedaan. In dit verband zou bijvoorbeeld de ervaringen in Australië genoemd kunnen worden. Zoals u weet wordt de situatie in Australië, internationaal veelal als model genomen voor de wijze waarop 'open source' i.r.t. het elektronisch stemmen geregeld zou moeten worden.

Na aanvankelijk gestart te zijn met het uitgangspunt van 'open source', in de zin van het zonder voorwaarden in het publieke domein beschikbaar stellen van de broncode, is op grond van nadere overwegingen besloten hiervan verder af te zien. Vervolgens is besloten 'open source' verder te benaderen vanuit de visie zoals verwoord in het OVSE rapport, m.b.t. de 'Mid Term Congressional Elections' in de VS van 7 november 2006. Deze overwegingen zijn in diverse publicaties beschreven⁴.

Bovendien constateert Nedap dat hoofdstuk VI (Electronic Voting) van het OVSE rapport m.b.t. de Tweede Kamer verkiezingen een aantal feitelijke onjuistheden bevat.

Nedap gaat er vanuit dat deze feitelijke onjuistheden in de meer gedetailleerde OVSE rapportage met aanbevelingen gecorrigeerd zullen worden.

Dit rapport wordt voorbereid onder de titel "An Assessment of Electronic Voting In the Netherlands". Uit communicatie blijkt tevens dat verschillende medewerkers van uw ministerie van BZK om input is gevraagd. Hierdoor doet de gelegenheid zich voor om de OVSE te vragen om meer duidelijkheid te geven met betrekking tot het thema 'open source'.

Wij vertrouwen u met deze informatie gediend te hebben en verblijven in afwachting van uw reactie,

Hoogachtend,



M. Schippers

N.V. Nederlandsche Apparatenfabriek "Nedap"
Marktgroep Election Systems

CC: Commissie Hermans / Van Twist
Commissie Korthals Altes

¹ *The Netherlands, Parliamentary Elections, 22 November 2006*
OSCE/ODIHR Election Assessment Mission Final Report

Page 16:

"Voting system standards should not permit the use of systems which depend for their security on the secrecy of any part of their technical specifications. Reliance on proprietary systems should be reduced, where neither citizens, nor electoral officials, nor observers can determine how they operate."

² United States of America, Mid-Term Congressional Elections, 7 November 2006

OSCE/ODIHR Election Assessment Mission Final Report

Page 24:

"As the responsibility for administering an election is vested with the states' and counties' authorities, this should be accounted for in the commercial relationship with vendors. Arrangements should be facilitated by a more clearly defined division of responsibilities, including access to software codes for public testing by professionally competent entities or individuals, under appropriate confidentiality conditions providing both for transparency and adequate protection against possible misuse of the codes."

³ De term 'monolithisch' verwijst in dit verband naar de tegenstelling met andere stelsystemen, waarvan de werking is gebaseerd op de samenhang van een zogenaamd 'commercial of the shelf' operating system (zoals Microsoft Windows, Apple, Linux), BIOS (firmware van de PC-leverancier) en specifieke applicatie software. Doorgaans is voor dit soort systemen alleen de broncode van de specifieke applicatie software beschikbaar en toegankelijk voor verificatie.

⁴ Zie link:

<http://www.softimp.com.au/Common%20content/White%20Papers/CredElectionSoftware.pdf>

Page 7:

"Part of establishing trust is transparency of code. This is not so much to increase the confidence of the elector directly but to allow those with the ability to understand the code to identify potential flaws or (preferably) give their stamp of approval.

It is not enough merely to describe the election products, and the processes used to create, maintain and operate them, to gain the confidence and trust of electors. The people, methods, and processes used to develop an election product need to be of the highest integrity, as do those who have the opportunity to inspect the source. Doing so will help to deflect ignorant claims such as:

- ☐ *"They used Java – everyone knows Java is an awful language"*
- ☐ *"The team developing the software were obviously a bunch of hackers"*
- ☐ *"No software product is without defects – ergo...!"*

Most of these types of criticisms are rarely backed up with evidence, but they (unfortunately) do hold political weight. Obviously the cost of checking out ill-founded criticisms needs to be avoided. To do that

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requires a great deal more professionalism than currently exists in all sectors of the software industry (see Standish CHAOS reports http://www.standishgroup.com/sample_research/chaos_1994_1.php and the BCS/RAE report <http://www.bcs.org/BCS/News/PositionsAndResponses/Positions/complexity.htm>). Trusted computer systems have been constructed. However only by people possessing high skills, who know what trust means and who work hard to identify all potential points of failure that might cause a system to operate incorrectly."

16042007



Commissie Inrichting Verkiezingsproces
De Voorzitter
T.a.v. de heer mr. F. Korthals Altes
Postbus 10451
2501 HL Den Haag

Groenlo, 8 juni 2007

Betreft: Invoering 'papertrail'.

Geachte heer Korthals Altes

Gelieve bijgaand een afschrift van een brief aan de staatssecretaris mevrouw Bijleveld-Schouten ten aanzien van het onderwerp 'papertrail' in combinatie met de Nedap stemb machines aan te treffen.

Gezien het aandachtsveld van de opdracht van uw commissie lijkt het zinvol u deze informatie te geven. Indien de informatie aanleiding geeft tot aanvullende vragen, dan ben ik gaarne bereid deze te vernemen en desgewenst te beantwoorden.

Hoogachtend,

M.Schippers
Nedap Election Systems
N.V. Nederlandsche Apparatenfabriek "Nedap"

Bijlage: Afschrift brief aan de staatssecretaris ref. 'Invoering mogelijkheid voor hertelling van de stemopslag'

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Ministerie van Binnenlandse Zaken en
Koninkrijksrelaties
De staatssecretaris
T.a.v. drs. A.Th.B. Bijleveld-Schouten
Postbus 20011
2500 EA Den Haag

Groenlo, 7 juni 2007

Betreft: Invoering mogelijkheid voor hertelling van de stemopslag.

Geachte Mevrouw Bijleveld-Schouten:

In het 'Algemeen Overleg' van 24 mei hebben leden van de Tweede Kamer de wens uitgesproken om in de eerstvolgende aanpassing van de 'Regeling voorwaarden en goedkeuring stemmachines', de mogelijkheid voor hertelling van de stemopslag op te nemen.

Deze mogelijkheid zou ingevuld moeten worden door de invoering van een door de kiezer te verifiëren zogenaamde 'papertrail'.

Een dergelijke voorziening is door ons bedrijf ontwikkeld en op 15 mei 2007 bij wettelijk bindende verkiezingen in de staat New York ingezet.

In de bijlage treft u een 'white paper' aan met de beschrijving en de overwegingen die bij de ontwikkeling een rol hebben gespeeld.

In tegenstelling tot andere staten kunnen kiezers in de staat New York in het stembureau slechts op één stemmachine voor hun district hun stem uitbrengen. In enkele uitzonderlijke situaties zijn twee identieke stemmachines in het stembureau opgesteld. Deze situatie komt overeen met de Nederlandse praktijk.

Nadat het NVVB bestuur in een brief (5/2/2007) aan de Adviescommissie Inrichting Verkiezingsproces de suggestie deed de transparantie en de verdere beveiliging te willen bevorderen door invoering van de 'papertrail', hebben wij onderzocht of de voor New York ontwikkelde oplossing in combinatie met de door de Nederlandse gemeenten gebruikte stemmachines ingezet kan worden.

Er is vastgesteld dat dit voor alle tijdens de PS'07 ingezette machines mogelijk is.

Het enige voorbehoud dat wij moeten maken is voor de nog bekend te maken civiele regeling voor compromitterende straling.

Tijdens dit onderzoek is zelfs een prototype vervaardigd, die aan verschillende testen is onderworpen. Voorts is dit prototype zowel tijdens het NVVB congres in Noordwijkerhout, als tijdens het VNG congres

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in Utrecht aan een breed publiek gedemonstreerd.

Tijdens de demonstratie op beide congressen ontving het prototype een groot aantal positieve reacties.

Wij vertrouwen u met deze informatie gediend te hebben en verblijven in afwachting van uw reactie,

Hoogachtend,



M. Schippers

Nedap Election Systems

N.V. Nederlandsche Apparatenfabriek "Nedap"

Bijlage: 'White paper' Voter Verified Paper Audit Trail

Kopie: Adviescommissie 'Inrichting Verkiezingsproces'

NVVB bestuur

De eerste inzet van de Voter Verifiable Permanent Paper Audit Trail (VVPAT) bij wettelijk bindende verkiezingen in New York op 15 mei '07 is succesvol uitgevoerd.

Dit artikel biedt de lezer achtergrond informatie rond het fenomeen VVPAT in het algemeen en de ontwikkeling van de VVPAT voor de staat New York in het bijzonder.

1. Inleiding:

In de Verenigde Staten van Amerika zijn de verkiezingen een verantwoordelijkheid van iedere individuele staat. De verkiezingsstelsels zijn allen van het type 'first past the post', waarbij fraude of vergissingen, in tegenstelling tot systemen met proportionele vertegenwoordiging, zeer veel invloed kunnen hebben op de politieke machtsverhoudingen.

Daarnaast vindt een groot aantal verkiezingen gelijktijdig plaats voor verschillende ambten, vertegenwoordigingen en meerdere referenda.

Er zijn echter opmerkelijke verschillen per staat en niet alle staten vragen om een VVPAT.

Eind 19^e eeuw zijn in de USA stemmachines geïntroduceerd met als voornaamste reden de wijdverbreide verkiezingsfraude, kosten voor en vergissingen tijdens het tellen te beperken¹. In feite werd daarbij overgeschakeld van het stemmen met een object naar het stemmen zonder object, zoals het geval is bij het stemmen doormiddel van handopsteken of het verbaal kenbaar maken van de gemaakte keuze.

De wens naar een papieren bewijs (object) van de gemaakte keuzes bestaat al sinds de ingebruikname van de eerste mechanische stemmachines in Rochester NY in 1896.

Transparantie van het verkiezingsproces zou door het stemmen zonder papieren bewijsstukken niet gegarandeerd worden. Vanaf eind jaren zestig van de 20^e eeuw werden, speciaal voor verkiezingen ontworpen, elektronische machines geïntroduceerd. De afloop van het kiezen, de manier waarop de uitgebrachte stemmen opgeslagen worden en de telling van de uitgebrachte stemmen per machine ligt vast in onveranderbare programma's.² De veranderende gegevens zoals kandidaat- en partij-namen en positie van de naam op de gebruikersinterface worden per verkiezing ingevoerd en vastgelegd in veranderbaar geheugen.³

2. Twijfel aan door software gecontroleerde systemen

In 1969 werd in een hoofdartikel in The Los Angeles Times (Bergholz)⁴ een experiment beschreven waarbij twee groepen computer wetenschappers tel software voor het verwerken van de invoer van ponskaartlezers voor verkiezingen onderzochten. Een groep voerde een aanval met frauduleuze software uit en de andere groep moest aantonen wat er was gebeurd. Doordat de frauduleuze software zichzelf had gewist, nadat het zijn taak had uitgevoerd, slaagde de tweede groep hier niet in. Dit onderzoek had geen invloed op de wens naar een VVPAT immers bij de in gebruik zijnde firmware gestuurde machines is dit niet mogelijk zonder dat er hardware uitgewisseld wordt.

Aan het eind van de 20^e eeuw vond er een technische omslag plaats. Veel fabrikanten introduceerden verkiezingssystemen waarbij uitgegaan werd van een PC platform en touch screens en bij deze uitvoering is de in 1969 gesignaleerde onbemerkte aanval wel mogelijk.

¹ Joseph P. Harris, Election Administration in the United States(1934)

² Over het algemeen liggen de programma's vast in PROM's of E-PROMS (deze vorm van software wordt firmware genoemd). PROM's kunnen niet gewijzigd worden en moet en in zijn geheel worden vervangen, E-PROMS kunnen gewist worden met UV straling en opnieuw geprogrammeerd. Sommige fabrikanten gebruiken een hardware gestuurde afloop.

³ Dit geheugen kan RAM zijn met batterij voeding, E-PROMS of zoals bij NEDAP EE-proms (elektrisch te wissen PROMS).

⁴ Roy G. Saltman, rsaltman@alum.mit.edu, August 22, 2006, Independent Verification: Essential Action to Assure Integrity in the Voting Process, 3 Concern over Software fraud begins

Het grote publiek is zich niet bewust van de vele microprocessor gestuurde betrouwbare en vertrouwde apparaten in hun leefomgeving⁵, en werd steeds meer geconfronteerd met PC's en virussen. Hierdoor lukte het de voorstanders van een tastbaar bewijs van de uitgebrachte stem, via de pers en publieke opinie in veel staten wetgeving af te dwingen die een VVPAT voorschrijven, zonder onderscheid te maken in de technische uitvoering van de verkiezingssystemen.

3. Certificeren en toelaten voor gebruik van stemb machines

Naast een goedkeuring en certificering op staatsniveau wordt in veel staten in de USA een goedkeuring volgens de vrijwillige federale regelgeving gevraagd voordat in een staat aan het goedkeuringsproces kan worden deelgenomen.

Een variant van de Nedap stemmachine zonder VVPAT is op staatsniveau gecertificeerd voor gebruik in New Jersey en federaal goedgekeurd onder de 'voluntary voting standards VVS 2002' na type testen door de onafhankelijke testlaboratoria Wyle en Systest.

4. New York

In de staat New York heeft men meer dan 100 jaar mechanische en tientallen jaren elektronische stemb machines gebruikt zonder VVPAT. In deze staat is de kieswet in de afgelopen jaren op zeer veel punten gewijzigd.

Deze wijzigingen betreffen ook de stemb machines. De stemb machines die de oude machines gaan vervangen moeten, naast een groot aantal voorzieningen, dat er voor zorgt dat gehandicapte kiezers zelfstandig kunnen stemmen, nu voorzien worden van een VVPAT.

