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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT EXPLANATORY REPORT  
TO THE CODE OF GOOD PRACTICE  
IN THE FIELD OF POLITICAL PARTIES**

by

**Mr Carlos CLOSA MONTERO (Member, Spain)**

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## **I. Introduction**

1. *On 17 April 2007, the Parliamentary Assembly of the Council of Europe adopted Resolution 1546 (2007) inviting the Venice Commission to prepare a Code of good practice for political parties (paragraph 15) which would set out the most important elements for their conduct.*
2. *The explicit aim of the code, as stated in the Resolution, is to reinforce political parties' internal democracy and increase their credibility in the eyes of citizens, thus contributing to the legitimacy of the democratic process and institutions as a whole and fostering participation in political life, as well as to promote democratic principles such as equality, dialogue, cooperation, transparency and the fight against corruption (paragraph 10).*
3. *As requested by the Parliamentary Assembly's Resolution, this document is based on the experience of political parties in Council of Europe Member States and drawn from existing good practices, taking into account both national legislation and practice in the field of regulation of activities of political parties and party statutes.*
4. *Additional sources have been Parliamentary Assembly Resolutions like Recommendation 1438 (2000) and Resolution 1344 (2003) on the threat posed to democracy by extremist parties and movements in Europe, Resolution 1308 (2002) on the restrictions on political parties in the Council of Europe member states, Recommendation 1516 (2001) on the financing of political parties, and Resolution 1264 (2001), Resolution 1320 (2003) and Recommendation 1595 (2003) on a code of good practices in electoral matters; and the Guidelines issued by the Venice Commission on legislation on political parties (2006)<sup>1</sup>, the Guidelines on the financing of political parties (2000)<sup>2</sup>, the Guidelines on prohibition and dissolution of political parties and analogous measures (1999)<sup>3</sup> and the Code of good practice in electoral matters (2002)<sup>4</sup>, plus other international instruments and declarations. Finally, the code has also drawn valuable information from the reports of certain international organisations and foundations.*

## **II. General principles**

### **Definition**

#### **a. Specific type of association**

5. For the purpose of establishing a definition of the type of association to which this code is addressed, political parties can be defined as non-profit associations of persons intended to act in a long-term perspective, thus having an internal structure that ensures their functioning on a permanent basis and thereby aiming to participate in the management of public affairs through

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<sup>1</sup> CDL-AD(2004)007rev - Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004).

<sup>2</sup> CDL-INF(2001)007 - Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001)

<sup>3</sup> CDL-INF(2000)001 - Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st plenary session (Venice, 10–11 December, 1999)

<sup>4</sup> CDL-AD (2002) 023rev. 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)

gaining the voters' support to their political programme.<sup>5</sup> Two distinctive features of political parties are that they overtly seek to wield political power through their elected representatives and their commitment to exercise such power for the common good.<sup>6</sup> In so doing, political parties perform essential functions for representative democracy, both social (contributing to the citizens' political socialisation, association and articulating their ideological pluralism) and institutional (controlling the executive and presenting alternative policies and candidates).<sup>7</sup>

6. The European Court of Human Rights (hereinafter referred to as the ECtHR) has upheld on several occasions that "political parties are a form of association essential to the proper functioning of democracy".<sup>8</sup> The Parliamentary Assembly of the Council of Europe (PACE) has as well acknowledged that "political parties constitute a permanent feature of modern democracies, a key element of electoral competition, and a crucial linking mechanism between the individual and the state", their role consisting in "integrating groups and individuals into the political process, serving as a tool for formulating and representing their interests, establishing public authorities at different levels, elaborating policies and alternative political programmes and holding the executive to account".<sup>9</sup>

#### **b. Freedom of establishment**

7. None of the features of political parties referred to in the text of this Code may be used as a ground to restrict the right to associate in political parties or in any way limit the activities of political parties in the Council of Europe Member States to a greater extent than provided by law. According to PACE Resolution 1308 (2002) on the restrictions on political parties in the Council of Europe Member States and the Guidelines on prohibition and dissolution of political parties and analogous measures<sup>10</sup> adopted by the Venice Commission, such measures can only be adopted exceptionally, should it be necessary for the safeguard of the democratic order and human rights, as a last resort and in conformity with the constitutional order and legal procedures which guarantee a fair trial.

8. There are different approaches to the regulation of political parties in the Council of Europe Member States. The establishment of political parties can be enshrined in the Constitution (as for instance in Azerbaijan, Bulgaria, Cyprus, Greece, Lithuania, the Russian Federation or Slovakia) and regulated within the general legislation on associations (like for example in Belgium, France, Finland, the Netherlands or Ukraine); in the specific legislation on political parties (as in Armenia, Azerbaijan, Bulgaria, Estonia, Lithuania, "the Former Yugoslav Republic of Macedonia, Moldova, Norway, Romania, Spain and the United Kingdom); or may not be regulated at all (like in Iceland, Italy, Malta or Switzerland).

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<sup>5</sup> This minimal definition builds upon elements of classic definitions by M. Weber, La Palombara and Weiner, Sartori and Duverger.

<sup>6</sup> *Ibid.*, p. 23.

<sup>7</sup> *Ibid.*, pp. 27 and 28.

<sup>8</sup> See ECHR, 30 January 1998, United Communist Party of Turkey and Others against Turkey judgment.

<sup>9</sup> Resolution 1546(2007) on the Code of good practice for political parties, paragraph 4.

<sup>10</sup> CDL-INF(2000)001 - Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st plenary session (Venice, 10–11 December, 1999).

## **b.1 Registration<sup>11</sup>**

9. In many Member States, registration is a necessary step for the formal recognition of an association as a political party, including for the purpose of participating in general elections or for financing. Registration may also be required for the acquisition of legal personality or to enable the association to open bank accounts, receive funding from public funds or hold property (for example, in Azerbaijan, Croatia, Georgia or Ukraine). In some states, this procedure has merely technical consequences, like in Sweden, where no registration is needed for the party to take part in elections but it may however wish to register so as to protect itself from improper use of its name. In other countries, no registration is required (Germany, Greece or Switzerland).

10. Where registration is required, it is usually done with either the competent ministries (generally the Ministry of Justice or the Ministry of the Interior) or judicial bodies (for example in Bulgaria, Poland or Romania). In some countries, the political parties are required to register with more than one institution (for example in Turkey: the Chief Public Prosecutor of the Court of Cassation and the Ministry of the Interior). Should registration be denied after a period most often of 30 days, a judicial remedy is usually available.

11. Some formal conditions can be legally prescribed for registration, such as permanent address, payment of registration fees, publication of information on the establishment of the party in the media, adoption of statutes or internal rules, elaboration of a programme, election of a board and/or committees, among others. In many Council of Europe Member States, the registration of political parties is also subject to more substantial requirements relative to their name, territorial representation or minimum membership.

12. As regards territorial representation, such requirements do exist in some Member States, such as Ireland (to maintain headquarters) and Turkey (to maintain a national office in the capital). In Moldova, political parties are required to establish structural sub-divisions with a minimum number of members in at least half of the administrative territorial units of second level. Similarly, political parties are required to form regional branches in more than a half of the Russian Federation's regions. In Ukraine, political parties are required to establish and register regional, city and district organisations in most of the regions and oblasts of Ukraine, in the cities of Kiev and Sevastopol and in the Autonomous Republic of Crimea, within six months from the date of their registration with the Ministry of Justice. With respect to both Moldova and Ukraine, the Venice Commission found that the relevant requirements could potentially represent a serious restriction to the political activity at regional and local level and raised issues of compatibility with the freedom of association.

13. As concerns the minimum membership requirement, registration of political parties is often subject to the presentation of the number of signatures of founding members required. In Azerbaijan, Estonia and Lithuania, legislation requires 1,000 signatures while 5,000 signatures are necessary in Austria, Moldova and Norway. In Romania, the signatures of 10,000 founding members are required, accompanied with strict conditions of geographical distribution.

14. Similarly, in the Russian Federation, amendments introduced in late December 2004 to the Law on Political Parties of July 2001 conditioned their registration (and subsistence of the registered ones) to the existence of 50,000 members nationwide (instead of 10,000 as

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<sup>11</sup> This section is based on Council of Europe Secretary General's Report on the Freedom of Association (2006), vol. II, pp. 29-31, Publisher: Council of Europe.

previously required), at least 500 representatives in half of the country's regions, and no fewer than 250 members in the remaining regions. Some countries impose relatively small membership requirements (100 members in Serbia, 200 in Latvia and 500 members in “the Former Yugoslav Republic of Macedonia” and Belarus) whereas others are quite demanding.

15. Registration may be a pure formality in some countries, where the only condition is to produce a certain number of signatures. In other countries, however, the authorities make sure that the party fulfils material requisites concerning its activities. Regardless of the nature of the requirements, the essential rule governing this issue is the principle of equality, requiring states to remain neutral when dealing with the establishment and registration procedures and to refrain from any measures that could privilege some political forces over others. The requirements based on territorial representation and on minimum membership, in particular, have the potential to limit the possibilities of persons belonging to national minorities to organise in political parties. Hence, countries applying registration procedures to political parties should refrain from imposing excessive requirements for territorial representation as well as for minimum membership.

16. The practice of legally requiring registration as a necessary step for recognition of an association as a political party is admissible and does not *per se* amount to a violation of the freedom of association. However, far-reaching requirements can unduly raise the threshold for registration to an unreasonable level, which may be inconsistent with the ECHR. Any provisions in relation to registration must be such as are necessary in a democratic society and proportionate to the object sought to be achieved by the measures in question. Registration of political parties should be denied as a preventive measure only in the cases clearly indicated in the Guidelines on prohibition of political parties and analogous measures, which will be analysed in the next section regarding registered political parties.