Wat in de USA op dit moment algemeen onder VVPAT verstaan wordt dekt de lading niet geheel meer. Het oorspronkelijke idee was een log rol die zichtbaar was voor de kiezer en waarop elke toetsaanslag van de kiezer wordt vastgelegd. Nu wordt hiermee over het algemeen een printer aangeduid die de samenvatting van door de kiezer gemaakte keuzes afdruckt. De kiezer kan deze samenvatting dan aanvaarden of afwijzen.

Uit de beschikbare publicaties over dit onderwerp kan geconcludeerd worden dat een printer die alleen de samenvatting print minder veilig is dan het oorspronkelijke concept van de log printer.⁶

5. De Nedap machine voor NY met VVPAT

De variant van onze machine voor New York state wordt onder andere voorzien van een VVPAT. De voorschriften hoe de printer moet functioneren ontbraken echter zodat dit gaande het certificeringproces vastgesteld moesten worden.

De keuzes die hier tot nu toe gemaakt zijn, zijn als volgt:

1. het betreft een thermische printer,
 - a. dus geen problemen met verouderde cartridges
 - b. het thermische papier is daarbij getest voor leesbaarheid bij de in NY vereiste jarenlange bewaartijd
2. er is sprake van een 'cut en drop' type,
 - a. voor elke kiezer wordt een reçu afgeknipt die een verzegelde zak valt

⁵Men zou alle microprocessor gestuurde apparaten een computer kunnen noemen. Voorbeelden zijn horloges en uurweken, rekenmachines, digitale thermometers, thermostaten, motor management systemen, moderne radio's en televisie toestellen

⁶http://www.brennancenter.org/dynamic/subpages/download_file_38150.pdf Brennan Center for Justice complete report

- b. In NY stemmen de kiezers net als in Nederland op een of twee aangewezen machines per stembureau. Men zou de volgorde waarin de kiezers stemmen kunnen bijhouden. Om het kiesgeheim te waarborgen is het dus noodzakelijk dat de volgorde van de afgedrukte reçu's niet kan worden achterhaald.⁷
- 3. het betreft een realtime printer,
 - a. dwz iedere selectie en deselectie wordt afgedrukt
 - b. de kiezer kan de juistheid van elke toetsaanslag verifiëren
 - c. in combinatie met punt 2 resulteert dit in één reçu per kiezer
- 4. op ieder reçu wordt een samenvatting afgedrukt in twee dimensionale streepjes code,
 - a. dit vereenvoudigt en versnelt het natellen
 - b. dit voorkomt handmatige fouten bij het natellen
- 5. de kiezer krijgt de afdruk niet in handen maar ziet deze achter een venster,
 - a. dit voorkomt verschillen door kiezers die afdrukken meenemen of toevoegen.
- 6. elk reçu is voorzien van dezelfde transactie code als de elektronisch opgeslagen stem,
 - a. hierdoor wordt vergelijking van de elektronisch opgeslagen keuze en het reçu mogelijk
 - b. dit opent de mogelijkheid om op elk moment onder toezicht teststemmen in te geven die later uit de totalen verwijderd kunnen worden. De goede werking van het systeem wordt hierdoor gecontroleerd terwijl men daarbij niet afhankelijk is van niet verifieerbare uitspraken van kiezers die immers in het geheim stemmen.
 - c. dit opent de mogelijkheid voor de kiezer om te controleren of zijn stem juist is meegeteld. Dit zal in afgeschermdde omgeving dienen plaats te vinden.⁸
- 7. de printer is samen met de verzegelde zak uitgevoerd als een eenheid die aan de machine bevestigd wordt
 - a. in geval van vastlopen van het papier of andere printerstoring kan de printer vervangen worden zonder dat de stembureauleden inzicht hebben in de reçu's
 - b. het natellen van de reçu's vindt op een andere locatie plaats dan het stembureau zodat er geen relatie gelegd kan worden tussen kiezer en uitgebrachte stem

In de wet en regelgeving van NY moest daarnaast ook nog het een en ander geregeld worden wat er nu met de twee onafhankelijk verkregen vastleggingen moet gebeuren.

Er is geregeld dat er in ieder geval 3% van de machine resultaten wordt nageteld, vandaar dat Nedap de barcode aan de reçu's heeft toegevoegd.

⁷ Op een 'real to real'printer worden de stemmen afgedrukt in volgorde van de kiezers die kan worden bijgehouden. In andere staten waar de kiezers binnen 1 stembureau naar een groot aantal willekeurige machines kunnen gaan voldoet een 'real to real' printer

⁸ De publicatie op een webpage van uitgebrachte keuzes met transactiecode, zoals in Nederland bij stemmen via het Internet voor kiezers in het buitenland, is in NY vooralsnog niet toegestaan. www.sos.cs.ru.nl/research/sosries/ Controle eigen stem

Datum

1 maart 2007

Uw kenmerk

Ons kenmerk

Mr. F. Korthals Altes

Commissie Inrichting Verkiezingsproces

p/a Ministerie van Binnenlandse Zaken en Koninkrijksrelaties

Herengracht 17-19

2511 EG DEN HAAG

Onderwerp

Commissie Inrichting Verkiezingsproces

Geachte heer Korthals Altes,

Deze brief schrijf ik u in uw capaciteit van voorzitter van de door de Minister van BZK ingestelde Commissie Inrichting Verkiezingsproces. Mijn brief richt zich specifiek op het aspect toelating van en toezicht op stembalies.

De betrouwbaarheid van stembalies staat, zo vlak voor de Statenverkiezingen, weer in de belangstelling. Er zijn belangengroeperingen die, terecht of onterecht, wijzen op de (vermeende) tekortkomingen van deze machines. Vooral wijzen zij op de mogelijkheid van a) de aantasting van het stemgeheim en b) de manipulatie met de software die deel uitmaakt van de stembalie. De media speelt graag op deze zaak in.

Het effect daarvan zou kunnen zijn dat het vertrouwen van de burger in het tot stand brengen van een juiste verkiezingsuitslag wordt aangetast.

De verwachting is dat de aandacht voor dit onderwerp met het naderen van de verkiezingsdatum zal toenemen en daarna weer zal wegebben totdat het bij de volgende verkiezingen weer onverkort aan bod komt. Het gevaar bestaat dat de overheid dan het verwijt wordt gemaakt dat in tussenliggende periode niets is ondernomen om aan dit probleem het hoofd te bieden en de burger te garanderen dat zijn stemgeheim is gewaarborgd.

Graag wil ik onder uw aandacht brengen dat het Nederlands Meetinstituut als geen andere organisatie binnen Nederland geëquipeerd is om het vertrouwen van de burger in het stemresultaat te verzekeren alsmede om de geheimhouding van zijn stemgedrag te waarborgen. Immers het verzekeren van vertrouwen van de burger in de resultaten verkregen met technische apparatuur is een hoofdactiviteit van het Nederlands Meetinstituut. Ik wijs op onze betrokkenheid via onze toezicht organisatie Verispect bij het vestigen van het vertrouwen van de consument en handelspartijen in meetresultaten verkregen via meetinstrumenten. Verispect houdt hiertoe toezicht op alle in Nederland opgestelde meetinstrumenten die worden gebruikt voor handelsdoeleinden.

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NMI Van Swinden Laboratorium B.V. (27.228.703)

Verispect B.V. (27.228.700)

Naast toezicht op meetinstrumenten in het kader van de Metrologiewet houdt Verispect in het kader van de Wet op de kansspelen ook toezicht op alle in Nederland opgestelde speelautomaten en in het kader van de Waarborgwet toezicht op de handel in gouden en zilveren voorwerpen. Voor de realisatie van zijn taken beschikt Verispect over een uitgebreide en goed toegeruste buitendienst. Tevens zijn de medewerkers van de buitendienst van Verispect beëdigd bijzonder opsporingsambtenaar.

Op het vlak van het vertrouwen in stemmachines kunnen wij op drie fronten actief zijn:

1. Ten eerste kunnen wij als onafhankelijke organisatie de eisen formuleren waaraan deze machines moeten voldoen. In het verleden zijn de oorspronkelijke eisen aan stemmachines immers ook door het NMI geformuleerd. Wij zouden deze met inachtneming van de laatste inzichten kunnen actualiseren, met name op het gebied van elektromagnetische uitstraling, (elektronische) verzegeling, software identificatie en authenticatie. NMI medewerkers ondersteunen en vertegenwoordigen de Staat der Nederlanden in alle internationale gremia van enig belang op het gebied van het formuleren van technische en wettelijke eisen aan meetapparatuur.
2. Daarnaast kunnen wij ieder van de stemmachines tegen deze eisen beoordelen en voorzien van een uniek type en machine gebonden kenmerk. Hierbij is het vermeldenswaard dat onze test- en keuringsorganisatie NMI Certin op het gebied van het keuren en toelaten van meetinstrumenten tegen (wettelijke) eisen op wereldschaal tot de absolute top behoort. Ca. 60% van de testrapporten op wereldschaal, uitgebracht volgens richtlijnen van de internationale landenorganisatie voor wettelijke metrologie (OIML), worden door NMI Certin uitgevoerd. De door NMI Certin op basis van deze testrapporten verstrekte certificaten worden wereldwijd erkend. Naast meetmiddelen voor handelsdoeleinden is NMI Certin ook actief als organisatie voor het keuren van politiemeetmiddelen, zoals alcohol- en snelheidsmeters, etc. Gezien de sancties voor individuele burgers, als gevolg van met deze meetmiddelen geconstateerde overtredingen of misdrijven, zijn de eisen aan deze keuringen zeer hoog.
3. Tot slot kunnen wij vlak voor en/of vlak na de verkiezingsdag alle machines (of op steekproefbasis) aan een controle op conformiteit onderwerpen (zowel software matig als technisch) als ook op het aanwezig zijn van alle verzegelingen en kenmerken, de juistheid daarvan, inclusief de inspectie van de wijze en kwaliteit van aanbrenging. Onze medewerkers verrichten in opdracht van het Ministerie van Economische Zaken en het Ministerie van Justitie dagelijks soortgelijke activiteiten en verrichten deze activiteiten met een landelijke dekking. Daarbij zijn o.a. onafhankelijkheid en onpartijdigheid essentiële begrippen.

Ik zou gaarne in de gelegenheid worden gesteld om bovenstaande in meer detail aan u en de leden van uw commissie toe te lichten en hierbij specifiek in te gaan op een aantal van de vragen waarop uw commissie op verzoek van de Minister van BZK een antwoord aan het formuleren is.

Met vriendelijke groet,
NMI B.V.

Ir J. Ridder
Algemeen directeur

Nederlandse Vereniging voor Burgerzaken



Afz.: Postbus 79, 2700 AB Zoetermeer

Aan de heer mr. F. Korthals Altes, voorzitter
Adviescommissie inrichting Verkiezingsproces
p/a Ministerie voor Bestuurlijke Vernieuwing en Koninkrijksrelaties
Schedeldoekshaven 200
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Inlichtingen bij: Mevr. A. van Vierzen
Tel: 079-3617747
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Datum: 05 februari 2007
Uw kenmerk:
Ons Kenmerk: B2007/0015

Onderwerp: NVVB standpunten en meningen
t.b.v. het verkiezingsproces.

Geachte heer Korthals Altes,

Op 29 januari jl. heeft een delegatie van het bestuur van de NVVB met u en overige leden van de Adviescommissie inrichting Verkiezingsproces gesproken.

Tijdens het gesprek, dat van de kant van de NVVB als prettig en constructief is ervaren, is de toezegging gedaan u eveneens schriftelijk van de door de NVVB geformuleerde meningen en standpunten op de hoogte te brengen.

Aan de hand van de gepubliceerde opdracht aan de commissie is ervoor gekozen per afzonderlijk onderwerp onze mening en standpunt te formuleren.

Hierna wordt daarop ingegaan, in volgorde van de brief van minister Nicolaï aan de Kamer van 20 december 2006. Tevens wordt in het kort nog aangegeven wat de bij het verkiezingsproces betrokkenen, in de ogen van het burgerzaken werkveld, vanaf 2010 zouden moeten kunnen verwachten.

Algemeen

Welke rol speelt automatisering in de verschillende stappen van het verkiezingsproces (vanaf voorbereiding kandidaatstellen tot en met benoeming nieuwe leden vertegenwoordigend orgaan)?

- Momenteel speelt automatisering in alle stappen van het verkiezingsproces een belangrijk en niet meer weg te denken rol. Behalve de specifiek voor het verkiezingsproces ontwikkelde automatisering worden met behulp van modules in de GBA applicaties van gemeenten selecties uit de GBA gemaakt ten behoeve van het samenstellen van de lijsten met kiesgerechtigden en het aanmaken van het kiezersregister.
- Een zo optimaal mogelijk efficiënt en effectief gebruik van de automatisering tijdens alle fasen van het proces, vanaf de voorbereiding van het proces (bij registratie) tot en met de toelating van kandidaten tot het vertegenwoordigende orgaan, dient naar onze mening in ieder geval op het huidige niveau te worden gehandhaafd en op termijn te worden geoptimaliseerd. Voorop staat dat de hele procesgang m.b.t. verkiezingen voor alle daarbij betrokkenen eenvoudig toegankelijk, duidelijk en

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transparant dient te zijn. Hoewel de laatste jaren al veel verbeteringen zijn doorgevoerd zijn er zeker nog optimalisatiemogelijkheden. Te denken valt aan het gebruik maken van de centrale GBA voorziening voor de registratie van de juiste tenaamstelling van kandidaten.

Welke stappen zijn toe aan herziening, vanuit het perspectief van nieuwe technieken en vanuit het perspectief van kiezer en bestuur?

- Het ten overstaan van de ambtenaar laten tekenen van ondersteuningsverklaringen moet worden gehandhaafd. Gebruikmaking van nieuwe technieken én netwerkverbindingen kan ondersteunend bijdragen aan het voorkomen van fouten en het vereenvoudigen van de handelingen. Hierbij kan gedacht worden aan het on-line verifiëren en overnemen van persoonsgegevens in plaats van het handmatig overnemen van persoonsgegevens uit legitimatiebewijzen en de daarop volgende controle op juistheid.
- Vanuit het perspectief van kiezer en bestuur denken wij aan de verdere uitbreiding van het plaats-onafhankelijk kiezen en het inzetten van het stemmen via Internet. De huidige en toekomstige generatie kiezers maakt en zal meer en meer gebruik maken van deze mogelijkheden. Daarnaast is het noodzakelijk de mogelijkheid voor het persoonlijk, op een stembureau uitbrengen van de stem te handhaven.
- Het is gewenst een oplossing te vinden voor de situatie waarin de burger zijn of haar kiezerspas kwijt is en binnen de huidige regelgeving niet in de gelegenheid is om toegelaten te worden tot de stemming.
- De mogelijkheid tot inzet van een centrale voorziening en het gebruik van bijvoorbeeld de e-Nik voor het verificatie en identificatieproces zal de betrouwbaarheid van het proces bevorderen en bijdragen aan het vertrouwen in het stemproces bij bestuur en burger. De inzet van de e-Nik zal overigens alleen zinvol zijn voor burgers die ook de beschikking hebben over een e-Nik.
- Family voting is een ongewenst verschijnsel en zal nooit geheel voorkomen kunnen worden. Kiezers zullen daarom meer kanalen moeten kunnen blijven gebruiken om hun stem uit te brengen. Door een keuze te laten in de wijze van stemmen, kan de kiezer zelf voorkomen dat zijn stem wordt uitgebracht in de sfeer van family voting.

Is de verantwoordelijkheid voor de organisatie van het verkiezingsproces goed belegd (verhouding centrale-decentrale overheid, verhouding stembureaus, hoofdstembureaus, centraal stembureau) en hoe zou de verhouding markt-overheid moeten zijn bij het gebruik van hulpmiddelen (stemmachines en verkiezingsuitslagenapparatuur)?

- De organisatorische verantwoordelijkheidsverdeling tussen centrale-decentrale overheid is naar onze mening goed belegd.
- Voor het gebruik van hulpmiddelen dient naar onze mening de centrale overheid de kaders aan te geven voor het gebruik van die hulpmiddelen. Een Logisch Ontwerp maakt bijvoorbeeld voor de GBA onderdeel uit van de regelgeving. Iets dergelijks is ook rond de bouw van stemmachines te overwegen.
- Behalve kaders stellen zien wij het ook als taak van de centrale overheid dat de geautomatiseerde hulpmiddelen worden getoetst op juiste werking. Het schouwen en toetsen van de geautomatiseerde hulpmiddelen kan voorwaarde zijn voor het in gebruik mogen nemen van stemmachines en verkiezingsuitslagenapparatuur. De consistentie in het gebruik wordt daarmee landelijk bewaakt.
- Daarnaast zien wij het als een taak van de centrale overheid dat producenten en aanbieders van stemmachines en verkiezingsuitslagenapparatuur in verband met het beschikken over broncodes

en kennis en informatie over gebruikte beveiligingstechnieken als organisatie periodiek aan een accreditatie onderworpen worden.

- De huidige voorwaarden voor goedkeuring en het gebruik van stembureaus blijken, gelet op de recent gedane constatering rondom de beveiliging, onvoldoende.

Is er voldoende toezicht op het goed verloop van het verkiezingsproces, wie zou toezicht moeten houden en wat zouden de handhavingsbevoegdheden moeten zijn?

- De burgemeester is verantwoordelijk voor het goede verloop van de verkiezingen. Naar onze mening zou dat zo moeten blijven. De handhavingsbevoegdheid ligt ook in handen van de burgemeester op basis van een duidelijke kaderstelling vanuit de Rijksoverheid.
- Aanvullend kunnen audits plaatsvinden om te zien of de wettelijke regels op een juiste wijze worden nageleefd.

Stembureaus

Welke risico's zijn structureel verbonden aan het gebruik van de huidige stembureaus, c.q. het elektronisch stemmen en het stemmen met potlood?

- Algemene opmerking:

Gemeenten zijn massaal overgegaan tot de aanschaf van stembureaus. Bij de besluitvorming zijn de kosten voor aanschaf afgewogen tegen de besparingen die de inzet van stembureaus op termijn met zich meebracht. De invoering van stembureaus heeft geleid tot een efficiënter proces en een versnelde bekendmaking van voorlopige uitslagen.

Het aantal stembuizen kon drastisch worden teruggebracht en het aantal leden van het stembureau tot het minimum worden beperkt. Naast de kosten voor huur van de lokalen speelden hier ook de besparing op de kosten van de opslag en het vervoer van de hulpmiddelen voor stemmen met het potlood een belangrijke rol.

Voorbeeld(en) van kostenonderbouwingen van gemeenten stellen wij u op korte termijn beschikbaar.

Het kunnen bemensen van stembureaus is ondanks het minimaal benodigde aantal locaties niet eenvoudig, evenals het vinden van geschikte locaties (toegankelijkheid ook voor minder validen).

- De huidige stembureaus dienen naar onze mening te worden geoptimaliseerd, zodanig dat aan een aantal eisen in het kader van betrouwbaarheid en transparantie kan worden voldaan.
- Voor wat betreft de transparantie en verdere beveiliging denken wij dat het na het uitbrengen van de stem laten produceren van een schriftelijk bewijsstuk voor de burger, in de vorm van een strookje waarop wordt geprint op wie de stem is uitgebracht, een oplossing biedt. We zijn van mening dat dit het vertrouwen van de burger in het stemproces bevordert.
- Structurele risico's zijn ook verbonden aan het stemmen met behulp van het potlood. Onduidelijkheid over het al dan niet uitbrengen van een 'geldige' stem omdat niet exact in maar net naast het daarvoor bedoelde vakje de stem is uitgebracht leidt bijvoorbeeld tot discussie voorafgaand aan besluitvorming bij stembureauleden. Het tellen van uitgebrachte stemmen is handwerk, gelet op het grote aantal uitgebrachte stemmen per stembureau kan hier al snel een telfout ontstaan. Fraude is bij het handmatig selecteren en tellen van de stembiljetten niet uitgesloten.
- Hertelling van stemmen zal bij het stemmen met potlood vrij vaak tot andere uitkomsten kunnen leiden, bij het stemmen met de stemcomputer is dit uitgesloten.

Zijn er alternatieven denkbaar voor de huidige wijzen van het uitbrengen van de stem, zoals onder meer het plaatsafhankelijke stemmen door middel van Internet?

- Alternatieven zijn er wel. Momenteel is (slechts) op zeer beperkte schaal stemmen via Internet mogelijk, n.l. uitsluitend voor kiezers die in het buitenland wonen of daar verblijven i.v.m. werkzaamheden.
- Naast de huidige wijze van uitbrengen van de stem zal de inzet van Internetstemmen naar onze mening de verkiezingen meer laagdrempelig maken.
- De huidige stand van techniek en de mogelijkheden voor verificatie van identiteiten via Internet bieden voldoende veilige methoden om het stemgeheim, de transparantie en betrouwbaarheid te waarborgen. Zo kan eventueel de eerder genoemde e-Nik als hulpmiddel worden ingezet en daarmee wordt ook verificatie met behulp van biometrische kenmerken mogelijk.

Hoe verhouden de alternatieven zich ten opzichte van elkaar wat betreft betrouwbaarheid en het waarborgen van het stemgeheim en de mogelijkheid tot hertelling?

- Wij menen dat de betrouwbaarheid van het stemmen met stemmachines beter is gewaarborgd dan met het rode potlood.
- Hertelling moet naar onze mening bij alle alternatieven mogelijk zijn, een goed gewaarborgd proces vooraf moet hertelling zoveel als mogelijk voorkomen.
- Bij het handmatig tellen van de stemmen blijkt in de praktijk regelmatig hertelling noodzakelijk te zijn. Dit handmatig hertellen biedt geen garantie dat er niet weer een telfout wordt gemaakt. Inzicht in het aantal hertellingen voorafgaand aan het opmaken van het Proces Verbaal ontbreekt. In het verleden werd vooral bij Gemeenteraadsverkiezingen een verzoek tot hertelling ingediend wanneer de verkiezingsuitslag zodanig was dat een enkele stem van invloed was op de zetelverdeling. De ervaring leert dat dergelijke verzoeken bij het gebruik maken van stemmachines en hulpmiddelen voor de verkiezingsuitslag achterwege blijven.
- Bij het stemmen via Internet zal er op een centrale plaats, via Internet toegankelijk, bijgehouden moeten worden of en wie gestemd heeft om dubbelstemmen te voorkomen. Voor de burger die de keuze maakt zijn of haar stem in een stembureau uit te brengen dient een geautomatiseerd hulpmiddel voor deze controle en het registreren van het uitbrengen van de stem door die persoon, in het stembureau aanwezig te zijn.
- Het waarborgen van het stemgeheim bij gebruik maken van stemmachines, geautomatiseerde hulpmiddelen en Internet kan en moet gewaarborgd kunnen worden met het stellen van kaders door de centrale overheid en het daarbij behorende controle- en toetsmechanisme.

Verdiert diversiteit (risicospreiding) of juist uniformiteit (controle) de voorkeur?

- Diversiteit in de verschillende vormen van stemmen (plaatsafhankelijk en naast persoonlijk bij het stembureau uitbrengen ook Internetstemmen) verdient de voorkeur. Het is laagdrempelig. Het stellen van kaders en het toetsen ervan door de centrale overheid levert afdoende uniformiteit en controle op.

Hoe verhoudt de race van technische ontwikkelingen zich tot het verkiezingsproces (vandaag een waterdichte oplossing, morgen te kraken)?

- De ontwikkelingen in de automatisering gaan snel. De huidige moderne technieken bieden voldoende waarborgen om deze ook in te kunnen zetten bij het verkiezingsproces. Gemeenten hebben behoorlijk geïnvesteerd in de aanschaf van stemmachines en stelsystemen. Bij het stellen van kaders door de centrale overheid moet bezien worden welke financiële consequenties hier voor gemeenten aan verbonden zijn wanneer aan de hand van de kaders systemen moeten worden aangepast. Een methodiek die wordt gehanteerd bij wijzigingen in de GBA, het Logisch Ontwerp, en het berekenen van de impact van de wijziging met behulp van een puntenstelsel waarop de vergoeding aan gemeenten is gebaseerd, biedt hiervoor een oplossing.

In hoeverre zijn hulpmiddelen nog bruikbaar bij praktische veranderingen als deelname van meer partijen aan de verkiezingen en combinatie van verkiezingen?

- Wanneer de hulpmiddelen voldoen aan de door de centrale overheid voorgeschreven kaders en voor wijziging gebruik wordt gemaakt naar de eerder genoemde methode bij de GBA blijven hulpmiddelen bruikbaar.

Wat zouden de bij het verkiezingsproces betrokkenen vanaf 2010 moeten kunnen verwachten?

- **Kiezer**
Uitgangspunt moet allereerst zijn dat het proces voor de kiezer helder is. Dat betekent dat de kiezer op eenvoudige wijze moet kunnen stemmen, zodat de drempel om te gaan stemmen laag is. Uiteraard met gebruik van alle moderne methoden die er zijn. Bij gebruik van moderne technieken, zoals gebruikmaking van een op het stembureau leesbare kiezerskaart en stemmen via Internet, moeten natuurlijk de nodige waarborgen met betrekking tot het stemgeheim in acht worden genomen.
- **Organiserende instantie**
Voor met name gemeenten moet het organiseren van verkiezingen op een efficiënte manier kunnen gebeuren. Verdere automatisering van het verkiezingsproces is daarbij van groot belang en kan ook bijdragen aan het verder verlagen van het aantal stemdistricten en –bureaus.

Aanpassingen tussen 2007 en 2010

De Adviescommissie inrichting Verkiezingsproces focust zich op verkiezingen vanaf 2010. Dat mag evenwel een snelle invoering van het in juni vorig jaar ingediende wetsontwerp tot wijziging van de Kieswet niet in de weg staan. Daarin wordt immers voorgesteld over te gaan tot algemene invoering van stemmen in een willekeurig stembureau, een eerste belangrijke stap om de weg naar het stemlokaal gemakkelijker te maken. Bovendien kan daarbij wellicht worden meegenomen de invoering van een verplichting tot vaststelling van de identiteit van de kiezer, door aanpassing van artikel J 24. Zeker nu, door de commotie rond het gebruik van stemmachines, de discussie over verkiezingsfraude in zijn algemeenheid weer is opgelaaid.

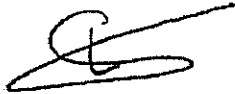
Bij de stemming ter verkiezing van de leden van de Tweede Kamer is gebleken dat het veel kiezers verbaast dat door het stembureau niet wordt gevraagd om een identiteitsbewijs. Invoering van de

identiteitsplicht zal waarschijnlijk een geruststellend signaal zijn naar bestuurders en kiezers, die het Nederlandse systeem van volmachtstemmen niet vertrouwen.

Wij wensen u en de leden van uw commissie succes met de uitvoering van uw opdracht en zijn gaarne bereid, zodra de contouren van uw advies bekend zijn, tot nader overleg.

Met vriendelijke groet,

NEDERLANDSE VERENIGING
VOOR BURGERZAKEN

A stylized handwritten signature in black ink, consisting of a large loop followed by a horizontal stroke.

C. Meesters
Voorzitter

A handwritten signature in black ink, featuring a cursive 'A' followed by a horizontal line and a period.

A.G.W. van der Velden-Walraven
secretaris



Datum
19 april 2007

Ons kenmerk
2007-000139837

Onderdeel

Inlichtingen

T
F

Uw kenmerk

Blad
1 van 1

Aantal bijlagen
2

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De voorzitter van de adviescommissie Inrichting
Verkiezingsproces
de heer mr F. Korthals Altes

Onderwerp
rapport van de commissie Besluitvorming
Stemmachines

Geachte heer Korthals Altes,

Op 16 april 2007 heeft de commissie Besluitvorming Stemmachines haar rapport aan mij aangeboden. Aansluitend daarop heb ik op 17 april 2007 het rapport met mijn standpunt daarover aangeboden aan de Tweede Kamer. Beide stukken treft u bij deze brief aan.