## **b.2 Prohibition or dissolution**

### *Regulation*

17. Whereas freedom of association, including freedom to form political parties, must be regarded as one of the cornerstones of pluralist democracy, restrictions to this right may be justified under the second paragraph of article 11 of the ECHR, provided that such restrictions – either preventive, like prohibition, or repressive, like dissolution- conform to the principles of legality and proportionality. Such measures must be “prescribed by law and (...) necessary in a democratic society, in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. Accordingly, the case law of the ECtHR requires that any interference with the exercise of rights and freedoms enshrined in articles 10 and 11 of the ECHR be assessed by the yardstick of “what is necessary in a democratic society”.

18. Any measures leading to prohibition or dissolution of political parties in particular must conform to the principles of legality, exceptionality and proportionality, being only justified in cases where the parties concerned advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order of the country, thereby undermining the rights and freedoms guaranteed by the constitution. Even in these cases, state authorities should evaluate whether other remedies, such as fines, withdrawal of state subsidies, administrative penalties or bringing individual members of the political party to justice, could solve the situation. Even the boycotting of the party by other political groups, for instance by systematically rejecting any coalition with it, may prove effective.

19. Furthermore, article 17 of the ECHR allows states to create burdens on and to restrain political parties whose programme or activities aim “at the destruction of any of the rights and freedoms set forth in the Convention”. The ECtHR has indicated that the general purpose of this provision was to prevent totalitarian groups from exploiting in their own interest the principles enunciated by the Convention.<sup>12</sup>

20. The activities of registered political parties may be ceased through diverse legal means, namely prohibition or banning, dissolution and liquidation. Banning or dissolution of political parties should be considered only as a last-resort measure to be used with restraint, under the responsibility of a judge, the judicial authority being essential to avoid interference for purely political motives, and in accordance with procedures which provide the necessary guarantees of due process, openness and fair trial, and respect of the standards established by the ECHR.

*Main grounds for prohibition or dissolution*<sup>13</sup>

21. The comparative study of the legislation and practice of the states regarding prohibition and dissolution of political parties, conducted by the Venice Commission<sup>14</sup>, shows a wide variety of approaches to the issue in the Council of Europe member states, depending on the individual trajectory of each country. The vast majority of member states, while guaranteeing the freedom of association, nevertheless regulate their activities and most of the national regulations provide for sanctions against parties which pursue certain aims or adopt the following behaviours:

22. Discrimination on racial or religious grounds (for instance in Azerbaijan, Belarus, Bulgaria, France, Georgia, Poland, Portugal, Spain and Ukraine). In conformity with the policy recommendations of the European Commission against Racism and Intolerance (ECRI), legislation in these countries provide for the possibility of dissolution of organisations that promote racism, yet only as a result of a court decision.

23. Political parties which foster racial, ethnic or religious hatred may be banned in France as well as under Azerbaijani and Bulgarian law and the constitutions of Belarus, Ukraine and the Russian Federation. The Polish and Portuguese constitutions only refer to racist parties, whereas discrimination based on sexual orientation, family situation, illness and disabilities, among other circumstances, are also taken into consideration in Spain.

24. Totalitarianism (Austria, Italy, Poland and Portugal). In accordance with the PACE Resolution 1344(2003), which states that the exercise of the freedom of association may be limited for the purpose of fighting extremism, the Portuguese constitution prohibits fascist political parties and the Polish Constitution bans those with programmes based on totalitarian methods; the Italian Constitution forbids the reorganisation of the dissolved fascist party and Austria bans the revival of the national socialist party.

25. To Member States, the Resolution recommends the introduction in legislation of effective penalties where cases of proven damage caused by an extremist party are established; proportionate and dissuasive penalties against public incitement to violence, racial

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<sup>12</sup> *Ibid.*, vol. I., paragraph 22.

<sup>13</sup> Classification established by the referred Council of Europe Secretary General's Report on the Freedom of Association, vol. II, paragraph 23.

<sup>14</sup> CDL-INF (2000)001 - Guidelines on prohibition and dissolution of political parties and analogous measures.

discrimination and intolerance; suspension or withdrawal of public funding for organisations promoting extremism; and dissolution, as an exceptional measure.

26. Good practices in this field are as well identified and recommended to political parties, like basing their programmes and activities on respect for fundamental rights and freedoms, excluding political alliances with extremist parties, and proposing policies of education for democratic citizenship and plausible solutions to the social and economic problems, such as unemployment, immigration and security, that cause public concern and extremist parties capitalise on.

27. Promotion of violence (Albania, Denmark, Portugal and Spain, among others). The possibility of dissolution of political parties linked to terrorist activities is explicitly provided in the legislation of Turkey and the United Kingdom as well as in Spain, where a separatist Basque party was banned by a court decision for having ties with a terrorist group. In Georgia and Latvia, parties may be prohibited for fostering violence through propaganda.

28. Pursuit of usurpation of state power (Azerbaijan, Bulgaria, Estonia and Ukraine, for example). The formulations vary in the member states' constitutions from prohibiting parties which pose a threat to the existence (Germany) or the independence of the state (Ukraine, Georgia), to requiring respect for the national sovereignty (France, Armenia) or territorial integrity of the state (Bosnia and Herzegovina, Bulgaria, France, Moldova, Russian Federation, Slovakia or Turkey).

29. Some provisions have been considered incompatible with the ECHR and the Guidelines. For instance, the dissolution of political parties, provided for in the Moldovan legislation on political parties, as a consequence of the decrease in their membership below a certain threshold. In "the Former Yugoslav Republic of Macedonia, the law provides for the obligation of political parties to submit written evidence to the competent court, proving that the number of their founders has not decreased. In case there are less than 1,000 members left, the Lithuanian legislation provides for the dissolution or the reorganisation of a political party within 6 months, after informing the Centre of Registers.

30. Some countries proscribe the creation of political parties around territorial or regional issues (Georgia) or whose names or programmes hinge on regional issues (Portugal). However, the ECtHR has held that there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the state's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned. The principle of separation between parties and the state, proscribing direct exercise of power by political parties, stands out as a specific ground that may justify dissolution in the former socialist countries of Central and Eastern Europe like Slovakia, Hungary and Armenia.

31. Other practices leading to dissolution or banning of a political party include *inter alia* the time elapsed between two meetings of a party's governing body (Croatia) and a failure to publish the party's financial resources (Albania) or systematic violation of the rules on party financing (Ukraine). The economic sanctions that apply elsewhere to these cases could be considered. In some countries, political parties can lose their status if they do not have any candidates elected in national elections whereas according to the Guidelines they should be allowed to continue their activities under the general law on associations. In Armenia, for example, the new Law on Political Parties drafted, provides that a political party is subject to



liquidation if it does not participate in two consecutive parliamentary elections or does not receive at least 1% of the votes cast in one of two consecutive parliamentary elections.

32. Any activity requirements for political parties to maintain their status have to be assessed by the test of “what is necessary in a democratic society”. Public authorities should refrain from any political or other excessive control over activities of political parties. Any interference of public authorities with the activities of political parties, especially those leading to their prohibition or dissolution should be prescribed by law, exceptional, proportionate to the objective sought to be achieved and duly motivated, and legislation should provide an opportunity for the party to challenge such decision or action in a court of law.

### **c. Legal framework**

33. Most of the Council of Europe Member States protect political parties either explicitly or implicitly by means of constitutional provisions concerning the classical freedoms of association and expression enshrined in fundamental international instruments, and enact specific legislation to regulate their core activities and other related aspects. This title focuses on the different levels of regulation concerning political parties and the main issues with which international, national and self-regulatory instruments like statutes and party charters deal.

#### **c.1 International regulation**

34. At the international level, the provisions of two basic instruments must be taken into account. The International Covenant on Civil and Political Rights (1966), developing the rights of this nature proclaimed by the Universal Declaration of Human Rights (1948), recognises the right to hold opinions and the right to freedom of expression (art. 19) alongside with the right to freedom of association (art. 22), notwithstanding the possibility of establishing legal restrictions to their exercise due to the special duties and responsibilities that these rights imply.

35. With a regional scope and for the purpose of advancing the collective enforcement of certain of the rights stated in the Universal Declaration, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), agreed by the Council of Europe Member States, likewise recognises the rights to freedom of expression (art. 10) and to associate in political parties as part of the general freedom of assembly and association (art. 11).

36. Other significant provisions of the ECHR include the prohibition of discrimination with regard to the enjoyment of the rights and freedoms set therein (art. 14) and the admission of restrictions on the political activity of aliens (art. 16). The case law of the ECtHR has accordingly developed a consistent interpretation of the non-discrimination principle, making clear that not every distinction or difference of treatment amounts to discrimination. Protocol no. 12 to the ECHR, establishing a general clause of non-discrimination, and the Convention on the Participation of Foreigners in Public Life at Local Level (1992) are also relevant.

#### **c.2 National regulation**

37. At the national level, political parties' regulation may derive from constitutions, legislative statutes, administrative rulings and even court decisions, composing the body of party law.<sup>15</sup>

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<sup>15</sup> Cfr. Kenneth JANDA, *Adopting Party Law*, Political Parties and Democracy in Theoretical and Practical Perspectives series, National Democratic Institute for International Affairs, 2005, pp. 3 and 4.

Constitutional provisions reaffirm the freedoms of expression and association but several constitutions make no specific mention of political parties (Albania, Finland, Ireland or Switzerland) and most of those that mention them give only basic guidance concerning everyday activities of political parties. More detailed regulation –if any- prescribing party behaviour is to be found in specific legislation, generally on what constitutes a political party, the activities in which parties may engage and types of party organisation deemed appropriate.

38. As scholars point out, devising party law implies deciding how much governmental authority should be used in regulating parties and a serious quandary: the lack of regulation risks ruthless politics and jeopardises public accountability but strict laws can discourage political participation.<sup>16</sup> Considering this trade-off, the Council of Europe member states have developed political parties' regulation to a variable degree, implying different approaches to legal micromanagement of political parties by the state.

39. Where it has been enacted, the character and contents of national legislation on political parties differ considerably from one country to another, regarding the criteria for creation, formalities to which registration may be subject and even material restrictions to their activities. These divergences are deeply rooted in the political and historical experience or institutional trajectory and democratic traditions of the country. Yet, according to the conclusions of the Forum for the Future of Democracy (2006), variations dictated by local specificities cannot put into question or dilute the universal character of the principles of democracy, which presuppose a climate in which basic freedoms enshrined in the ECHR may be fully exercised.