Bij een aantal van de aanbevelingen van de commissie Besluitvorming Stemmachines heb ik in mijn standpunt aangegeven waardering daarvoor te hebben, maar pas definitief daarover te zullen besluiten als het advies van uw commissie beschikbaar is. Ik stel u daarom voor in het gesprek met uw commissie, dat gepland is op 31 mei 2007, ook stil te staan bij de aanbevelingen van de commissie Besluitvorming Stemmachines.

DE STAATSSECRETARIS VAN BINNENLANDSE ZAKEN EN
KONINKRIJKSRELATIES,

drs. A.Th. B. Bijleveld-Schouten

2007 · 04 · 05

De heer Korthals Altes,
Voorzitter Commissie Verkiezingsproces,
Ministerie van Binnenlandse Zaken en Koninkrijksrelaties,
Afd. D.G.K.B. / B.P.R., t.a.v. Mevrouw M. Gonzales,
Lange Vijverberg 11,
2513 AC Den Haag.

Zeer geachte heer Korthals Altes,
Betreft: Stemmachines.

Hoewel het vermoedelijk nog niemand is opgevallen
zit er m.i. een foutje in het concept van de stemmachines.
De rode toets die moet worden ingedrukt om te bevestigen
de het op het scherm van het Medap-model weergegeven
inderdaad overeenkomt met je keus is een anachronisme.
Het ligt voor de hand waarom ooit - ondoordacht? -
voor die kleur is gekozen: het rode potlood uit vorige
eeuwen gaf een duidelijk contrast op het met zwart
bedrukte witte papier en bovendien was het alom - op
school en thuis - volop in gebruik en dus beschikbaar.
Tegenwoordig is het echter in strijd met de aan kleuren
toegekende signalisatiebetekenis: rood staat voor
gevaar, stop, verbod, niet doen!, en is derhalve contru-
geïndiceerd om het GROENE licht te geven aan je stem.

2/-

Een eenvoudige instructie aan de fabrikant om de
toets voortaan in het felgroen te leveren lijkt voldoende.

Ik heb dit voorstel jaren geleden voorgelegd aan de
Kiesraad, die mij toen antwoorde in de geest van
"waar hebt u het eigenlijk over?".

Als dat de machines weer in de belangstelling staan
heb ik mijn verzoek herhaald, vorig jaar, bij Minister
Nicolai. Namens hem kreeg ik een reactie getekend
door de directeur Constitutionele Zaken en Wetgeving,
H.P. Heida, die het ook weer afwees op grond van de
overweging dat de kiezers door de kleur van de knop
niet in verwarring zijn geraakt. Neen, de massa is
zelden kritisch over zaken die niet ernstig hinderen.
Maar als dat het criterium is, dan worden fouten nooit
verbeterd. Ik hoor dat de overheid dichtbij het volk
wil gaan staan, maar daar merk ik dus niets van.
De inertie van de bureaucratie. Men durft geen ini-
tiatieven te nemen of is bang voor de consequenties.
Kliefkenluiders zijn steeds een kleine minderheid en
wellicht ben ik de enige in Nederland in deze aan-
gelegenheid. Maar heb ik daarom ongelijk? Neen zei
de directeur van Nedap twee jaar geleden, toen ik hem
erover belde. Maar ook hij zag de wijziging niet
gauw gerealiseerd.

3/-

Welaan, nu is de kans aanwezig om in te grijpen op dit op zichzelf onbeduidende doch wel principiële punt. De kiezer zal het nauwelijks opvallen; geen sterveling zal er wakker van liggen, laat staan er bezwaar tegen aantekenen. Het zal de burger een zorg zijn. De kleinvordering is goed te verdedigen en er is, neem ik aan, geen deugdelijk argument om de wijziging NIET door te voeren.

Kunt u bewerkstelligen dat dit punt in uw rapport wordt meegenomen of weet u een andere weg om het gedaan te krijgen? Ik wil dolgraag weer in staat gesteld worden om mijn stem, bij verkiezingen, zonder gewetensbezwaar uit te brengen.

Mag ik op uw medewerking rekenen? Veel dank.

Hoogachtend,





Aan de voorzitter van de Commissie Inrichting
Verkiezingsproces
De heer mr. F. Korthals Altes
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2500 EA Den Haag

datum	ons kenmerk	uw kenmerk	Onderwerp
10 januari 2007	ICTU/B@O2007/ U00902		stemsystemen
blad	aantal bijlagen	Inlichtingen	
1/2	-	Matt Poelmans - 070 888 7957	

Geachte heer Korthals Altes,

Nu de verkiezingen voor de Tweede Kamer achter de rug zijn, lijkt alle commotie rond de stemcomputers alweer vergeten. Dit zal niet lang duren, want binnenkort start uw commissie met een onderzoek naar de betrouwbaarheid en veiligheid van stemsystemen. Als Burger@Overheid.nl zouden wij ten behoeve van dit onderzoek graag een rol vervullen. Verder juichen wij het toe dat de commissie ook het internetstemmen onderzoekt.

Burger@Overheid.nl is een onafhankelijk forum dat de digitale overheid stimuleert vanuit het burgerperspectief. Daartoe inventariseert het wensen van burgers, adviseert het overheden en evalueert het de voortgang. Burger@Overheid.nl voert regelmatig onderzoek uit met het eigen BurgerOverheidPanel en heeft de BurgerServiceCode ontwikkeld: de kwaliteitsnormen voor de digitale overheid. Een aantal punten uit de BurgerServiceCode heeft betrekking op de manier waarop we in Nederland het verkiezingsproces organiseren. Het gaat dan om de punten "Keuzevrijheid contactkanaal", "Transparante werkwijzen", "Digitale betrouwbaarheid" en "Actieve betrokkenheid". Op basis van onderzoeken van ons BurgerOverheidPanel trekken wij de conclusie dat met name internetstemmen interessante kansen biedt. Bovendien blijken burgers hier graag gebruik van te maken.

Door het laagdrempelige karakter van internetstemmen -onafhankelijk van tijd en plaats - is de verwachting dat het kan leiden tot een hoger opkomstpercentage. Internetstemmen is transparant, omdat achteraf gecontroleerd kan worden of een uitgebrachte stem is meegeteld. Verder is het gemakkelijker om aan "stempagina's" informatie te koppelen, zodat kiezers zich een beter oordeel kunnen vormen over de persoon op wie ze willen stemmen. Deze punten kwamen duidelijk naar voren in een onderzoek dat Burger@Overheid.nl in 2004 heeft

uitgevoerd naar internetstemmen bij de Waterschapsverkiezingen. Bijna 80 procent van degenen die toen aan een proefstemming deelnamen, prefereerden achteraf internetstemmen boven het traditionele stemmen in een stemlokaal. Uit een recent onderzoek naar de Persoonlijke Internetpagina bleek er een grote groep voorstanders (60 procent) te zijn voor internetstemmen.

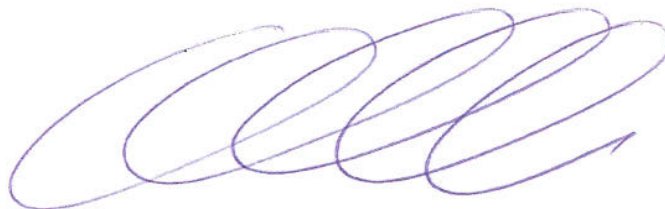
Toch krijgt internetstemmen niet veel maatschappelijke steun. De meeste politieke partijen zijn tegen, en vanuit "Wijvertrouwenstemcomputersniet", die recent met succes actie heeft gevoerd tegen elektronisch stemmen, klinkt een hard "nee". De voornaamste bezwaren hebben te maken met beveiliging en controleerbaarheid. Verder zouden mensen niet meer "vrij" kunnen stemmen als er geen stemhokjes meer zouden zijn.

Burger@Overheid.nl denkt dat de voornaamste bezwaren oplosbaar zijn. Uit het eerder genoemde experiment met internetstemmen bleek juist een grote mate van controleerbaarheid. Als het mogelijk is om financiële transacties veilig via internet te doen, of om bijvoorbeeld gevoelige patiëntinformatie te versturen, moet internetstemmen ook veilig kunnen. Verder pleit Burger@Overheid.nl bij het uitbrengen van een stem voor keuzemogelijkheden: of via internet, of in het stemhokje, of schriftelijk. In dat geval hoeft u minder bang te zijn dat er niet in alle vrijheid gestemd kan worden. Tot slot kan Burger@Overheid.nl het zich niet voorstellen dat anno 2007 het stemmen met het rode potlood of met behulp van een extra bonnetje ("paper trail") de enige alternatieven zijn.

Wij ondersteunen daarom een grondige verkenning naar de kansen en risico's van internetstemmen.

Op basis van deze uitkomsten zou er een brede discussie kunnen worden gevoerd, waaraan zoveel mogelijk verschillende partijen meedoen. Burger@Overheid.nl is van harte bereid om zitting te nemen in de onafhankelijk commissie. Wilt u mij laten weten hoe u over ons aanbod denkt?

Met hartelijke groet,



Marjet van Zuijlen
Voorzitter Forum Burger@Overheid.nl



Burger@Overheid.nl

Aan de voorzitter van de Commissie Inrichting
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Datum
12 februari 2007

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Onderwerp
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9

Inlichtingen
Matt Poelmans - 070 888 7957

Geachte heer Korthals Altes,

Naar aanleiding van uw verzoek, gedaan tijdens de toelichting op ons standpunt voor uw commissie op 29 januari jl. sturen wij u het toegezegde onderzoeks- en achtergrondmateriaal toe. In de lijst van bijlagen is voor elk document een 'hyperlink' bijgevoegd waar de documenten ook in digitale vorm beschikbaar zijn voor iedereen.

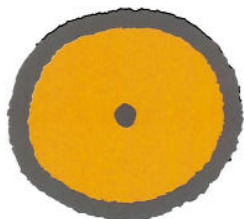
Wij zijn benieuwd naar de conclusies en aanbevelingen van uw commissie en zijn gaarne bereid een bijdrage te leveren aan de verdere discussie.

Met vriendelijke groet,

Matt Poelmans
Directeur Burger@Overheid.nl

Bijlagen:

1. **"Stemmen via internet"** Samenvattend bericht op de website van Burger@Overheid.nl over onderzoek digitale publiekspanel naar online stemmen, *1 november 2002*.
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2. **"Highlight report panelonderzoek online stemmen"** – Burger@Overheid.nl, *1 november 2002*.
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3. **"E-stemmen: laat jij je online stem gelden? Evaluatie onderzoek van het online stemmen"** Een kwantitatief onderzoek naar het stemmen via internet van Burger@overheid.nl uitgevoerd door NetPanel in samenwerking met het Hoogheemraadschap van Rijnland, *juni/juli 2004*.
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http://www.burger.overheid.nl/files/b@o_advies_pip_def_.pdf
5. **Persoonlijke Internetpagina "Mijn Overheid.nl"** BurgerOverheidPanel, Onderzoek in opdracht van Burger@Overheid.nl uitgevoerd door ADV market research, *oktober 2006*; met name bladzijden 11, 30 & 32.
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7. **"Plannen lastenvermindering vallen goed"** Samenvattend bericht op de website van Burger@Overheid.nl over BurgerOverheidPanel onderzoek naar administratieve lastenreductie maatregelen, *24 januari 2007*.
http://www.burger.overheid.nl/wat_doen_we_nu/nieuws?itemID=52
8. **"Blij met de maatregelen, maar ...Wat ik nog wilde opmerken"** Analyse van de open antwoorden in de BurgerOverheidPanel enquête administratieve lasten door Hein Albada in opdracht van ministerie van Binnenlandse Zaken en Koninkrijksrelaties team administratieve lastenvermindering, *januari 2007*; met name bladzijde 15.
<http://www.lastvandeoverheid.nl/NR/rdonlyres/73E3FC0F-68C4-4AD7-8FF7-A9DE13F4E94F/21385/Analysereactieburgerpanelover13reductiemaatregelen.pdf>
9. **"De BurgerServiceCode"** Werkschrift BurgerServiceCode van Burger@Overheid.nl - versie 2.1, *november 2005*.
http://www.burger.overheid.nl/files/burgerservicecode_nl.pdf



Taskforce Handicap en Samenleving

Adviescommissie inrichting verkiezingsproces
Mevrouw mr. M. Gonzalez
Postbus 10.451
2501 HL DEN HAAG

datum 2 augustus 2007
kenmerk 2007-503/MdC/EvB
onderwerp Uw brief van 12 juli 2007 over criterium telefonisch stemmen

Geachte mevrouw Gonzalez,

In antwoord op bovengemelde brief kan ik u het volgende melden.
Onderstaande reactie komt mede namens mevrouw Van den IJssel van VIZIRIS en de heer Budding van de CG-Raad.

Allereerst onze dank voor het feit dat u ons heeft gevraagd onze mening te geven over het criterium telefonisch stemmen.
Wellicht ten overvloede stellen wij opnieuw dat in het kader van '*inclusief denken en doen*' de noodzaak om stembureaus en stemcomputers volledig toegankelijk te maken het uitgangspunt dient te blijven.

Als een groep kiesgerechtigde burgers met (chronische) beperkingen niet in staat is om naar het stembureau toe te gaan, moet deze groep in staat gesteld worden om zelfstandig telefonisch te stemmen.
Naar ons oordeel is het mogelijk deze groep nader te omschrijven en daarvoor een criterium te stellen.

Afbakening van de bedoelde groep is goed mogelijk. Het beste aangrijpingspunt hiervoor is de ICF-classificatie*. Een ICF-classificatie maakt wettelijk deel uit van de indicatie voor de verstrekking van AWBZ-zorg en individuele Wmo-voorzieningen. Van iedereen die van deze zorg of voorzieningen gebruik maakt, is de ICF-classificatie derhalve bekend.

De precieze afbakening van de bedoelde groep binnen de ICF-coderingen moet bij de verdere uitwerking in de praktijk goed doordacht worden.

* zie bijlage



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www.handicapensamenleving.nl

Wij doen mee, jij ook

In beginsel ligt het voor de hand om de bedoelde groep af te bakenen als de groep mensen die vanwege een ziekte of beperking niet in staat zijn het huis te verlaten.

Binnen het ICF-classificatiesysteem gaat het daarbij om personen die vallen binnen

ICF-code 4: Volledige afhankelijkheid, onder de codes

- Lopen en zich verplaatsen (450) en
- Zich verplaatsen per vervoersmiddel (470).

Afbakening van de doelgroep op deze manier is praktisch haalbaar. De groep is identificeerbaar via afstemming tussen Centraal Indicatieorgaan Zorg (CIZ), zorgkantoor en gemeenten binnen het WMO-loket en kan via die weg door de gemeente benaderd worden met een code om telefonisch te stemmen.

Nog eenvoudiger wordt het wanneer in de toekomst bij een af te geven indicatiebesluit en Wmo-indicaties de indicatie telefonisch stemmen standaard meegenomen wordt wanneer betrokkene binnen de daarvoor gedefinieerde ICF-classificaties valt.

Het is wettelijk vastgelegd dat voor AWBZ-zorg of individuele WMO-voorzieningen een indicatie moet worden gesteld waar de ICF-classificatie een onderdeel van uitmaakt. In theorie moet dat dus overal geregeld zijn. Het is tegelijkertijd ons inziens moeilijk voorstelbaar dat iemand wel binnen deze doelgroep valt maar in het geheel geen AWBZ-zorg of Wmo-voorzieningen gebruikt en dus om die reden geen ICF-classificatie heeft. De ICF-classificatie is zo waterdicht als mogelijk, maar uitsluiten dat in zeer exceptionele en individuele gevallen het niet waterdicht is, kunnen wij niet. De kans daarop achten wij echter minimaal.

Met vriendelijke groeten,
Mede namens VIZIRIS en CG-Raad,



S.M. da Costa
Secretaris

* Toelichting op de ICF-classificatie bijgevoegd

CC:

- mevrouw M.van den IJssel, VIZIRIS
- de heer P. Budding, CG-Raad

Onderstaande tekst is afkomstig uit:

ICF : Internationale classificatie van het menselijk functioneren / Nederlands WHO-FIC Collaborating Centre. - Houten : Bohn Stafleu Van Loghum, 2002 ISBN 90-313-3913-X

1. Achtergrond

Met deze uitgave presenteert de Wereldgezondheidsorganisatie (World Health Organization, WHO) de Internationale Classificatie van het menselijk Functioneren, de ICF (International Classification of Functioning, Disability and Health, afgekort ICF). De ICF (voorheen de ICIDH)¹ bestaat uit een raamwerk van classificaties die tezamen een gestandaardiseerd begrippenapparaat vormen voor het beschrijven van het menselijk functioneren en de problemen die daarin kunnen optreden. Doel van de ICF is om door middel van het in kaart brengen van begrippen op dat terrein een basis te leggen voor een gemeenschappelijke standaardtaal.

Aspecten van het menselijk functioneren die gerelateerd kunnen zijn aan een gezondheidsprobleem, worden in de ICF op systematische wijze geordend. In aanvulling op de Internationale Classificatie van Ziekten (ICD) worden in de ICF naast gezondheidscomponenten ook een aantal met de gezondheid samenhangende componenten, zoals bijvoorbeeld op het gebied van werk en onderwijs, gedefinieerd.

Met behulp van de ICF kan het menselijk functioneren worden beschreven vanuit drie verschillende perspectieven:

1. het perspectief van het menselijk organisme;
2. het perspectief van het menselijk handelen;
3. het perspectief van de mens als deelnemer aan het maatschappelijk leven.

Het eerste perspectief is uitgewerkt in twee afzonderlijke classificaties, de classificatie van functies van het organisme en de classificatie van anatomische eigenschappen. Het tweede en derde perspectief zijn uitgewerkt in de classificatie van activiteiten en participatie². De ICF ordent op systematische wijze verschillende domeinen³ betreffende aspecten van het menselijk functioneren die verband kunnen houden met een gezondheidsprobleem. De term 'menselijk functioneren' in de titel verwijst naar functies, anatomische

¹ De tekst vormt een herziene versie van de Internationale classificatie van stoornissen, beperkingen en handicaps (ICIDH) die voor het eerst in 1980 als proefclassificatie is gepubliceerd door de Wereldgezondheidsorganisatie. Na gedurende vijf jaar op systematische wijze te zijn beproefd en na internationale consultatie, is deze tekst op 22 mei 2001 door de 54^e World Health Assembly goedgekeurd voor internationaal gebruik (resolutie WHA 54.21).

² Deze termen vervangen de voorheen gebruikte termen 'stoornis', 'beperking' en 'handicap'. Doordat de nieuwe termen neutraal geformuleerd zijn, kunnen nu ook positieve aspecten worden aangeduid. De nieuwe termen worden elders in deze inleiding gedefinieerd, de classificaties vormen de nadere detaillering ervan. Het is van belang op te merken dat deze termen in een speciale betekenis worden gebruikt die kan verschillen van de betekenis die zij in het dagelijks spraakgebruik hebben.

³ Een domein is een praktisch en zinvol stel met elkaar verband houdende fysiologische functies, anatomische eigenschappen, activiteiten, taken of levensgebieden.

eigenschappen, activiteiten en participatie; de term 'functioneringsprobleem' verwijst naar stoornissen, beperkingen en participatieproblemen. Daarnaast bevat de ICF een lijst met externe factoren die van invloed kunnen zijn op elk domein. Op deze manier kan een zinvol beeld worden verkregen van iemands functioneren (zie paragraaf 6 punt 10).

De ICF maakt deel uit van de 'familie' van classificaties die is ontwikkeld door de WHO. De WHO-familie van internationale classificaties (FIC) vormt een taal met behulp waarvan verschillende gegevens op het gebied van de gezondheid kunnen worden vastgelegd (bijvoorbeeld ziekten, functioneren, redenen voor contact met de gezondheidszorg). Dankzij deze gestandaardiseerde gemeenschappelijke taal kunnen uiteenlopende vakgebieden en takken van wetenschap wereldwijd communiceren over gezondheid en gezondheidszorg.

Gezondheidsproblemen zoals ziekten, aandoeningen, letsels enz., worden in de WHO-FIC voornamelijk geclassificeerd met de ICD-10 (afkorting van Internationale classificatie van ziekten, tiende revisie)⁴ die een etiologisch raamwerk vormt. Voor het classificeren van het menselijk functioneren in verband met de gezondheidstoestand is de ICF ontwikkeld. De ICD-10 en de ICF zijn dus complementair⁵. Het is de bedoeling dat, steeds wanneer dat van toepassing is, deze twee leden van de WHO-FIC tezamen gebruikt worden. De ICD-10 voorziet in termen voor ziekten, aandoeningen en andere gezondheidsproblemen, en de ICF in termen voor het beschrijven van het menselijk functioneren⁶ vanuit drie verschillende perspectieven. Door gegevens over de ziekte te combineren met gegevens over het menselijk functioneren krijgt men een ruimer en zinnvoller beeld van de gezondheidstoestand van een individu of populatie. Deze gegevens liggen aan de basis van besluitvormingsprocessen.

De WHO-FIC vormt een waardevol hulpmiddel voor het beschrijven en vergelijken van het gezondheidsniveau van populaties in internationaal verband. De gegevens over mortaliteit, verkregen met behulp van de ICD-10 en gezondheidsresultaten, verkregen met behulp van de ICF, kunnen waarschijnlijk

⁴ *Internationale Statistische Classificatie van Ziekten en met Gezondheid verband houdende Problemen, Tiende Revisie*, Deel 1-3, Genève, Wereldgezondheidsorganisatie, 1992-1994, 1999; Versie 1999 is in Nederlandse vertaling verkrijgbaar op CD-Rom bij het WHO-FIC Collaborating Centre, RIVM, Postbus 1, 3720 BA Bilthoven.

⁵ Het is van belang dat men zich realiseert dat de ICD-10 en de ICF elkaar deels overlappen. Beide bevatten een ordening naar orgaansystemen. In de ICF is dat de eerste component 'functies en anatomische eigenschappen van het menselijk organisme' met de stoornissen als negatieve component. Stoornissen kunnen deel uitmaken van het 'ziekteproces', ze komen daarom ook voor in de ICD in de vorm van symptomen, afwijkende klinische bevindingen of soms als reden voor contact met gezondheidsdiensten. De ICF daarentegen beschrijft stoornissen als problemen in functies of anatomische eigenschappen als aspect van het menselijk functioneren.

⁶ Twee personen met dezelfde ziekte kunnen op verschillende wijze functioneren en twee personen met hetzelfde niveau van functioneren hebben niet noodzakelijkerwijs hetzelfde gezondheidsprobleem. Daarom verhoogt het gezamenlijk gebruik van ICF en ICD de kwaliteit van gegevens voor medische doeleinden. Gebruik van de ICF houdt niet in dat de gangbare diagnostische handelwijze voor medische doeleinden achterwege moet blijven. Afgezien daarvan kan de ICF afzonderlijk worden gebruikt.

gecombineerd worden, en als gezondheidsmaten gebruikt worden voor het monitoren van de gezondheid van populaties en haar statistische spreiding. Ook kunnen zij bijdragen aan het vaststellen van verschillen in oorzaken van ziekte en sterfte.

Werd de ICIDH uit 1980 nog beschreven als een classificatie van 'de gevolgen van ziekten', bij de ICF is dat standpunt verlaten. De uitdrukking 'gevolgen van ziekten' legde teveel de nadruk op de manier waarop problemen in het functioneren tot stand komen, hetgeen op gespannen voet stond met het feit dat oorzakelijkheid geen rol speelt bij de ordening van de begrippen in de ICIDH. De ICF wordt gezien als een classificatie van 'gezondheidscomponenten', waarmee de samenstellende elementen van de gezondheid bedoeld worden. Met betrekking tot de etiologie neemt de ICF een neutraal standpunt in. Zodoende kan men met gebruikmaking van de ICF gegevens op het gebied van die samenstellende elementen afzonderlijk vastleggen en verzamelen. Daarmee wordt het mogelijk om met behulp van wetenschappelijke methoden onderlinge verbanden op het spoor te komen. De ICF onderscheidt zich hiermee van onderzoek naar gezondheidsdeterminanten en risicofactoren. Mede ter ondersteuning van dat onderzoek bevat de ICF een lijst van externe factoren voor de beschrijving van de omgeving waarin iemand leeft.

2. Doelstellingen van de ICF

De ICF is een classificatie die voor meer dan één doel geschikt is en die is ontwikkeld voor toepassing in verschillende vakgebieden en uiteenlopende sectoren. Meer specifiek heeft de ICF de volgende doelstellingen:

- De ICF voorziet in een wetenschappelijke grondslag voor het begrijpen en bestuderen van het menselijk functioneren, uitkomsten en determinanten;
- De ICF schept een gemeenschappelijke taal voor het beschrijven van iemands functioneren met als doel de communicatie tussen beroepsbeoefenaren in de gezondheidszorg en in andere sectoren, als ook met mensen met functioneringsproblemen te verbeteren;
- De ICF maakt gegevens in de tijd en uit verschillende landen, vakgebieden en sectoren, en met elkaar vergelijkbaar;
- De ICF voorziet in een systematisch codestelsel voor informatiesystemen in de gezondheidszorg.

Deze doelstellingen staan niet los van elkaar. De behoefte aan en het gebruik van de ICF vereisen de constructie van een praktisch en zinvol systeem dat bruikbaar is voor ontwikkelaars van gezondheidsbeleid, voor kwaliteitsbewaking en voor evaluatie van de resultaten.

2.1 Toepassingen van de ICF

Sinds de eerste proefuitgave van de ICIDH in 1980 heeft deze classificatie verschillende toepassingen gehad, bijvoorbeeld:

- als basis voor het verzamelen en vastleggen van statistische gegevens (bijv. in gezondheidsenquêtes of in informatiesystemen ten behoeve van beleid);
- als basis voor het ontwikkelen van onderzoeksinstrumenten - voor het meten van de kwaliteit van leven, de effecten van zorg of van externe factoren;

- als basis voor het ontwikkelen van klinische instrumenten - bij het vaststellen van de behoefte aan zorg, bij het afstemmen van de behandeling op specifieke situaties, bij vaststelling van iemands geschiktheid voor een bepaald beroep, bij revalidatie en bij het evalueren van behandelingsresultaten;
- als basis voor het ontwikkelen van instrumenten voor sociaal beleid - bij het plannen van de sociale zekerheid, bij uitkeringsstelsels en bij het ontwikkelen en uitvoeren van beleid;
- als basis voor het ontwikkelen van onderwijsinstrumenten - bij het ontwikkelen van lesprogramma's.

De ICF heeft in principe betrekking op gezondheid en gezondheidszorg, maar wordt ook gebruikt in sectoren die een raakvlak met de gezondheidszorg hebben, zoals sociale zekerheid, arbeid, onderwijs, economie, sociaal beleid en wetgeving in het algemeen. Vandaar dat de Verenigde Naties de ICF hebben aanvaard als een van haar classificaties in de sociale sector. De ICF wordt, nog als ICIDH, genoemd in de *Standaardregels betreffende het bieden van gelijke kansen voor gehandicapten*.⁷ Als zodanig vormt de ICF een geschikt hulpmiddel bij het ten uitvoer te brengen van zowel de vastgestelde internationale verplichtingen op het gebied van de mensenrechten als ook de nationale wetgeving op dit terrein.

De ICF is bruikbaar in een breed spectrum van toepassingen, zoals bijvoorbeeld op het gebied van de uitvoering van de sociale zekerheid, bij de evaluatie van het beleid en voor onderzoek op het gebied van gezondheid en gezondheidszorg op lokaal, nationaal en internationaal niveau. De ICF vormt een raamwerk van begrippen voor het verzamelen van gegevens, en is toepasbaar op de gebieden van de individuele gezondheidszorg, met inbegrip van preventie, de gezondheidsbevordering en het vergroten van de participatie door het wegnemen of verzachten van sociaal belemmerende factoren en door het bevorderen van de verstrekking van sociale steun en het verruimen van de mogelijkheden tot participatie. De ICF is ook van nut voor de vergelijkende studie van gezondheidszorgstelsels in de verschillende landen. Dit strekt zich uit over het evalueren van stelsels en het formuleren van beleid.