40. To promote standards in the field of legislation on political parties on the basis of European legal heritage, the Venice Commission analysed different aspects of these laws and elaborated the Guidelines on the financing of political parties (2001)<sup>17</sup> and on prohibition and dissolution of political parties and analogous measures (2000)<sup>18</sup>. These documents will be synthesised in the next titles, which follow the exhaustive Secretary General's Thematic Report on the Freedom of Association (2006). Building upon previous work, this report provides examples of relevant legislation and practice in member states in light of the study on the establishment, organisation and activities of political parties conducted by the Venice Commission in 2003.

## **2. Guiding principles for political parties**

41. The rule of law, democracy and human rights make up the three pillars of European and the Council of Europe's constitutional/legal heritage. Therefore, provisions on democracy, the rule of law and human rights protection alongside norms regulating the political system, separation of the different branches of power and interaction based on balance and mutual control, as well as the organisation of state administration stand among the basic principles sanctioned by the national constitutions of the Council of Europe Member States.

### **b. Rule of law**

42. Many national constitutions -from the Portuguese, Spanish, French, German, Swiss and Italian texts through to the Armenian, Romanian, Greek and Turkish ones- expressly recognise political parties as essential elements of democratic pluralism, basic instrument for political

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<sup>16</sup> See *ibid.*, p.3.

<sup>17</sup> CDL-INF (2001)007 - Guidelines and Report on the Financing of Political Parties.

<sup>18</sup> CDL-INF(2000)001 - Guidelines on prohibition and dissolution of political parties and analogous measures

participation as vehicles to influence the formulation of national policies, and precondition for the proper functioning of representative democracy.<sup>19</sup> Nevertheless, these constitutions require from political parties the strict observance of the constitution and the laws for their free creation and exercise of the activities to which they are entitled by virtue of the freedom of association and expression of political opinions and the right to stand for elections.

43. Thus, recognition and scrupulous respect of the existing constitutional framework by all political parties are not only elements of the utmost importance for their credibility and the legitimacy of the whole democratic system in the eyes of citizens but formal constitutional requirements for the full exercise of the freedom of association for political purposes. The programmes and action of political parties should consequently be based on compliance with the rule of law and respect for fundamental rights and freedoms and democracy among other principles of the constitutional and legal national order if they are aiming to take active part in electoral competition.

44. Most of the national specific laws on political parties impose this requirement of compliance with national constitution and legislation for their legal creation and functioning, although the scope of this regulation differs from country to country as this code analyses under the next title. Most of the parties' statutes consulted for this study make a solemn declaration of commitment with the principles of freedom, equality, legality and democracy, some of them referring to international standards of human rights protection and emphasizing either freedom or equality and social justice depending on their specific ideology.<sup>20</sup> In some cases, these principles are set out by separate statements or declarations of principles but every political party declares its formal adherence to the constitutional values, undertaking to use them as basic orientation for their policies and to promote them in parliamentary activities and governments in which they may participate.

45. Respect for the existing constitutional and legal framework is a fundamental requirement for political parties to legally and effectively operate in a democracy and so seems to be assumed by political parties in light of their statutes. However, seeking a peaceful change of constitution is a legitimate purpose if so wished by any political party, provided that its pursuit is conducted by lawful means and that the change proposed is compatible with the fundamental democratic principles. As the Guidelines on prohibition and dissolution of political parties and analogous measures clearly declare, merely challenging the established order is not considered as a punishable offence in a liberal and democratic state.

46. The establishment of such political parties aiming at overthrowing or forcibly changing the constitutional order or in any way purporting to provoke animosity among the population are prohibited by national constitutions or legislation on political parties. It is important that political parties make a clear commitment to conform their action to these limits. As the very principles

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<sup>19</sup> See art. 10 of the Portuguese constitution; art. 6 of the Spanish constitution; art. 4 of the French constitution; art. 21 of the German constitution; art. 137 of the Swiss constitution; art. 8 of the Romanian constitution; art. 29 of the Greek constitution; art. 67 of the Turkish constitution; and art. 7 of the Armenian constitution.

<sup>20</sup> See, for instance, art. 2 of the Belgian Socialist Party statutes and art.1 of the Reform Movement; art. 2 of the French Union for a Popular Movement statutes; paragraphs 12 to 31 of the Party Principles of the Christian Democratic Union in Germany; section 2 of the Irish Green Party constitution and part I of the Irish Labour Party constitution; section 1 of the Norwegian Labour Party statutes; art. 3 of the Spanish Socialist Workers' Party, art. 1 of the United Left statutes, and art. 2 of the People's Party statutes, in Spain; section 1 of the Swedish Social Democratic Party constitution; and, in the United Kingdom, clause IV of the Labour Party Rule Book and the preamble of the Liberal Democrats constitutions.

that enable political parties to act, the rule of law, democracy and respect for fundamental rights and freedoms should not be put into question.

### **b. Democracy**

47. The requirement of compliance with democracy is twofold. Not only political parties' speech and action *ad extra* must formally endorse the democratic principles and rule of law contained in constitutional and legal provisions of the country but their internal organisation and functioning must also substantially abide by the principles of democracy and legality. The basic tenets of democracy are not satisfied with mere formal adherence or lip-service paid by the statutes of the party but require substantial application of them *ad intra*.  
[p.30, internal functioning, para.4]

48. Intra-party democracy is manifested in internal party procedures that enhance inclusion of party members in deliberation and decision-making processes, extending the involvement of the party rank-and-file in certain key tasks of party governance, like the selection of party leaders and electoral candidates as well as the definition of the party's policy positions. Internal party democracy fulfils the citizens' legitimate expectation that parties, which receive public funding and effectively determine who will be elected to public office, "practice what they preach", conforming to democratic principles within their own organisations. Therefore, good practices in the area of democratic functioning within political parties, in parallel to the legislation on the subject where it has been enacted and on their own initiative where it has not been developed, is essential to enhance the credibility of the entire democratic system and generally strengthen democratic culture.

49. Only a few legal systems regulate the requirement thoroughly but several states require the party's internal structure and operation to be democratic.<sup>21</sup> At the same time, many statutes of political parties do proclaim internal democracy as one of the basic organising principles of the party. However, its application in practice is to be carefully assessed.<sup>22</sup>

### **c. Non-discrimination**

50. National legislation on political parties sets out voluntary participation, equality and openness among the basic principles governing their activity and imposing certain obligation of open access to membership and equal treatment of members irrespective of age, ethnic origin, religion, gender, sexual orientation or profession, among other circumstances.

### **d. Transparency and openness**

51. Transparency of political parties' external activities and internal functioning is a fundamental principle to tackle the current crisis of legitimacy and restore public confidence on political forces

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<sup>21</sup> See art. 26 of the Andorran constitution; art. 21 of the German constitution; art. 51.5 of the Portuguese constitution; art. 6 of the Spanish constitution. Similar provisions may be found in Albania, Armenia, Czech Republic, Finland, Slovakia and Turkey.

<sup>22</sup> See, among others, the statutes of the Union for a Popular Movement (art. 4) and those of the Socialist Party (art. 1.4) in France; the statutes of the Spanish Socialist Workers' Party (3.1), those of the People's Party (art. 18.b) and of the United Left (art. 8 on democratic functioning and consensus, and art. 11 on pluralism) in Spain; the statutes of the Party of the Italian Communists (art. 9); and the Rule Book of the Labour Party (chapter 4A) in the United Kingdom, the latter making a general commitment to respect fairness, openness and transparency in the election of national officers and committees in particular.

and the whole democratic system as well as a precondition for real accountability and responsibility. Openness to dialogue with other associations and non-governmental organisations in particular should be taken into account by political parties, since they share the objective of serving the common good. Sharing ideas, perspectives and experiences with this sector can help parties to better understand and respond to the expectations of their voters with sound public policies, thus fulfilling their representative mandate.

52. Good examples in this area can be found in the Secretary for Social Movements and Relation with NGOs of the Spanish Socialist Workers' Party and the Belgian Socialist Party's initiative (*Action Commune Culturelle Socialiste*) of cooperation with civic associations working for common objectives in the fields of lifelong education, political participation of foreigners and young people, and development, among others.<sup>23</sup> Another valuable instrument to (re)connect with society are the collaboration agreements that the Spanish Socialist Workers' Party can conclude with cultural and professional associations, research and study centres, citizens' movements and associations, among other organisations, which can even be entitled to take part in the party congresses.<sup>24</sup>

### **III. Internal organisation of political parties**

53. Political parties are integral parts of democratic systems, being therefore required in some Council of Europe Member States to observe democratic principles in their internal organisation and functioning. Many countries have regulated political parties to a moderate degree, imposing a generic obligation of compliance with democratic principles but granting them a wide margin to decide how to fulfil this prescription through their statutes, as occurs in the cases of Andorra, Finland, Greece, Poland, Turkey and France. Few countries have enacted such thorough regulation as Germany, with a meticulous state regulation of party organisation and activities. Some other member states lack any specific regulation for political parties' organisation and activities, generally applying the law on associations, like Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Ireland, Liechtenstein, Luxembourg, Malta, Sweden and Switzerland. These three main categories of countries can be distinguished among Council of Europe member states according to the scope of their national legislation and corresponding margin of self-regulation left for political parties to regulate their activities and internal structure. Both sources will be taken into account to identify good practices in the fields examined in the following sections.

#### **1. Membership**

54. To ensure inclusiveness and promote participation in the current context of drastically declining membership in political parties, the Venice Commission considers that not only national legislation but party statutes as well should expressly prohibit any restrictions on membership on the grounds of race, skin, colour, language, sex, religion, national, ethnic or social origin, property or place of residence, introducing open conditions for membership instead. However, restrictions on political activities of foreign citizens and stateless persons in particular are not only possible under international law<sup>25</sup> but in fact applied alongside with other

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<sup>23</sup> See art. 24 of the Spanish Socialist Workers' Party statutes and arts. 56 to 59 of the Belgian Socialist Party statutes.