3. Eigenschappen van de ICF

Bij een classificatie moet duidelijk zijn wat het werkkerrein en het bereik is, wat de eenheden zijn, wat de wijze van ordening is en hoe deze elementen zich tot elkaar verhouden. In het navolgende worden de basiseigenschappen van de ICF toegelicht.

⁷ *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Aanvaard door de Algemene Vergadering van de Verenigde Naties in de 48e sessie op 20 december 1993 (resolutie 48/96). New York, NY, United Nations Department of Public Information. Redactioneel: *In het Nederlands vertaald als Standaardregels betreffende het bieden van gelijke kansen voor gehandicapten, in 1994 uitgebracht door de Interdepartementale Stuurgroep Gehandicaptenbeleid. In de ICF is de term 'gehandicapten' vervangen door 'mensen met functioneringsproblemen'.*

3.1 Het terrein van de ICF

De ICF betreft aspecten van iemands functioneren en welzijn. Deze aspecten worden beschreven in termen van gezondheidsdomeinen en domeinen die met gezondheid verband houden.⁸ De classificatie heeft dus betrekking op gezondheid in brede zin, maar dekt niet problemen in het functioneren die door andere factoren worden veroorzaakt. Als voorbeeld kan men denken aan mensen die participatieproblemen hebben als gevolg van hun ras, geslacht, godsdienst, e.d. Dergelijke problemen vallen niet onder de participatieproblemen die in de ICF zijn opgenomen.

Er bestaat een wijdverbreid misverstand als zou de ICF alleen betrekking hebben op mensen met functioneringsproblemen. De ICF heeft betrekking op *alle mensen*. Ieders functionele gezondheidstoestand kan aan de hand van de ICF worden beschreven. Met andere woorden de ICF is algemeen toepasbaar.⁹

3.2 Het bereik van de ICF

De ICF is een taal die de termen bevat waarmee het menselijk functioneren kan worden beschreven en vormt zo een raamwerk voor het ordenen van gegevens. De ICF biedt een structuur om die gegevens op zinvolle wijze, in onderling verband, te presenteren in een gemakkelijk toegankelijke vorm.

In de ICF zijn termen geordend in twee delen: (1) het menselijk functioneren en de problemen daarmee en (2) externe en persoonlijke factoren. Elk deel heeft twee componenten.

1. De twee componenten van het menselijk functioneren en de problemen daarmee

De eerste component is die van het **menselijk organisme** en bestaat uit twee classificaties, een voor functies en een voor anatomische eigenschappen. De hoofdstukken in beide classificaties zijn grotendeels geordend volgens orgaansystemen.

De tweede component is die van **activiteiten en participatie** en beslaat het geheel van aspecten van het menselijk functioneren vanuit het perspectief van het menselijk handelen en dat van deelname aan het maatschappelijk leven.

2. De twee componenten **externe factoren** en **persoonlijke factoren**

De ICF bevat een lijst van **externe factoren**. Deze zijn van invloed op alle

⁸ Gezondheidsdomeinen bevatten bijvoorbeeld de categorieën: zien, horen, lopen, leren en herinneren, met gezondheid verband houdende domeinen bevatten bijvoorbeeld de categorieën: transport, scholing en sociale interacties.

⁹ Bickenbach JE, Chatterji S, Badley EM, Üstün TB. Models of disablement, universalism and the ICIDH, *Social Science and Medicine*, 1999, 48: 1173-1187.

componenten van het functioneren en de problemen daarmee. Ze zijn geordend, beginnend bij de onmiddellijke omgeving van het individu en eindigend bij de omgeving in het algemeen.

Persoonlijke factoren worden wel genoemd, maar niet als zodanig geclassificeerd in de ICF vanwege de grote sociale en culturele verschillen die erin voorkomen.

Deze componenten van het menselijk functioneren en de problemen daarmee kunnen op twee manieren worden weergegeven. Enerzijds kunnen ze gebruikt worden om problemen aan te duiden, zoals een stoornis, beperking en participatieprobleem met als overkoepelende term *functioneringsproblemen*; anderzijds kunnen er niet problematische aspecten van het menselijk functioneren mee worden aangeduid, met als overkoepelende term (*menselijk functioneren*).

De componenten van het menselijk functioneren en de problemen daarmee worden in deel 1 van de ICF geïnterpreteerd met behulp van vier afzonderlijke, doch gerelateerde *constructen*. Deze constructen zijn geoperationaliseerd door gebruik te maken van typering. Functies en anatomische eigenschappen kunnen geïnterpreteerd worden met behulp van afwijkingen in of verlies van functie of anatomische eigenschap. Voor activiteiten en participatie zijn er twee constructen beschikbaar: *vermogen* en *uitvoering* (zie verder bij 4.2).

Het menselijk functioneren en de problemen daarmee worden opgevat als de uitkomst van een dynamische wisselwerking¹⁰ tussen iemands gezondheidsproblemen (ziekten, aandoeningen, ongevallen, trauma's, etc), en de context waarin die problemen zich voordoen. De ICF bevat een alomvattende lijst van externe factoren die een essentieel onderdeel van de classificatie vormt. Zoals eerder aangegeven zijn externe factoren van invloed op alle componenten van het menselijk functioneren en de problemen daarmee. De basale constructen van externe factoren zijn de ondersteunende of belemmerende factoren in de fysieke en sociale wereld en in attitudes.

3.3 De eenheid van classificatie

De ICF classificeert aspecten van het menselijk functioneren. De eenheden van classificatie zijn categorieën binnen elk domein van het menselijk functioneren. Het zal hieruit duidelijk worden dat in de ICF personen niet de eenheid van classificatie zijn; dat wil zeggen dat de ICF geen mensen classificeert, maar termen biedt voor het beschrijven van de situatie van individuen binnen een reeks van gezondheidsdomeinen en met de gezondheid verband houdende domeinen. De situatie is er bovendien altijd een binnen de context van externe en persoonlijke factoren.

¹⁰ De uitkomst van deze wisselwerking kan aan de hand van de termen in de ICF worden beschreven *op een gegeven ogenblik in de tijd*. Voor een beschrijving van het *proces*, de wijze waarop die uitkomst tot stand komt, zijn meerdere beschrijvingen in de tijd nodig.

Bijlage 16

Ervaringen met een 'Voter Verifiable Paper Audit Trail' (VVPAT)

De Adviescommissie inrichting verkiezingsproces heeft ervaringen met het stemmen met een stemmachine met paper trail in het buitenland geïnventariseerd. In dit document worden de conclusies en bevindingen uit een aantal evaluatierapporten opgesomd.

Verkiezing: May 2006 Primary Election, Cuyahoga County, Ohio, USA¹

Stemsysteem: Diebold AccuVote-TSX VVPAT

In de wet van de Amerikaanse staat Ohio is vastgelegd dat elektronische stemsystemen een papieren stem moeten produceren; in geval van hertelling is de papieren stem de officiële geldende stem. Het Election Science Institute heeft de verkiezingen in Cuyahoga County geanalyseerd en een onafhankelijke hertelling uitgevoerd. De belangrijkste conclusie is dat de verschillende stemtotalen niet met elkaar overeenkwamen. De AccuVote-TSX is een 'touch screen'-stemmachine voorzien van een externe printer (de AccuView Printer Module).

Bevindingen:

- een groot aantal papieren stemmen was blanco, verfrommeld, gescheurd, vertoonde printafwijkingen, bevatte onverklaarbaar lange stukken onbeschreven ruimte of er ontbrak tekst;
- de papieren en elektronische stemtotalen kwamen niet met elkaar overeen;
- de papieren stemtotalen van de individuele printrollen en de samenvattingen (uitgeprint na de sluiting van de stemming) kwamen niet altijd met elkaar overeen;
- bij de hertelling bleken een aantal VVPAT 'tapes' (rollen papier) te ontbreken, of vernietigd, blanco, onleesbaar, of anderszins niet betrouwbaar te zijn;
- op een aantal rollen ontbrak informatie
- 38% van de stembureauleden gaf aan problemen te hebben ondervonden bij het omgaan met de printers en/of papierrollen.

Verkiezing: November 2006 General Election & December 2006 Runoff Election, Bibb County, Camden County & Cobb County, Georgia, USA²

Stemsysteem: Diebold AccuVote-TSX VVPAT

In een drietal kiesdistricten in drie verschillende counties in de Amerikaanse staat Georgia zijn tijdens verkiezingen experimenten gehouden met stemmachines met paper trail. De AccuVote-TSX is een 'touch screen' stemmachine voorzien van een externe printer (de AccuView Printer Module).

Bevindingen:

- 79,1% van de kiezers gaf aan de paper trail gecontroleerd te hebben, 95,9 % gaf aan dat de paper trail gemakkelijk te lezen was;
- 29,3% van de kiezers gaf aan dat het stemmen langer duurde;
- 3,5% van de kiezers had problemen ondervonden bij het printen van de papieren stem;
- 95,6% van de kiezers gaf aan dat het stemsysteem gemakkelijk te gebruiken was.

¹ Election Science Institute, 2006, DRE Analysis for May 2006 Primary Cuyahoga County, Ohio.

² Office of the Secretary of State, 2007, Voter Verified Paper Audit Trail. Pilot Project Report, SB 500 2006 Georgia Accuracy in Elections Act.

- de handmatige audit bevestigde dat de elektronische stemmen overeenkwamen met de stemmen op de papierrollen;
- er deden zich veel papieropstoppingen voor;
- de lay-out van de papierrol was inefficiënt en verwarrend;
- het stemmen duurde aanzienlijk langer (wachtijden varieerden van 20 minuten tot 2 uur);
- het audit proces was kostbaar, kostte veel tijd en was erg foutgevoelig (Cobb county schatte dat een countybrede audit 120 dagen en 520.000 \$ zou kosten);
- lokale verkiezingsbeambten wezen op de toegenomen mogelijkheden voor menselijke fouten in de handmatige telling van het paper trail;
- het op volgorde printen van de papieren stemmen staat op gespannen voet met het stemgeheim.

Verkiezing: 2003 Federale Parlementsverkiezingen, Waarschoot & Verlaine, België³

Stemsysteem:

Waarschoot: Digivote

Verlaine: Jites

In de kantons Waarschoot en Verlaine werd bij de federale parlementsverkiezingen in mei 2003 een experiment met stemb machines met paper trail uitgevoerd ('ticketing'). Het college van deskundigen belast met de controle van de geautomatiseerde stemmingen en stemopneming heeft hierover verslag uitgebracht.

Conclusies:

- het experiment heeft de betrouwbaarheid van de elektronische stemming voldoende bevestigd;
- het handmatig tellen van de papieren stemmen (ticketten) was lastig;
- de opzet en vorm van de papieren stemmen liet niet toe dat de handmatige telling conform de wettelijke voorschriften werd uitgevoerd;
- de resultaten van de elektronische stemopneming zijn het meest betrouwbaar; de resultaten van de handmatige telling zijn niet betrouwbaar.

Verkiezing: 2002 Presidentiele Verkiezingen, Brazilië⁴

Stemsysteem: stemmachine met VVPAT (Unisys & ProComp)

Op verzoek van het Braziliaanse Congres werden in 2002 in 3% van de kiesdistricten de stemb machines voorzien van een externe printer. Het betrof een thermische printer ontwikkeld door Unisys, het type printer dat ook in de creditcardgeldautomaten gebruikt wordt. De stemb machines, ook wel 'urna eletrônica' genoemd, zijn afkomstig van Unisys & ProComp, een Braziliaans bedrijf dat nu in eigendom is van Diebold Elections Systems.

De evaluatie van het experiment met het VVPAT was negatief en luidde als volgt:

- Het stemmen duurde 6 keer langer dan normaal (o.m. wegens het wachten op de print);

³ College van deskundigen belast met de controle van de geautomatiseerde stemmingen en stemopneming, VERSLAG BETREFFENDE DE VERKIEZINGEN VAN 18 MEI 2003, Wetgevingsstuk nr 3-7/1.

⁴ Informatie is afkomstig van de Supremo Tribunal Eleitoral, via de Nederlandse Ambassade te Brasilia.

- het aantal technische gebreken was proportioneel hoog, aangezien het ging om elektro-mechanische printers die gewoonlijk méér defecten te zien geven. Ook dit leidde tot vertragingen;
- de redenering dat de methode een extra middel zou zijn om fraude tegen te gaan, houdt geen stand. Het is immers juist de elektronische stembus (d.w.z. het elektronisch geheugen zonder handmatige tussenkomst) die als fraudebestendig kan worden beschouwd.

Verkiezing: december 2005 Parlementaire Verkiezingen, Venezuela⁵

Stemsysteem: SAES (Smartmatic Automatic Election Systems)

Bij de verkiezingen in 2004, 2005 en 2006 werd gebruik gemaakt van een stemmachine met een VVPAT. De stemmachines van het Amerikaanse bedrijf Smartmatic hebben een interne thermische printer. De verkiezingen in 2005 zijn geëvalueerd door de European Union Election Observation Mission.

Conclusies:

- de audit van de papieren print wees uit dat de resultaten van de elektronische stemming betrouwbaar waren;
- in een aantal geïsoleerde gevallen claimden kiezers dat de papieren print niet correspondeerde met hun keuze of vergat men de print in de daarvoor bestemde bus te deponeren. Deze incidenten zouden geen invloed hebben gehad op de totaaluitslag;
- in 28 % van de geobserveerde gevallen kwamen de papieren en elektronische stemtotalen niet met elkaar overeen. Deze verschillen zouden het resultaat zijn van menselijke fouten in de handmatige telling.

⁵ European Union Election Observation Mission, Final Report, Parliamentary Elections Venezuela 2005.

Bijlage 17

Electronic counting. May 2007 electoral pilot schemes, The Electoral Commission

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Electronic counting

May 2007 electoral pilot schemes

At the May 2007 local government elections in England, six local authorities held pilot schemes trialling electronic counting. This paper summarises the main findings of the Electoral Commission's evaluation of these pilot schemes.