<sup>24</sup> See art. 13 of the party's statutes.

<sup>25</sup> See Article 16 of the ECHR.

traditional restrictions by different Council of Europe Member States' regulations and political parties' statutes.

55. Parties may withhold the membership from any applicant who rejects the value they uphold or whose conduct goes against the values and ideas of the party. The application of such measures by independent bodies and the recognition of basic procedural guarantees, including the right to appeal their decision, constitute desirable good practices. Examples of such organs in charge of determining disciplinary matters and possible penalties are the Council of Conciliation and Arbitration of the Reform Movement and the Monitoring Commissions of the Socialist Party in Belgium;<sup>26</sup> the Conflicts Commissions of the Socialist Party and the National Commission of Appeals of the Union for a Popular Movement in France;<sup>27</sup> the Complaints Committees of the Labour Party in Ireland;<sup>28</sup> the Board of Arbitrators of the Northern League and the National Jury of the Green Federation in Italy;<sup>29</sup> the Jurisdiction Commissions of the Socialist Party in Portugal;<sup>30</sup> in Spain, the Commission of Guarantees of United Left, the Commission of Rights and Guarantees of the People's Party and the Commission of Ethics and Guarantees of the Spanish Socialist Workers' Party;<sup>31</sup> and the National Constitutional Committee of the Labour Party in the United Kingdom.<sup>32</sup> Their independence is guaranteed through different interesting provisions, either declaring the incompatibility of their membership with any other party function, public mandate or both; requiring the appointment of persons of recognised integrity, moral quality, independence and understanding of politics;<sup>33</sup> or restricting membership to experienced jurists.<sup>34</sup>

56. Article 11.2 of the ECHR allows Member States to restrict the freedom of association of three categories of persons: members of the armed forces, of the police and of the administration of the state. Accordingly, the ECtHR has recognised the legitimacy of restricting the political activity of such public authorities, because of the need to guarantee their political neutrality and ensure that they will duly fulfil their duty of impartiality, treating all citizens in a manner that is equal, fair and untainted by political considerations.

57. The Council of Europe Secretary General's Report on the Freedom of Association points out that the legislation of several Member States (Albania, Bosnia and Herzegovina, Croatia, Cyprus, Estonia, France, Greece, Italy, Latvia, Lithuania, Romania, Serbia, Spain, Turkey and United Kingdom) forbids membership of political parties for members of the armed forces. However, in other member states no restrictions are placed on the freedom of association of

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<sup>26</sup> See art. 27.3 of the Reform Movement statutes and art. 79 of the Belgian Socialist Party statutes.

<sup>27</sup> See art. 11.1 of the French Socialist Party statutes and art. 32 of the Union for Popular Movement statutes.

<sup>28</sup> See art. 14 of the constitutions of the Irish Labour Party.

<sup>29</sup> See art. 54 of the Northern League statutes and art. 22 of the Green Federation ones.

<sup>30</sup> See art. 57 of the Portuguese Socialist Party statutes.

<sup>31</sup> See section 13.B.3 of the United Left statutes and art. 50 of the People's Party statutes and the Spanish Socialist Workers' Party statutes.

<sup>32</sup> See clause IX of the Rule Book of the Labour Party.

<sup>33</sup> Requirements imposed by the Belgian Socialist Party statutes to the members of the Monitoring Commissions (art. 79).

<sup>34</sup> It is the case of the National Jury regulated by the statutes of the Green Federation (art. 22) in Italy.

military personnel (Austria, Belgium, Denmark, Finland, Germany, the Netherlands, Norway, Sweden and Switzerland).<sup>35</sup>

58. With regard to the police, civil servants and members of the judiciary, the regulation differs among member states. In Montenegro, professional members of the police cannot be members of political parties, while judges and members of the Constitutional Court and the Public Prosecutor's Office cannot be members of the bodies of political parties. The Bulgarian legislation is similar in that sense, but also restricts the association rights of the employees of the Ministry of Foreign Affairs, as well as of the staff of the Presidency of the Republic. Similar provisions can be found in the Romanian Constitution. In Italy, restrictions on the judiciary or other public servants are permitted by the Constitution.

59. With regard to the members' rights, most of the parties distinguish different levels of membership or types of association to and participation in the tasks of the party, encompassing different rights and obligations. As a general rule, these levels are based on the degree to which the person wishes to be involved in the party. On this ground, we can find the distinction between *adherents* and *associates* (Socialist Party and Reform Movement of Belgium); and the most common between *militants* and *sympathizers* (People's Party and Spanish Socialist Workers' Party in Spain, and the Radical Democratic Party and Socialist Party in Switzerland, among others). The classification is sometimes linked to the issue of nationality, like the abovementioned distinction between *members* and *guests* (Christian Democratic Union in Germany); and can also be justified by age, like the distinction between *ordinary* or *militant associates*, who must be adults, and *supporting associates* who can be minors (Northern League in Italy).

60. In general for certain vulnerable groups, measures like reserved seats, lower electoral thresholds, special parliamentary committees, adapted constituency boundaries, voting rights for non-citizens and constitutionally guaranteed representation of minorities in parliament are particularly welcomed to promote their political participation and representation. They are specially desirable in those member states where the strict requirements of minimum membership and regional representation are likely to affect the possibilities of persons belonging to national minorities that are regionally concentrated to form political parties (as occurs in Moldova, Ukraine or the Russian Federation) or where the establishment of political parties based on ethnicity or region is plainly prohibited (such as in Bulgaria and the Russian Federation).<sup>36</sup>

61. Legislative frameworks of reference may be found in some Central and Eastern European countries like Poland, where the country-wide threshold is not applied to minority parties; Montenegro, where an extra constituency was introduced to facilitate the representation of a certain minority;<sup>37</sup> as well as in Bosnia and Herzegovina and Croatia, which guarantee minimum representation for their constituent ethnic groups; and Hungary, Slovakia and "the Former Yugoslav Republic of Macedonia, where political representation of minorities like Roma is

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<sup>35</sup> Section based on the Council of Europe Secretary General's Report on the Freedom of Association, vol. I, pp. 9 and 10.

<sup>36</sup> See art. 11.4 of the Bulgarian constitution, which proscribes political parties created on ethnic or racial lines, without distinguishing extremist parties, which pursue *discrimination* or *exclusion*, from those parties that legitimately seek to secure the rights of a given ethnic or racial community for their effective social *inclusion*.

<sup>37</sup> The examples of Poland and Montenegro have been extracted from IDEA's Central and Eastern European Regional Report, *op. cit.*, p. 22.

possible and has materialised with the emergence of one or more political parties which have an ethnic basis or defend the interests of these communities.<sup>38</sup>

62. Political parties' initiatives are also essential to promote political participation of national minorities, not only in Central and Eastern European countries, the majority of which present heterogeneous societies in their ethnic make-up, but also in Western European member states, where multiethnic societies are emerging. Despite the importance of these measures to ensure the political representation of minorities and, by extension, prevent social conflict, few concrete mechanisms can be found in the statutes consulted for this study apart from solemn declarations of commitment with inclusive representation in their respective preambles.<sup>39</sup>

63. Loose provisions requiring that minorities be taken into account for the composition of candidates' lists have been adopted by the French Socialist Party for party office and by the Liberal Democrats in the United Kingdom regarding parliamentary candidates' nomination.<sup>40</sup> An interesting experience, though limited to one specific ethnic group, is the integration in the Norwegian Labour Party of a Sami-political Group with a whole parallel structure of party bodies (including a political advisor to the executive when the party is in the government) with the tasks of placing the concerns of the community in the political agenda and providing candidates for the Sami Parliament, among others.<sup>41</sup> Another remarkable initiative can be found in the *Ethnic Minorities Forums* of the Labour Party in the United Kingdom, with the main objective of encouraging black, Asian and other minority ethnic members to play active part in all the party's activities and to run for elected office.<sup>42</sup>

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<sup>38</sup> See the Council of Europe Secretary General's Report on the Freedom of Association, vol. II, p. 10 and CDL-AD(2008)013 Report on Dual Voting for Persons belonging to National Minorities adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and the Venice Commission at its 75th plenary session (Venice, 13-14 June 2008), CDL-INF(2000)004 Electoral law and national minorities and CDL-AD(2005)009 Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62th Plenary Session (Venice, 11-12 March 2005).

<sup>39</sup> See, for instance, clause 2.7 (section 47) of the statutes of The Greens in Luxembourg, which include a commitment to ensure effective and fair participation of migrants at all levels of the party but it is not matched by any further rule to guarantee the application of the principle. A similar commitment (and lack of consistent rules to put it into operation) can be found in the statutes of the United Left in Spain, when identifying migrations as one of the party's areas of work (page 28). In more general terms, art. 4 of the statutes of Democratic Convergence of Catalonia asserts that the party will remain attentive so that sectors and groups of society with difficulties in reaching equitable levels of external and internal participation in the party can reach them progressively.

<sup>40</sup> The statutes of the French Socialist Party demand in art. 1.6 *in fine* that the lists of acting and substitute members elected for the party's governing bodies try to safeguard the representation of the geographical and sociological diversity of the French society. Similarly, art. 11.3.c) of the Liberal Democrats' Constitutions insists on the need to ensure that the parliamentary candidates' list includes representatives of different social and economic groups and of ethnic minorities.

<sup>41</sup> See the Guidelines for the Sami-political work of the Norwegian Labour Party statutes (page 23).

<sup>42</sup> Alongside the regulation of Minority Ethnic Forums in chapter 14 of the Labour Party Rule Book, rules regarding the composition of candidates' lists are provided. The party commits to take positive action to ensure that considerably more ethnic minority candidates are selected for public office (5A.1.e), that training is available to interested nominees, and that targeted action is taken to increase the representation of ethnic minorities, among other groups (5C.4). The general responsibility to promote inclusion is charged upon the National Executive Committee (Clause VIII.3.n) which "will work to deliver a Labour Party that reflects the communities it serves and will therefore ensure policy, practices and procedures enshrine principles of equality, inclusion and diversity".