Background

Under the Representation of the People Act 2000, local authorities in England and Wales can submit proposals to the Secretary of State for Justice (prior to 9 May 2007, the Secretary of State for Constitutional Affairs) to carry out electoral pilot schemes. Local authorities in Scotland can apply to the Scottish Executive to carry out pilot schemes. Electoral pilot schemes can involve changes to when, where and how voting at local government elections is to take place, how the votes cast at the elections are to be counted, or candidates sending election communications free of postage charges.

The Electoral Commission is required by law to evaluate every electoral pilot scheme in England and Wales, and may also be asked to evaluate pilot schemes in Scotland. We must consider whether the pilot scheme:

- helped to make voting or counting the votes easier
- helped to improve turnout
- helped to facilitate voting
- led to a reduction or increase in electoral fraud

- led to a reduction or increase in the cost of the elections

The Commission is required to publish evaluation reports on individual pilot schemes within three months of the elections taking place.

Electronic counting

The electronic counting of votes (e-counting) has been relatively widely implemented through electoral pilot schemes as well as at other elections. It has been piloted at English local government elections in 2000, 2002, 2003, 2004 and 2006 and was also used under specific legislation at the 2000 and 2004 elections to the London Assembly and for the Mayor of London. Electronic counting was also used at the combined Scottish Parliamentary and local government elections in 2007, which will be the subject of a separate Commission report.

The Commission has previously indicated its support for the use of e-counting where it can improve the accuracy and efficiency of the counting process. However, it has also recommended that further measures are required to

support the routine roll-out of the technology. In particular, we have highlighted the need:

- to ensure that best practice is documented and circulated to ensure that future pilots and implementations of e-counting build on the lessons that have already been learned
- for a centrally managed accreditation and certification process to provide independent assurance of e-counting solutions and to enable local authorities to make an informed choice regarding the use of appropriate technology
- to obtain better value for money by reducing the costs associated with e-counting
- to maximise efficiency to ensure that the potential benefits of reduced effort and timescales associated with e-counting are realised
- to increase the transparency of the solutions adopted to ensure continued stakeholder acceptance of the technology

Announcing approval for a number of pilot schemes in January 2007, the Secretary of State for Constitutional Affairs noted that e-counting pilot schemes 'will build on past work and test how this can be refined to ensure confidence and support future use of technology to gain efficiencies in the administration of elections'.

Pilot schemes at the May 2007 elections

In total, seven applications were received in November 2006 to pilot e-counting. The Commission wrote to the

Secretary of State on 1 December 2006 and stated that it was unable to support any of the applications, as they did not provide sufficient evidence that the pilots would add significantly to the current level of knowledge regarding e-counting. Following negotiations between the Department for Constitutional Affairs¹ and the local authorities, the applications were revised, principally to explore the learning around the use of commercially available hardware scanners to reduce the costs associated with e-counting. We were satisfied that these revisions provided sufficient improvement to the learning potential of the schemes that went ahead.

A total of five pilots of e-counting were approved by the Secretary of State:

- Bedford Borough Council conducted a combined count of a Mayoral election, Borough Council elections and a number of parish council elections. The ballot paper for the Mayoral election featured a single column, with voters numbering their first and second preferences '1' and '2', rather than two columns marked with crosses as the existing law provides.
- Breckland District Council conducted a combined count of District Council elections and a number of parish council elections.
- Dover District Council conducted a combined count of District Council elections and a number of parish council elections.

- South Bucks District Council conducted a combined count of District Council elections and a number of parish council elections. South Bucks also operated an electronic voting (e-voting) pilot.
- Stratford-on-Avon District Council and Warwick District Council undertook a joint pilot. Each was counting District Council elections and a number of parish council elections. Two count centres were used.

A total of four suppliers provided the e-counting solution for the pilots: Indra supplied the technology for Bedford and Breckland, Opt2Vote for Dover, Election Systems and Software (ES&S) for South Bucks, and Software AG for Stratford and Warwick. All the pilots involved the use of commercially available scanners and hardware, with bespoke software solutions.

Findings

The overall outcome of the pilots in 2007 varied. A major factor influencing the success, or otherwise, of the pilots was the amount of time available to plan and implement them. By the time suppliers had been chosen, just two to three months remained for implementation, when six months was more realistic. This had a knock-on effect on many of the aspects of the pilots, as described below.

Management

Given the shortened timescales, the project management undertaken by the local authorities was satisfactory across the pilot schemes. Prior to the elections, some evidence of good practice was observed at most of the local authorities, with documented plans, structured teams and communication and decision mechanisms in place.

However, although the mechanisms for project management were in place, in some cases expectations were over-ambitious and unrealistic. The quality of the project management undertaken by the local authorities was affected by the amount of time available and the relative inexperience of the local authorities undertaking these pilots in e-counting.

The level of project management undertaken by the suppliers varied from adequate, given the timescales, to ineffective. The greatest areas of weakness in both local authority and supplier project management related to the degree of contingency planning and quality management undertaken. Quality management aspects are discussed separately from other project management issues under 'Security and confidence' below.

On the whole, however, the overall pilots programme was not well managed, above all because there was insufficient time for planning and implementation (see the Commission's separate summary paper, 'Key issues and conclusions' for more detail on this).

Impact on counting

Three of the local authorities, Dover, Bedford and South Bucks, successfully operated an e-counting solution to count the ballots. In the other three local authorities, Stratford, Warwick and Breckland, the pilots were not successful and they ultimately resorted to a manual count for some or all of their elections. The failure of the e-counting solution meant that the count took significantly longer than a conventional count without an electronic element.

All counts took longer to undertake than had been envisaged prior to the elections. Only the count at Dover was quicker than a previous manual count. Allowing for the increased complexity and the turnout for the Mayoral election at the Bedford count, it was estimated by Bedford that, despite the problems occurring, the count was also undertaken in a shorter time than it would have been if conducted manually.

Process and technology issues affected the efficiency of the counting process. These issues occurred to some extent at all pilots, although some were affected more than others.

The achieved scanning throughput was significantly lower than the capability specification of the scanners in the majority of the 2007 e-counting pilot schemes. This was principally caused by the fact that the overall solutions used were not very robust in the face of deviations from the expected input conditions and environment. Examples of this related to paper quality and size

issues, the condition of the ballots (e.g. whether they had been folded or damaged, particularly for postal ballots), the use of counterfoils, the print quality of the ballots, the characteristics of the pen or pencil used to mark the ballots and the manner in which voters marked their ballot papers. Some of the technical issues relate to the scanners themselves, while other issues relate to the capability of the software system used to process the images.

In all pilots a higher than expected number of ballots were sent for adjudication. While this was appropriate from an integrity point of view (the technology did not count a vote unless there was a high degree of certainty associated with it), the net result was that operators had to adjudicate a large number of ballots that most observers felt were clearly marked and should have been dealt with by the technology.

At most pilots the process of adjudication was split into two stages, with the first stage conducted by council operators and the second stage by the Returning Officers and their deputies. First stage adjudications were the relatively simple judgements to allow clearly acceptable ballot papers into the count. Any further doubt over a ballot paper would go to a second stage for adjudication by the Returning Officer. At one pilot, Stratford and Warwick, all adjudications were dealt with by both Returning Officers and their deputies, resulting in further inefficiencies through lack of delegation of lower level decisions.

Some suppliers did not have significant knowledge of UK electoral law and practice, leading to lack of clarity in communications between suppliers and local authorities and a mismatch of what was expected from and by each. This led to more complex manual processes being adopted to make up for deficiencies in the system.

Although the testing undertaken generally on the e-counting solutions was insufficient, where it was performed it often focused on the accuracy of the technology to count previously prepared ballots so that the result could be compared with the known totals. This testing indicated that the systems used were accurate. The systems were configured to be cautious, referring ballot papers for adjudication unless there was a high degree of certainty as to the voter's intention. Because of the lack of sophistication of the technology used, this resulted in a large number of adjudications.

Verification checks (i.e. checks matching the number of ballot papers removed from ballot boxes with the number issued) were undertaken at all pilots and sometimes identified deficiencies in the e-counting process or technology. In Breckland, some verification checks did not tally, resulting in a number of votes not being counted for a few of the wards.

Some local authorities made significant use of council resources to conduct the count. For example, Council staff at both Breckland and Dover were responsible for registration, scanning, verification and

adjudication. Other local authorities made greater use of supplier staff: for example, Bedford, South Bucks, Stratford and Warwick all used supplier staff for scanning; South Bucks also used supplier staff for registration.

Some councils trained staff members only on their envisaged role (scanning, or verification, or adjudication, etc.) and did not cross-train them for multiple roles. This led to some inefficiency at the count when staff members were redeployed in roles for which they had not been trained. However, there was no significant impact on the count that can be directly attributed to the use of resources.

[Security and confidence](#)

The level of testing and quality assurance undertaken across the pilots varied. Many local authorities assumed that the Ministry of Justice's (MoJ's) selection process for identifying suitable suppliers of e-counting solutions had entailed a higher level of testing and investigation than it had.

Dover had a comprehensive testing and training programme. This was conducted over several sessions over four weeks and included a test of 14,000 ballots drawn up by supplier and Council staff and user acceptance testing driven by the Council. A further stress test with 53,000 ballots was undertaken, and independent security testing and analysis was undertaken by the supplier.

Stratford and Warwick undertook limited testing, and user acceptance testing did not take place until 2 and 3 May (polling day itself) respectively.

Quality assurance was undertaken through a security audit by the MoJ's contractors. In summary, this was too little too late. The scope of the quality assurance did not cover a number of areas, such as accuracy or compliance with required functionality, and many of the suppliers did not have the required documentation for the audit. The audit was conducted too close to the count itself and there was not enough time to make any significant changes following the audit.

In summary, the overall level of testing and quality assurance was insufficient and it is therefore not possible to state definitively whether the solutions were adequately secure. In general, security countermeasures were in place and no high security risks have been identified. For example, standalone networks were used without connectivity to external networks or the internet, access by operators was controlled and authenticated, physical security measures were in place around the count and 'clean builds' of computers were used to ensure that viruses or other malicious software were not present.

However, some security issues did arise: the degree to which the systems were locked to prevent electronic tampering was unclear as no security testing was performed on the final configuration. Security procedures appeared to be less rigorously followed when operational problems occurred and the password procedures used were not always sufficiently stringent.

Suppliers were required to delete the data from all systems used in the count. However, this process was not always witnessed by the local authorities and in many cases it was not clear how effectively it was performed. In some cases it is possible that the data was not deleted sufficiently securely – that is, there is a possibility that the data could be recovered using sufficient technology and skills such as would be available in a data recovery laboratory.

Feedback

The problems and delays that occurred with e-counting across the pilots had a negative effect on stakeholder perception. Candidates and agents remain unconvinced concerning the benefits, although there was a greater acceptance of the technology for those pilots that did not have significant problems. Major concerns include the loss of transparency, increased costs, extended timescales associated with the problems that occurred and a reduced 'sense of excitement' associated with the count.

Public perception of e-counting is mixed. A total of 37% of the respondents to a public opinion survey carried out by ICM Research on behalf of the Commission thought that it would be more accurate than manual counting, 33% thought it would be less accurate, 24% thought it would make no difference and 6% expressed no opinion. ICM Research has pointed out that this poll was conducted after the high-profile coverage of e-counting at the combined Scottish Parliamentary and local government elections

and so may have been influenced by the press coverage.

Cost and value for money

The additional costs associated with e-counting varied from about £1.50 to £2.00 per elector. A range of hardware scanners were used by the pilots. Most of these were high-specification commercial office scanners from major vendors such as Kodak and Canon. South Bucks used a more specialised product. The recommended retail price varied from about £6,000 to £28,000 per scanner, although the actual costs were often difficult to determine from the pricing model used by the suppliers.

Learning and issues

Best practice dissemination

The Commission has highlighted on a number of occasions the need for development and dissemination of best practice in the use of e-counting technology. It is clear that this is now a critical issue. Key failings that occurred during the 2007 pilots could have been avoided if knowledge that has been developed in the past had been taken into account. This includes issues such as the potential high number of adjudications, the adjudication process, paper quality issues, workflow issues and the need for contingency planning and resource reallocation.

The pilots have highlighted a number of additional points of best practice that should be incorporated into this documentation, such as issues related to the use of commercial office scanners and print quality issues.

This best practice should include a checklist for Returning Officers and their staff to facilitate their conduct of the e-count and to ensure that key elements related to the integrity and efficiency of the count do not get overlooked due to unfamiliarity or because of unforeseen circumstances.

Accreditation and certification

Previous evaluations by the Commission have concluded that e-counting can be used to increase the efficiency and accuracy of the counting process. Despite the failures this year, this conclusion remains valid. However, the experiences of 2007 have once again highlighted the fact that the implementation needs to be carried out in an appropriate fashion, with fully tested solutions and sufficient time to implement them. We have previously recommended that an accreditation and certification scheme is required to provide independent quality assurance of e-counting solutions before they are made available for general use at local government elections, and in 2006 we stated that this was critical.

It is now essential that an accreditation and certification scheme is put in place before any further piloting of e-counting is undertaken. Indeed, it is the Commission's view that such an accreditation and certification scheme would in any case be highly desirable to support the use of e-counting outside the piloting framework.

It will be important to ensure that any accreditation and certification scheme has appropriate characteristics.

It should incorporate a set of requirements for e-counting systems to be used at all elections in the UK, including usability, availability, security and transparency requirements. The current statement of requirement for suppliers on the MoJ's framework can be used as a starting point for these requirements; however, these should be augmented with a number of requirements that have arisen out of these pilots. It is important that the accreditation and certification process is open to all eligible suppliers and that it does not unduly constrain the market.

The certification process should involve an evaluation of technology, and further investigation is required to identify the optimum approach and level of detail to be undertaken in this area. Extensive testing is required, including the conduct of a mock-election count, security penetration testing of the standard configuration, and volume and stress testing, including issues related to excessive numbers of spoilt ballots, damaged paper and varying print quality.

Certification should include the identification of a clearly defined configuration of the system being tested, together with the envisaged processes with which it will be used. Quality assurance activities associated with individual elections should be based on this certification configuration and any departures from this should be strictly controlled and assessed.