64. As it was mentioned before (par. 54), Member States are allowed, in accordance with art.16 of ECHR, to apply restrictions on political activities of foreign citizens and stateless persons. However, the admissibility of such restrictions according to international law can hardly justify an absolute ban on non-citizens' membership of political parties, as stated by the Venice Commission Guidelines on legislation on political parties<sup>43</sup>. In the context of changes occurred in Europe during the past decades, the Council of Europe advocates for the promotion of non-citizens' participation in political life, specially at local level and therefore encourages member states to apply the European Convention on the Participation of Foreigners in Public Life at Local Level to the largest possible extent.<sup>44</sup> Foreign citizens and stateless persons should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can take part in the elections. At the very least, the country of residence should make membership in political parties possible for these persons.<sup>45</sup>

65. At the legal level, three approaches can be distinguished in the Member States with respect to the political activities of foreigners. In states with no specific legislation on political parties, there exists no restriction as to the aliens or stateless persons' political activities (Liechtenstein, Malta) or membership of political parties unless stipulated in the internal statutes of the parties (Ireland, Italy). In some countries, either the constitution or the law restricts membership of political parties to national citizens.<sup>46</sup> In other member states, such as Finland and Spain, legally residing foreigners enjoy the right to become members of any type of associations. In the United Kingdom, there is no legal requirement that members of political parties be nationals. In Germany, membership of a political party is open to foreign citizens, but a political organisation cannot be considered as a political party if the majority of its members or the members of the executive committees are foreign citizens.<sup>47</sup>

66. Entering the self-regulatory domain of political parties, two main approaches can be identified. A restrictive approach is assumed by those political parties which exclusively admit nationals for membership. Among the political parties statutes consulted for this report, this position is represented by Italy Ahead, whose statutes restrict membership to Italian citizens only, requiring the support of another associate.<sup>48</sup>

67. The majority of the political parties studied for this report explicitly subscribe to the inclusive approach, but two groups can be distinguished attending to their degree of foreigners' inclusion: a kind of *regional* or *limited* inclusion is practiced by the parties restricting admissibility to European Union citizens in front of the *universal* inclusion of those countries opening

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<sup>43</sup> CDL-AD(2004)007rev - Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004)

<sup>44</sup> Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144). Opened for signature in 1992, the Convention entered into force in 1997 although it has to date been signed and/or ratified by only a few member states. Yet, some European states are already implementing the measures it proposes without having formally signed or ratified it.

<sup>45</sup> See the referred Council of Europe Secretary General's Report on the Freedom of Association, vol. II, p. 34.

<sup>46</sup> See, for instance, art. 48.1 of the Estonian constitution; art. 26.2 of the Georgian constitution; and art. 29.1 of the Greek constitution, though allowing citizens who have not yet acquired the right to vote to join the youth sections of parties. Similar provisions, explicitly stressing the need to be a national citizen to join political parties, may be found in the laws on political parties of Azerbaijan, The Former Yugoslav Republic of Macedonia, Romania, Lithuania and Slovenia.

<sup>47</sup> See art. 2.3.1 of the German Law on Political Parties.

<sup>48</sup> Cfr. art. 2 of Italy Ahead statutes.

participation to all legally resident foreigners. The first group of political parties, recognising nationals and legally resident European Union citizens as potential members, includes the People's Party in Spain and the Swiss Socialist Party.<sup>49</sup>

68. More exemplary are those political parties open to all legally resident foreigners. To begin with, the Christian Democratic Union in Germany admits all nationals and legally resident foreigners, yet distinguishing diverse types of association to the party, which involve a different statute of rights and duties: nationals and other citizens of the European Union can associate to the party as full members (*Mitglieder*) whereas non-citizens of the European Union can only participate in the tasks of the party as guests (*Gastmitglieder*).<sup>50</sup> Other parties expressly open full membership to all persons, either nationals or legally resident foreigners, like the Spanish Socialist Worker's Party, the Socialist Party and the Union for a Popular Movement in France, the Irish Labour Party, the Socialist Party of Belgium and the Labour Party of the United Kingdom or the Party of the Italian Communists.<sup>51</sup> These parties allow free affiliation under different formal conditions of age (from the 18 years required by the Spanish Socialist Workers' Party to the 16, 15 or 14 sufficient for the Belgian and French Socialist Party and the Party of the Italian Communists, respectively) and a substantial commitment to observe the statutes and basic principles of the party.

69. Most exemplary parties are those which, like the Austrian, Swedish and German Social Democratic Party, the Liberal Democrats in the United Kingdom, the Irish and Norwegian Labour Party and United Left in Spain, reduce their requirements for membership to the commitment with the purpose and statutes of the party, excluding any other condition and discrimination on any ground.<sup>52</sup> The United Left, in particular, asserts the admission of all persons, regardless of their nationality and administrative situation, explicitly including irregular immigrants.<sup>53</sup> The aims and essence of the Council of Europe policy in this area are captured in the combined wording of the statutes of the Irish Labour Party and Liberal Democrats of the United Kingdom when they state that membership of the party is open to all persons who agree with its fundamental values and objectives irrespective of nationality, citizenship or place of residence, without discrimination as to age, ethnic origin, religion, disability, gender or sexual orientation.

70. Whilst some parties may aim at promoting the interest of specific age groups, no national legislation accepts membership discrimination based on age (except what is referred to the legal voting age). Getting youth involved in the political life is vital for the future prospects of democracy. But the contribution that participation and mentoring by senior members of political

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<sup>49</sup> See art. 4.1 of the People's Party statutes and art. 3.6 of the Swiss Socialist Party, which -albeit submitting the issue of membership to cantonal parties- expressly opens membership to those European Union citizens living in Switzerland who were members of socialist parties in their countries of origin. Other foreigners, however, are not mentioned.

<sup>50</sup> See art. 4 of the Christian Democratic Union statutes, requiring three years of legal residence.

<sup>51</sup> See art. 6 of the Spanish Socialist Workers' statutes; art. 2.1 of the French Socialist Party statutes; art. 3 of the Union for a Popular Movement statutes; art. 2 of the Irish Labour Party statutes; art. 5.1 of the Belgian Socialist Party Statute; chapter 2 of the Rule Book of the Labour Party in the United Kingdom; and art. 1 of the statutes of the Party of the Italian Communists.

<sup>52</sup> See section 4 of the Austrian Social Democratic Party statutes; section 3 of the Swedish Social Democratic Party constitutions for the party's associations and clubs; section 2 of the German Social Democratic Party; art. 2 of the Irish Labour Party statutes; art. 3.1 of the United Kingdom Liberal Democrats statutes; art. 2 of the Norwegian Labour Party statutes; and art. 14 of the United Left statutes.

<sup>53</sup> See art. 19.1 of the party's statutes.

parties can make to these prospects should not be neglected either. The most common mechanism to engage both young people and the elderly in the activities of political parties throughout the Council of Europe member states consists of regulating young and senior sections with guaranteed representation in the party statutory bodies.

71. A vast majority of political parties in the Council of Europe Member States include such specific sections in their structure. Sections for young people committed with the principles of the party and willing to actively promote them among their generation can be found under different names in the Austrian Social Democratic Party (*Junge Generation*); the Socialist Party in Belgium (*Mouvement des Jeunes Socialistes*); the Union for a Popular Movement (*Jeunes Populaires*) and the Socialist Party in France; the Christian Democratic Union in Germany (*Junge Union*); the Northern League (*Movimento dei Giovani Padani*), the Party of the Italian Communists (*Federazione Giovanile Comunisti Italiani*) and Italy Ahead (*Giovani per la Liberta*); the Labour Party in the United Kingdom (*Young Labour*); and the Spanish Socialist Workers' Party and People's Party in Spain, among others. This infrastructure could be used to develop policies and programmes in partnership with young people, particularly in those areas affecting them.

72. Some of these parties refer to senior sections too, like the Belgian Socialist Party, presenting the Socialist Pensioners' Confederation as a group of lifelong education;<sup>54</sup> the Christian Democratic Union in Germany; Italy Ahead, the Democratic Union of the Centre in Switzerland and United Left in Spain, among others. Interestingly, the Union for a Popular Movement in France incorporates former party officers and individuals elected for their old age and expertise in a special committee (*commission des sages*) with functions of internal deontological control.<sup>55</sup>

73. The reference to young sections is usually complemented by rules providing for their proper representation in the party's organic structure.<sup>56</sup> Yet, only a few parties have introduced rules regarding their representation in candidates' lists for public office.<sup>57</sup> Most of them encourage the nomination of young candidates but do not reserve posts or establish *quotas* for them yet, except the Hungarian Socialist Party, the statutes of which specify that 20 per cent of candidates should be under the age of 35.<sup>58</sup> Other measures to encourage the participation of young people include their exemption from membership fees.<sup>59</sup> Much more initiatives have been

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<sup>54</sup> See art. 7.3 of the Belgian Socialist Party statutes. Yet, art. 68 thereof limits the age for candidates' nomination to 65 years.

<sup>55</sup> See art. 36 of the statutes of the Union for a Popular Movement.

<sup>56</sup> Art. 7.2 of the Belgian Socialist Party establishes a *quota* of 15 per cent for young people (up to 30 years) in certain party offices. In the United Kingdom, clause VIII.1.f of the Labour Party Rule Book ensures the (gender-balanced) representation of youth in the highest executive body: the National Executive Committee will be comprised of a youth member elected at the national Young Labour Conference (and must be a woman at least every other term).

<sup>57</sup> Among those who have, the Swedish Labour Party constitution (rule 3 for the nomination of candidates) states that the need for a continuous new recruitment of younger people shall be met when drawing up the ballot paper. The Liberal Democrats' constitution (art. 11.3.c) insists, regarding parliamentary candidates' nomination, on the need to ensure that the list contains a reasonable balance between different age groups.