In order to gain stakeholder buy-in, it will be important for any accreditation and certification scheme to be suitably transparent. This will include the publication of the e-counting requirements and of the certification process that will be undertaken as well as some form of report for each certified product outlining the results of the certification process.

[Cost and value for money](#)

The costs in 2007 were greater than those incurred in 2006, despite the use of commodity hardware. The two main factors associated with this are that the nature of the procurement using the MoJ's framework of suitable suppliers meant that any possible savings from using commodity hardware were not realised and that there were substantial development and professional services costs associated with the technical solutions. These development costs arose due to the current immaturity of the marketplace and outweighed any potential savings from reduced scanner costs at this time.

One of the principal aims of these pilots was to investigate whether commercial office scanners could be used in an e-counting solution. While this learning has been hampered by the management of the piloting process, as noted elsewhere, there is some indication that it is possible to use these scanners in an effective solution.

It was notable that the overall count efficiency was influenced more by print quality, software design and process issues than

by scanner performance and that therefore it is possible that standard office scanners that are suitable for other electoral tasks such as annual canvass form scanning, or scanners that can be hired cost effectively, could be used in future. It was also notable that the overall scanning efficiency was influenced more by scanner robustness and reliability issues and ballot paper quality rather than by the raw scanner speed.

[Efficiency](#)

The 2007 pilots did not contribute greatly to learning how the efficiency of e-counting solutions can be maximised, although they have highlighted instances of poor practice.

The Bedford pilot has demonstrated that it is possible to count marked numerals rather than simply crosses on the ballot papers, although further research is required to determine whether the use of numerals can reduce the number of spoilt ballots at Mayoral elections.

[Transparency](#)

The pilots have highlighted a number of issues concerning the transparency of the e-counting solutions deployed, some of which have been highlighted in previous Commission reports.

More effort needs to be spent in communicating the process and progress to candidates, agents and other observers. Display technologies need more development: none of the progress screens was satisfactory and they appeared

to be considered desirable rather than a necessary or mandatory feature by the suppliers.

More effective reporting and accounting is required and best practice should be produced to define what is allowed and expected in this area.

There is significant scope for innovations in increasing the transparency of e-counting solutions. For example, large screens could be used to show briefly all ballot papers to candidates and agents, as undertaken in the Swindon local government by-election in 2004 to replicate a manual count, or a manual or other system could be used to count a subset of the ballot papers to act as a cross-check. Consideration could be given to publishing an audit report showing the actions and decisions taken during the count, including any verification discrepancies and the reasons for them. Peer-review and other checks could be implemented to ensure that the source data that is entered into the e-counting system, such as Presiding Officer accounts, is double-checked to ensure it is correct.

Recommendations

A good deal of experience has already been gained from previous e-counting experiments, from the 2002 and 2004 elections to the London Assembly and for the Mayor of London and from the 2007 combined Scottish Parliamentary and local government elections (the report on which will contain further lessons). The lessons learned in the May 2007 pilots do not differ greatly from previous rounds.

The circumstances and practices that lead to successful e-counting are therefore clear, although many of these were not applied this year. Any further e-counting projects – both pilots and others – need to take full account of these:

- Substantial testing must be undertaken, either through an accreditation and certification process or through a detailed and thorough procurement process. This procurement process will need to be substantially more detailed than that undertaken for the framework agreement put in place by the MoJ for these pilots.
- Sufficient time must be allowed for the development of e-counting projects. The amount of time needed will depend on a number of factors, including the experience of the local authority and the suppliers, whether there is an accreditation scheme in place and the nature of any procurement. But the Commission recommends a minimum of six months.
- Measures must be in place to ensure that current best practice is adopted. This could be achieved through the development of best practice documentation or by ensuring the involvement of election officials within the local authorities with sufficient expertise and experience.

Unless these conditions can be met, the Commission questions the value of undertaking further small-scale pilots of the kind that were run at the May 2007 elections and would not

recommend their further implementation.

The current review of the combined Scottish Parliamentary and local government elections may indicate further conditions for the implementation of e-counting. The Commission also notes that for elections to the London Assembly and for the Mayor of London, which are next due to take place in 2008, there is already provision in law for an e-count to be carried out without the need for a pilot scheme. It is strongly recommended that the implementation of e-counting at these elections should also provide for substantial testing and the incorporation of best practice along the lines set out in this paper.

Issues related to the transparency of the e-counting process continue to be important. While some of the concerns raised can be addressed through the deployment of best practice, there is nevertheless a need for further measures to increase transparency.

Various observer groups at these elections have questioned the fundamental basis under which electronic processes are used at elections. The Commission recommends that further public debate on this issue should be initiated by the publication of a government strategy on the modernisation of elections. The Commission's separate summary paper, 'Key issues and conclusions', also addresses this issue.

¹ Hereafter referred to as the Ministry of Justice following the machinery of government changes on 9 May 2007.

Further information

All evaluation reports for individual electoral pilot schemes are available from our website.

In preparing the evaluation of the 2007 electoral pilot schemes, the Commission has drawn on findings from work undertaken by a number of contractors, including technical and accessibility experts. Their reports are available from our website.

Further information on electoral pilot schemes is available from the Ministry of Justice website, www.justice.gov.uk.

Feedback

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We are an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. We regulate party and election finance and set standards for well-run elections.

The
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Bijlage 18

Ervaringen met optical scanstemmen in de Verenigde Staten van Amerika

De Adviescommissie inrichting verkiezingsproces heeft de ervaringen in de Verenigde Staten van Amerika met het stemmen door middel van automatische telling van met de hand ingevulde stembiljetten geïnventariseerd. In dit document worden de bevindingen opgesomd.

Geschiedenis

In de Verenigde Staten van Amerika is het stemmen door middel van automatische telling van met de hand ingevulde biljetten een van de meest voorkomende methoden. De eerste optical scansystemen, ook wel marksense genoemd, werden in de jaren '60 van de vorige eeuw ontwikkeld. In 1980 stemde 2 % van de Amerikaanse kiezers met dergelijke systemen¹. Het gebruik nam toe tot 24 % in 1996, 34 % in 2004 en 49 % in 2006. Tussen 2000 en 2006 steeg het aantal districten met optical scan van 1279 naar 1752. In dezelfde periode nam het aantal districten met volledig elektronische systemen toe van 309 tot 1142. Steeds meer staten kiezen voor een uniform stelsysteem, wat betekent dat in de gehele staat met dezelfde middelen wordt gestemd. In 2006 werd in 9 staten alleen nog met optical scan gestemd: North Dakota, South Dakota, Michigan, Vermont, New Hampshire, Arizona, New Mexico, Oklahoma en Alabama². De meest gebruikte systemen in 2006 waren de Diebold AccuVote Optical Scan met 10,95 % van de kiezers, de ES&S Model 100 met 8,21 % en de Sequoia Optech III-P Eagle met 4,13 %³.

Varianten

In de Verenigde Staten worden altijd meerdere verkiezingen tegelijk gehouden. De kandidaten voor de verschillende functies worden op één biljet weergegeven.

Er zijn twee basisuitvoeringen van het optical scanprincipe, afhankelijk van waar de telling plaatsvindt. Bij *precinct count optical scan* (PCOS) worden stemmen ter plaatse geteld, waarbij de kiezer veelal het stembiljet zelf in de scanner invoert. De scanner is hierbij veelal geïntegreerd met de stembus. Bij *central count optical scan* (CCOS) worden de biljetten na de stemming naar een centrale faciliteit getransporteerd en voor het gehele district gezamenlijk geteld. Optical scan kent het laagste percentage van ongeldige stemmen van de in de VS in gebruik zijnde systemen (0,7 % in 2004 voor PCOS en 1,7% bij CCOS)⁴. Dit is deels te danken aan de mogelijkheid van precinct optical scan om na het invoeren van het biljet in de scanner een probleem direct aan de kiezer te melden, zodat deze de stem kan corrigeren, bijvoorbeeld wanneer de scanner te veel kandidaten heeft geselecteerd.

De systemen die nu gebruikt worden, herkennen de keuzen van de kiezer via ingekleurde vakjes of aangebrachte verbindingen van lijnen. De eerste vorm geeft het laagste percentage ongeldige stemmen⁵. Herkenning van tekst, al dan niet in combinatie met stemprinters, wordt niet gebruikt. Wel is deze methode inmiddels voorgesteld⁶. Het is niet gebruikelijk dat een stemmachine of telapparaat een papieren proces-verbaal afdruckt. De geheugenkaart van het apparaat is daarmee bepalend voor de uitslag.

¹ Roy G. Saltman, *The history and politics of voting technology: in quest of integrity and public confidence*, Palgrave MacMillan, New York, 2006.

² Verified Voting, *Election Equipment: Standard 2006*, <http://www.verifiedvoting.org/verifier>, geraadpleegd 6 september 2007.

³ Election Data Services, *Almost 55 Million, or One-Third of the Nation's Voters, Will Face New Voting Equipment in 2006 Election*, 2 oktober 2006, http://www.edssurvey.com/images/File/ve2006_nrpt.pdf, geraadpleegd 6 september 2007.

⁴ Norden et al. (2006).

⁵ Lawrence Norden, Jeremy M. Creelan, David Kimball and Whitney Quesenbery, *The machinery of democracy: usability of voting systems*, Brennan Center for Justice, 2006, <http://www.brennancenter.org/programs/downloads/Usability8-28.pdf>, geraadpleegd 5 september 2007.

⁶ Gregg Vanderheiden, *Brief on Accessible, Verifiable Voting*, 15 januari 2007

<http://vote.nist.gov/ecposstatements/Brief-on-Accessible-Verifiable-Voting.htm>, geraadpleegd 6 september 2007.

Evaluatie

Mogelijke nadelen van optical scan die in evaluatierapporten worden genoemd zijn:

- Het papier kan vastlopen in de scanner (bij volledig elektronisch met paper trail ook in de printer). Door verbetering van de scanners en printers en instructie aan stembureauleden heeft men dit probleem in Californië aanzienlijk weten te beperken;⁷
- Er is geen mogelijkheid tot aanpassing voor gehandicapten;
- Het is minder gemakkelijk om de gebruiker te helpen bij het corrigeren van fouten dan bij volledig elektronische systemen;
- Er moet (anders dan bij volledig elektronische systemen) voldoende voorraad aan stembiljetten zijn⁸.

Een voordeel dat genoemd wordt ten opzichte van volledig elektronische apparatuur is de beperkte interactie tussen de kiezer en het apparaat. De kiezer kan immers zijn stem op papier uitbrengen, en hoeft deze alleen in de scanner in te voeren (bij precinct count) of in de stembus te deponeren (bij central count). Hierdoor zouden wachtrijen, zoals die bij elektronisch stemmen kunnen optreden, worden voorkomen⁹. Bovendien is het mogelijk om bij storingen aan de apparatuur toch te stemmen, waarbij de stemmen later geteld worden met een vervangende scanner of met de hand. Daarnaast wordt ook de betere transparantie gezien als een voordeel, aangezien de stemmen op papier aanwezig zijn.

Inmiddels hebben 30 staten wetgeving die eist dat ook bij elektronische systemen de individuele stemmen op papier achterblijven in het stemlokaal, zodat een hertelling mogelijk is¹⁰. Hiervoor worden voornamelijk 'paper trail'- of optical scantechnieken ingezet. Vergelijkbare wetgeving op federaal niveau is in voorbereiding¹¹.

Net als bij de volledig elektronische systemen zijn ook bij de optische scansystemen kwetsbaarheden gevonden die het manipuleren van de uitslag mogelijk zouden maken¹². Hierbij gaat het met name om:

1. het manipuleren van de telling in de scanapparaten en telsoftware via geheugenkaarten, ongeautoriseerde verbindingen of fysieke toegang;
2. het ontregelen van het scanapparaat (denial of service) of het meerdere malen invoeren van dezelfde stem;
3. het reconstrueren van de volgorde van stemmen hetgeen een afbreuk van het stemgeheim oplevert.

⁷ California Secretary of State Bruce McPherson, *Election Day Observation Program Report June and November 2006 Elections*, 5 januari 2007, http://www.sos.ca.gov/elections/voting_systems/election_observer_report_complete_final.pdf, geraadpleegd 6 september 2007.

⁸ UConn Voting Technology Research Center, *Electronic Voting Machines: A Summary Comparison of the Optical Scan (OS) and the Touch Screen (TS) Voting Terminals*, 2007, <http://voter.engr.uconn.edu/voter/Report-Compare.html>, geraadpleegd 6 september 2007; Mike Doyle, *Miami-Dade County's experience: Touch Screen (DRE) vs. Optical Scan*, <http://mysite.verizon.net/resq4lq/cvi/id129.html>, geraadpleegd 6 september 2007.

⁹ Bij volledig elektronische systemen kan het door de vele verkiezingen tegelijk lang duren voordat een kiezer voor alle verkiezingen een keuze heeft gemaakt. Omdat er slechts een beperkt aantal machines per stembureau beschikbaar is kan dit tot wachtrijen leiden. In Nederland is dit probleem niet of nauwelijks aanwezig.

¹⁰ Verified Voting, *Mandatory Manual Audits of Voter-Verified Paper Records*, <http://www.verifiedvoting.org>, geraadpleegd 6 september 2007.

¹¹ Voter Confidence and Increased Accessibility Act, H.R. 811.

¹² California Secretary of State, *Voting systems review*, http://sos.ca.gov/elections/elections_vsr.htm, geraadpleegd 6 september 2007; A. Kiayias L. Michel A. Russell A. A. Shvartsman, *Security Assessment of the Diebold Optical Scan Voting Terminal*, UConn Voting Technology Research Center, 30 oktober 2006, http://voter.engr.uconn.edu/voter/Report-OS_files/uconn-report-os.pdf, geraadpleegd 5 september 2007.

Als gevolg hiervan zijn in Californië goedkeuringen voor eerder gecertificeerde systemen geheel of gedeeltelijk ingetrokken. Autorisatie, encryptie, verzegeling en goede procedures voor transport en toezicht worden gezien als oplossingen om de problemen het hoofd te bieden.