<sup>58</sup> According to IDEA's Central and Eastern European Regional Report, *op. cit.*, p. 29, this provision can be found in section 41 of the party's statutes.

<sup>59</sup> See art. 34.2 of the statutes of the Democratic Union of the Centre (Switzerland).

proposed: from specific training to providing forums for the free expression of young people and introducing *shared* or *alternative mandates*.<sup>60</sup>

## 2. Organisation

74. The internal structure of political parties should be clear and transparent since it constitutes the channel through which party officials and public office holders are selected and can be held accountable to the party membership.

75. In the same manner, the internal rules governing the functioning of such organic structure should be guided as well by the principles of clarity and transparency, and ensure effective links between the functional units and thematic sections operating at the different geographic levels. Of the utmost importance is the linkage between central party leadership and the regional and local levels of the organisation, which are fundamental for the party's interaction with civil society and for galvanising citizens' participation in local public life.

76. The rules governing their internal procedures are left to party statutes by virtue of the principle of organisational autonomy in those countries that stress the private dimension of political parties (Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, Georgia, Ireland, Italy, Liechtenstein, Lithuania, Luxemburg, "the Former Yugoslav Republic of Macedonia, Malta, Sweden, Switzerland and the United Kingdom) while their relevance for the functioning of the whole democratic system justifies the constitutional or legal mandate requiring political parties to organise democratically in those countries that emphasise their public dimension (like Andorra, Finland, Germany, Greece, Poland, Spain, Turkey or France, among others).

77. At the same time, most of the Member States leave it up to the parties to interpret the constitutional mandate of conformity to democratic principles, except Germany -with a detailed regulation on internal party governance contained in the law on political parties- and other countries that have developed a minimal imperative regime.<sup>61</sup> In Spain, for example, the law on political parties requires the constitution of a general assembly of the members (to act directly or through representatives) in charge of the most important decisions; the statutory determination of the executive organs as well as the procedures for the democratic selection and control of party officers; and the recognition of a minimum set of rights for members.<sup>62</sup> Other legal provisions on the internal functioning of parties can be found in Armenia, regarding the selection of candidates,<sup>63</sup> in Estonia, empowering the general assembly to appeal the exclusion of

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<sup>60</sup> The possibility of such mandates, requiring parties to nominate pairs of candidates that would *share* (one as primary candidate, the other as deputy, for instance) the post or *alternate* (one filling the first term, the other the second) in each position, was discussed on the occasion of the Council of Europe's Forum on the Future of Democracy (2006). They would help political parties enhance inclusion of underrepresented groups, balancing pairs of candidates by gender, religion, social origin or age. For more details, see *Reflections on the future of democracy in Europe*, 2004, *op. cit.*, p. 84.

<sup>61</sup> The German Law on Political Parties (arts. 7-17) develops the constitutional imperative (art.21) of conformity of political parties' internal organization to democratic principles, providing for several rules to govern the internal decision-making procedures, the determination of the statutes and political programme, and control of the executive committee by the general assembly.

<sup>62</sup> See art. 7.2 of the Spanish Law on Political Parties, as analysed in Joan OLIVER ARAUJO and Vicente J. CALAFELL FERRÁ, *op. cit.*, pp. 41-44.

<sup>63</sup> The presidential candidate must be selected by the highest body of the party and parliamentary candidates by the second permanent body of the party, according to the Armenian Political Parties Act summarised in IDEA's Central and Eastern European Regional Report, *op. cit.*, p. 29.

members; in Latvia, concerning the regularity of assembly meetings and the compulsory publication of the date, place and agenda of the meeting; or in the Netherlands, attributing the right to call assembly meetings to 1 per cent of the members.

78. Presented under different names, reproduced at the different geographic layers of the organisation and more or less active or dormant between elections, the organic structure of the parties studied follows a very similar pattern. The supreme decision-making body is the party congress or conference, composed of an assembly of delegates as a general rule, although it can also assemble all the party members.<sup>64</sup> As the supreme body, congresses decide on long-term issues, setting the party's policy guidelines, and select the leader and the executive committee, among other party representatives. Their sovereignty must, however, be carefully considered, taking into account their powers to control the executive committee,<sup>65</sup> and manage their own calendar (the regularity of meetings varies among parties) and agenda (usually controlled by the executive). The executive committee is the administrative authority that decides on current issues between congresses, although it can coexist with reduced delegates' assemblies.<sup>66</sup> Different boards and the leadership run the party on a day-to-day basis. Alongside these functional units, a wide range of thematic or interest sections (of youth, seniors, women, minorities, with their own functional units in some cases) can be found at the different geographic levels of the organisation.

79. The parties studied establish basic disciplinary provisions addressed to all members of the party to ensure that both ordinary militants and public or party officers conform to the statutes and other internal regulations. Some of them also present a thorough regulation of internal discipline regarding decision-making and general functioning of parliamentary groups.<sup>67</sup> Yet, such rules should not amount to the imposition of an imperative mandate to deputies, which the Venice Commission has declared incompatible with the principle of free and independent mandate of deputies and with the traditional and generally accepted doctrine of representative democracy.<sup>68</sup>

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<sup>64</sup> Among the parties studied, the Union for a Popular Movement in France regulates its congress as a body integrated by all members of the party (art. 14 of the party's statutes) whereas the vast majority opts for the assembly of delegates: the Belgian Socialist Party (art. 32.1 of its statutes); the French Socialist Party (art. 6.3 of its statutes); the Norwegian Labour Party (section 6 of its statutes); the Socialist Party in Portugal (art. 60 of its statutes); the Spanish Socialist Workers' Party (art. 30.2 of its statutes) and the People's Party (art. 28 of its statutes) in Spain; the Social Democratic Party in Sweden (section 4 of its constitution); the Democratic Union of the Centre (art. 13 of its statutes) and the Socialist Party (art. 11 of its statutes) in Switzerland; the Labour Party (section 3A of its Rule Book) and the Liberal Democrats (art. 6 of its constitution) in the United Kingdom. In Ireland, the National Convention of the Green Party is composed of delegates too, but all paid-up members of the party are entitled to attend as observers, with the right to speak but not to vote (section 7.3 of its constitution).

<sup>65</sup> The congress of the Belgian Socialist Party, for instance, is entitled to propose and carry a motion of censure against the president, affecting the whole executive committee of the party (art. 35.1 *in fine* of the party's statutes). In the case of the Spanish Socialist Workers' Party, it is the supreme organ between congresses (the Federal Committee), which is empowered to put forward such motion against the Federal Executive Commission (art. 35.e of the statutes).

<sup>66</sup> It is the case of the Norwegian Labour Party, the Executive Committee coexists with the National Delegates' Meeting as supreme body between congresses, with the duty of ensuring that the party is run according to the statutes and decisions of the Congress (section 7 of its statutes).

<sup>67</sup> See, for example, art. 9.6 of the French Socialist Party statutes; art. 20 of the Belgian Reform Movement; art. 49 of the Belgian Socialist Party; and art. 74 of the Spanish Socialist Workers' Party statutes.

<sup>68</sup> See CDL-AD(2007)018 Opinion on the Law on Amendments to the Legislation concerning the Status of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and of Local Councils in Ukraine adopted by the Venice Commission at its 71st Plenary Session, (Venice, 1-2 June 2007).

80. Specific rules for holders of public or party mandates are important to monitor the use of public and party office. Good examples of provisions that strengthen evaluation and monitoring can be found in the obligation to periodically report their activities to certain organs of the party. The Belgian Socialist Party, for instance, requires the parliamentary group to report to the Bureau at least once a year their activity regarding the control of government if they are in the opposition and concerning the application of the political project of the party if they are in government.<sup>69</sup> The Party of the Italian Communists requires all party organs, single executives and elected representatives to report their activities to the members of the party.<sup>70</sup> Other exemplary measures to improve internal accountability and control the use of public office include the Spanish People's Party regulation of corruption as a very grave infringement in the exercise of public mandate; the prohibition of acceptance of any money, gifts or benefits in kind given to public representatives in connection with their political work without the knowledge and approval of the party; and the abovementioned obligations of economic disclosure imposed to elected representatives or even candidates for public office as well as the regulation on incompatibilities.<sup>71</sup>

### 3. Appointment of leaders and candidates for election

81. The selection of party officers and candidates for public mandate is critical for assessing the degree of intra-party democracy, which depends on different relevant features of the regulation of these procedures: regarding the selection of party officers, the main aspects to be taken into account are the selection device (party assembly, membership ballot, combined mechanisms) and the party units entitled to be selectors; concerning the selection of electoral candidates, the requirements for eligibility to vote and be nominated and voted must be considered together with possible party rules conferring pre-nomination or veto rights to the party leadership.<sup>72</sup>

82. When setting out the general statute of rights and duties of members, the vast majority of parties attribute to their members -and only to their members, as a general rule-<sup>73</sup> active and passive suffrage for party office and for the selection of candidates for public mandate. Nevertheless, their rights are actually limited by the specific regulation for the provision of each party body and electoral candidates' list, introducing formal requirements of seniority;<sup>74</sup>

<sup>69</sup> See art. 49 of the Belgian Socialist Party statutes.

<sup>70</sup> See arts. 9.3 and 29.1 of the statutes of the Party of the Italian Communists.

<sup>71</sup> See art. 11.b of the People's Party statutes; art. 9.6.8 of the Irish Green Party constitution; note 106 on the obligation of economic disclosure and note 101 on incompatibilities.

<sup>72</sup> These aspects of the selection of party officers and candidates for public office are thoroughly examined in Susan SCARROW, *Implementing Intra-party Democracy*, Political Parties and Democracy in Theoretical and Practical Perspectives series, National Democratic Institute for International Affairs, 2005, pp.8-10.

<sup>73</sup> Section 14 of the Swedish Social Democratic Party constitution clearly declares that "only party members can be elected to positions of trust within the party". The Spanish Socialist Workers' Party, however, offers an example of inclusion when regulates the possibility of including independent candidates in the party's electoral lists for public mandate (art. 24.1 of the Regulation of Public Officers integrated in the party's statutes) and the possibility of integrating sympathizers in the process of primaries (art. 9.1.e of the statutes).

<sup>74</sup> In the Norwegian Labour Party, eligibility for office and the right to vote are only acquired after the first month of membership (section 12 of its statutes). In Ireland, the Green Party imposes 6 months of probation to be permitted to vote (art. 4.4 of its constitution). In the Portuguese Socialist Party, 6 months are also required for active and passive suffrage for party offices in general, except for eligibility to the post of Secretary General, which requires 12 months of membership (art. 18 of its statutes). The Labour Party in the United Kingdom requires 6 months of membership to participate in selection meetings for public office and 12 months to stand as a Labour candidate

membership of other bodies within the party or in public institutions, or support by certain bodies or critical masses from their members.<sup>75</sup> Different levels of the party intervene in the selection of party officers and candidates for public mandate, depending on the party post or public office for which they are being elected. The following overview focuses in the selection of electoral candidates for public office and the most representative party officer, the leader (president, secretary-general or general coordinator).

83. Regarding the selection of party leaders, two groups of political parties can be distinguished, taking into account that, when it comes to their internal organisation, parties are confronted with the same classic dilemma faced by the societies which they aim to manage: either opting for direct (internal) democracy or for representative (internal) democracy. As already mentioned, the vast majority of parties adopt representative democracy, constituting their supreme governing bodies as delegates' assemblies. Yet, the selection of the party leader may introduce an exception to this rule where universal and direct suffrage of the party members is required.

84. Mechanisms of direct democracy for the election of the leader have been introduced by the Green Federation in Italy, the Reform Movement and the Socialist Party in Belgium, the Union for a Popular Movement and the Socialist Party in France, as well as by the Green Party in Ireland. The statutes of the Italian Green Federation establish universal suffrage of members as common rule for the election of all party organs.<sup>76</sup> The Belgian Reform Movement and Socialist Party as well as the French Socialist Party and Union for a Popular Movement regulate universal suffrage for the election of the specific post of party president or first secretary,<sup>77</sup> and this practice seems common for French political parties. The formula of the Green Party in Ireland is specially interesting, since it is designed to secure not only formal inclusion (through party-wide ballot) but as much consensual a party leader as possible: if there are only two candidates, the party leader is elected by simple majority of the party members' vote; in case more than two candidates compete for election, a *preferendum* will be conducted –requiring voters to rank candidates in order of preference and granting them different points according to the position where each voter has ranked them- to ensure a consensus-based leader.<sup>78</sup>

85. More or less inclusive mechanisms are maintained according to the general rule of representative democracy by other parties, where the right to vote is restricted to the members' delegates and eligibility is quite limited. In Spain, the General Coordinator of United Left, the Secretary-General of the Spanish Socialist Workers' Party and the President of the People's Party are elected by the delegates' assembly and the two latter parties require candidates to obtain previous support of a significant part of the delegates to enter competition for the post.<sup>79</sup>

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(section 5A of the Rule Book). In the French Socialist Party, 3 years are necessary to be eligible for party office at the national level whereas 6 months suffice to vote (art. 1.8 of its statutes). The Belgian Socialist Party requires 5 years of membership to be eligible for the post of party president (art. 42 of its statutes).

<sup>75</sup> For instance, when the statutes limit nomination for party leadership to members of a given party board or to the members of the parliamentary group or impose certain thresholds of support for the nomination to prosper. Some examples will be analysed below.

<sup>76</sup> Cfr. art. 16.1 of its statutes.

<sup>77</sup> See art. 12 of the Reform Movement statutes; art. 42 of the Belgian Socialist Party statutes; art. 7.14 of the French Socialist Party statutes; and art. 26 of the Union for Popular Movement statutes.

<sup>78</sup> See art. 5.7 of the party statutes.

<sup>79</sup> See art. 38.d of the United Left statutes; art. 5.1 of the Spanish Socialist Workers' Party statutes, imposing the threshold of 25 per cent of delegates; and art. 30 of the People's Party statutes, requiring previous support of 20 per cent of the delegates.

The Labour Party in Ireland and the Liberal Democrats in the United Kingdom restrict eligibility for the post of leader to members of the parliamentary group of the party.<sup>80</sup> The Labour Party in the United Kingdom presents a kind of mixed mechanism where the Commons members of the Parliamentary Labour Party act as *gatekeepers* (candidates must be members of this group or have their support) but a party-wide ballot is conducted for the selection among nominees.<sup>81</sup>

86. With regard to the selection of candidates for public mandate, the practices of the political parties examined for this study are quite inclusive, opening the selection of prospective elected representatives to the participation of party members. Some restrictive practices still subsist, securing pre-selection or veto rights in favour of central party elites to ensure that they retain the ability to include certain nominees and exclude the unwanted ones.<sup>82</sup> However, examples of inclusive procedures have been developed by the Labour Party and the Liberal Democrats in the United Kingdom, where members of the relevant electoral area are invited to participate in the process of short-listing and final selection of candidates through direct ballot.<sup>83</sup> The Social Democratic Party in Sweden admits proposals of candidates by any individual member and other party constituencies though final selection corresponds to an assembly of delegates (election conference) unless one third of the present delegates call for a general vote among members, who will then be able to draw up the ballot paper by ranking candidates according to their preferences.<sup>84</sup> So-called primaries may be conducted by United Left in Spain for the selection of the presidential candidate.<sup>85</sup> Primaries are thoroughly regulated by the Spanish Socialist Workers' Party, admitting proposals for candidates by party members (10 per cent of them for the particular case of the presidential candidate) and submitting the final selection to a party-wide ballot.<sup>86</sup>

87. In the Central and Eastern European region, political parties remain strongly centralised and heavily dependent on their founder, who has sometimes managed to retain leadership since the fall of communism.<sup>87</sup> In this context, the inner leadership or the leader himself control the selection of candidates at all levels and country-wide ballots, in particular, are dominated by

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<sup>80</sup> See art. 10 of the Irish Labour Party constitution and art. 10.5 of the Liberal Democrats constitutions.

<sup>81</sup> See section 4B.2 of the Labour Party Rule Book, requiring the support by 12.5 or 20 per cent of the Commons members of the Parliamentary Labour Party (depending on the timing of the leader election, either to cover a vacancy or not) and regulating the voting procedure.

<sup>82</sup> As an example, albeit providing for the constitution of selection meetings/conventions at the different geographic levels, the statutes of the Green Party and the Labour Party in Ireland empower the National Executive Committee to add candidates for acceptance and to reject candidates supported locally (arts. 9.4 and 13.4 of the respective statutes).

<sup>83</sup> Cfr. section 5A of the Labour Party Rule Book, although the process for the selection of Westminster parliamentary candidates is more dominated by the leading role of the National Executive Committee, which establishes the national parliamentary panel of parliamentary candidates. See art. 11 of the Liberal Democrats constitutions.

<sup>84</sup> See the Social Democratic Party constitution, pp. 31 and 32.

<sup>85</sup> Yet, only if the year of legislative elections coincides with a year of Federal Assembly of the party and a consensus-based candidature has not been possible, alternative candidatures competing for nomination (art. 51.2 of the party statutes).

<sup>86</sup> See Title III of the Regulation of Public Officers integrated in the party statutes. If the mechanism of primaries is to be considered a good practice, art. 49.3 of the statutes can be criticised for providing an outlet valve to the much praised mechanism, since it empowers the Federal Commission of Lists to suspend the primaries in case the political circumstances or the general interest of the party so require.

<sup>87</sup> This overview on the region is based on IDEA's Central and Eastern European Regional Report, *op. cit.*, pp. 29 and 30.



the central authority, with the leader at the top, closely followed by the inner leadership. Even where the local party organisation has attained certain autonomy, the central party leadership maintains a veto right over local or regional ballots. The exchange of money for nominations of the sponsors at the forefront of candidates' lists, thus securing a seat for them in parliament, has become a common practice in some of these countries. However, different features of the democratic transition and institutional path of some other countries (like the division of the state into multiple constituencies in the Czech Republic) have favoured a certain degree of independence for regional and local levels of party organisations.

88. When selecting the party officers and candidates for public mandate, parties must also comply with the principle of non-discrimination on the basis of gender. Despite *de iure* equality, women's right to vote and stand for public office being nowadays guaranteed in all democracies, women remain largely under-represented in national legislatures and local decision-making bodies in a large number of Council of Europe member states. Hence, political parties should devise mechanisms to promote gender equality not only in parliamentary elections but also in elections for decision-making posts in general, both inside and outside the party, strengthening legal provisions for gender equality where they exist and filling the legal gap where positive action strategies for achieving gender parity are lacking. Alongside the general commitment with gender equality proclaimed in the preambles of the statutes, three main strategies for the promotion of women's political participation can be distinguished: the introduction of quotas, the creation of women's sections and the establishment of control commissions to ensure gender equality.

89. Quotas, aimed at ensuring that women constitute at least a "critical minority" of 20, 30 or 40 per cent, have become the most popular mechanism for affirmative action in recent decades. There are two main types: legally binding and enforceable constitutional or statutory quotas, establishing reserved seats for women in the national or sub-national representative bodies, or controlling the composition of candidate lists for all parties, on the one hand; and voluntary party quotas on the other, self-imposed in the regulations and rules governing the candidate selection procedures within particular parties to guarantee the nomination of a certain number or proportion of women.

90. Although the overall representation of women in European parliaments stands at approximately 18 per cent, the situation differs widely throughout the region: from a low of 7 per cent in Albania to a high of 47 per cent in Sweden.<sup>89</sup> Most of the Western European countries keep their figures between 20 and 40 per cent. In Central and European countries, data vary from the lowest representation in Albania to the traditionally high levels of female representation in the representative bodies of the Baltic states (around 20 per cent) and the highest representation of women in parliament (almost 30 per cent) in "the Former Yugoslav Republic of Macedonia. Gender quotas aimed at ensuring that women constitute at least a critical minority have a long tradition in this region, being common practice during the communist era, "when 'socialist' representation required deputies that were reflective of society".<sup>90</sup> This would explain why, in some of these countries, now modern democracies, quotas are not regarded as

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<sup>88</sup> Cfr. Mr VAN DEN BRANDE'S Report, *The code of good practice for political parties*, PACE Doc. 11210, 29 march 2007, p. 9

<sup>89</sup> The data on women's representation in the different European countries contained in this section have been extracted from the Global Database of Quotas for Women, joint project of International IDEA and Stockholm University, available at [www.quotaproject.org/index.cfm](http://www.quotaproject.org/index.cfm).

<sup>90</sup> See IDEA's Central and Eastern Europe Regional Report, p. 33.

positive measures but rather negative reminders of non-democratic practices, raising serious questions and facing scepticism and strong resistance in some cases.<sup>91</sup>

91. At the constitutional level, apart from generic guarantees of equality, the freedom of association and the right to stand for elections, some countries have introduced specific constitutional provisions to safeguard gender equality in political representation.<sup>92</sup> However, statutory provisions devising concrete mechanisms to guarantee women's political participation are much more common. In Western European countries, legislative provisions promoting gender-balanced political representation at different levels have been introduced combining quotas with rank-order rules. Parity rules have been enacted in Belgium and France, whereas different quotas to ensure at least balanced presence of men and women in candidates' lists have been adopted by Greece, Portugal and Spain.<sup>93</sup>

92. In Belgium, the parity rule requires an equal share of men and women in lists for national elections, and is combined with a rank-order rule precluding the top two positions to be held by candidates of the same sex. A *zipper* or *zebra* rule is applied in France, requiring the strict alternation of male and female candidates in all elections based on lists.<sup>94</sup> Greece applies a *pure* quota, requiring at least one third of female candidates in lists for local and regional government. Similarly, Portugal establishes a 33 per cent quota combined with a rank-order rule that reserves every third candidate for the underrepresented sex. Spain requires party lists to have a minimum of 40 per cent and a maximum of 60 per cent of either sex, establishing threshold quotas that in fact operate as rank-order rules too, since not only the whole list but every fifth of it must fulfil that condition. All these countries provide for sanctions in case of non-compliance: from financial penalties (France and Portugal) to the limitation of the number of candidates (leaving the reserved seats vacant, as in Belgium), or even the rejection of the lists (Spain, Greece and France at the local level).

93. In Central and Eastern Europe, two areas can be distinguished.<sup>95</sup> On the one hand, in the area of the Balkan and Caucasian countries, heirs to a strong tradition of patriarchy, different laws promulgating equality of women have been adopted, offering good examples for other countries with no such legislation (like Albania and Georgia) as well as for political parties willing to introduce voluntary measures. In Croatia, for instance, 10 per cent more funds are allocated to political parties that have women elected into parliament. Armenia and "the Former Yugoslav Republic of Macedonia have introduced *pure* quotas to control the composition of party

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<sup>91</sup> See Mr. VAN DEN BRANDE's Report, p. 10.

<sup>92</sup> In France, the requirement that political parties must promote gender equality was recently added to article art. 4 of the 1958 Constitution and, in Serbia, art. 100 of the 2006 Constitution stipulates that equality and representation of different genders must be provided in accordance with the law.

<sup>93</sup> Examples extracted from IDEA's Global Database of Quotas for Women that will be analysed in detail below.

<sup>94</sup> The principle of gender equality was introduced by the Act of 6<sup>th</sup> June 2000, with the following main provisions: the imposition of the *zipper* rule for elections to the Senate and European Parliament; the requirement of gender parity in regional and municipal elections too, but with less demanding placement rules as lists had to be divided into blocks of six candidates, of whom three had to be women; and the modulation of public subsidies according to the gap between men and women fielded by each party to parliamentary elections, penalising those which did not field enough female candidates. The recent Act of 31<sup>st</sup> January 2007 has strengthened these provisions, extending the strict *zipper* rule to municipal elections in communes with more than 3,500 inhabitants too (art. 2) and increasing the financial penalisation in case of deviation from gender balance rules (art. 5).

<sup>95</sup> See IDEA's Central and Eastern European Regional Report, *op. cit.*, pp. 33 and 34.

candidate lists for elections at the national level.<sup>96</sup> Bosnian and Serbian legal provisions combine quotas with strict rank-order rules at the national and local levels.<sup>97</sup> Slovenia's regulation of local elections establishes an interesting formula combining a progressive quota with placement regulations.<sup>98</sup> Only "the Former Yugoslav Republic of Macedonia and Slovenia provide for sanctions -like rejection of the list- in case of non-compliance with quota requirements. On the other hand, in the area of the Central European and Baltic countries, no specific legal provisions for gender equality in political representation have been adopted in the Czech Republic, Estonia, Lithuania, Latvia, Hungary, Poland or Slovakia.

94. By 2000, among 76 European parties, with at least ten members in the lower house, almost half (35 parties) used gender quotas and two dozen of these had achieved levels of female representation in the lower house of parliament of over 24 per cent.<sup>99</sup> Among the European parties using gender quotas, on average one third (33 per cent) of their elected representatives were women. In contrast, in European parties without gender quotas, only 18 per cent of their members of parliament are women.<sup>100</sup>

95. In Western European countries, voluntary party quotas are widespread. The majority of them consist of *pure* or *simple* quotas applicable to the nomination process, aimed at securing women's representation (women quotas) or gender balance (parity rules or gender neutral quotas) in parties' lists of candidates either for internal party office, for public mandates or for both. Different quotas for candidates' lists for party office have been established by the Christian Democratic Union in Germany, the Socialist Party in Portugal, the Liberal Democrats in the United Kingdom and the Labour Party in Ireland (30-33 per cent),<sup>101</sup> by the French Socialist

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<sup>96</sup> According to the Armenian Electoral Code of 1999 (amended in 2007 to introduce a rank-order rule), at least 5 per cent of the candidates in parties' lists for the elections to the National Assembly must be women, placed in at least every tenth position in the list. The Former Yugoslav Republic of Macedonia's electoral laws require a minimum of 30 per cent of each sex to be represented on party candidate lists for parliament.

<sup>97</sup> Bosnian Electoral Law stipulates that both candidates of male and female gender must be included in parties candidates' lists, establishing a formula to ensure that the minority gender candidates will represent at least one third of the total number of candidates and distributing minority gender candidates as follows: at least one minority gender candidate among the first two candidates, two among the first five, three among the first eight, and so on. Serbian Electoral Law requires that at least 30 per cent of each sex be represented in electoral lists, both for national and local elections, and that every fourth placed be reserved for the less represented sex.

<sup>98</sup> Slovenian Electoral Law of 2005 established a 20 per cent quota for local elections in 2006, increasing for the next scheduled elections to 30 per cent in 2010 and 40 per cent in 2014. In addition, a clear placement mandate states that every third candidate must be of the underrepresented sex.

<sup>99</sup> Data extracted from the referred Global Database of Quotas for Women as an indirect source. When the original source was available, the relevant articles of the statutes are indicated.

<sup>100</sup> See Mr. VAN DEN BRANDE'S Report, p. 9.

<sup>101</sup> Section 15.2 of the Christian Democratic Union statutes adopts a women quota of 33 per cent for party offices and public mandates (this latter rule will be analysed later because it is combined with a rank-order rule for certain elections). As a guarantee of application, in case the quota requirement is not met, internal elections for delegates must be repeated. Yet, the same rule provides an outlet valve when stating that the second ballot will be valid regardless of the women quota. Art. 116 of the Portuguese Socialist Party statute adopts a gender neutral quota of 33 per cent applicable to candidates' lists for party office. Art. 2.4 of the Liberal Democrats constitution sets a 33 per cent quota for either sex in elections for party bodies of three persons or more. Regarding candidates' lists for public office, the party only assumes a loose commitment to ensure reasonable balance between both sexes in electoral candidates' lists (art. 11.3.c). The gender neutral quota of 30 per cent established by art. 15 of the Irish Labour Party operates as a "results-based" quota, since it requires that at least 30 per cent of either sex is *elected* – not only nominated- for party office, providing for the application of the "best losers" system (substituting the candidates of the overrepresented gender for candidates of the underrepresented one) in case the quota is not met.

Party (40 per cent);<sup>102</sup> and by The Greens of Luxembourg and the Labour Party in the United Kingdom (50 per cent).<sup>103</sup> Diverse quotas for electoral candidates' lists for public office have also been adopted by the Austrian People's Party (33 per cent); in Iceland, by the Social Democratic Alliance and the Progressive Party (40 per cent); and a parity rule by The Greens in Austria, the Left Party and the Alliance 90/The Greens in Germany, and the Party of the Italian Communists and the Green Federation in Italy.<sup>104</sup> Quotas for both candidates' lists have been introduced by the Socialist Party in Switzerland (50/40 per cent) and Belgium (50/33 per cent);<sup>105</sup> the Social Democratic Party in Germany, the Democrats of the Left in Italy and the Green Party in Ireland (40 per cent);<sup>106</sup> and the Socialist Party in Portugal (33 per cent). However, these are loose regulations, since they involve no obligations as to where women must be placed: scrupulously respecting *pure* quotas, women can be relegated to the end of the list, where they will have scant real opportunities to be elected.

96. More exemplary are –at least where systems of closed electoral lists apply– the less numerous *strengthened* quotas, combined with rank-order or placement rules that prescribe women's nomination in a favourable manner, placing them strategically on a party's list. The strict *zipper* or *zebra* system, whereby every other candidate must be a woman has been adopted by the Left-Green Party in Iceland and by the French Socialist Party and the Swedish Social Democratic Party for candidates' lists for public office.<sup>107</sup> Other parties opt for the division of the lists into blocks or *ceilings* within which certain quotas must be respected, thereby ensuring an even distribution of male and female candidates, like the Social Democratic Party in Austria, the Christian Democratic Union in Germany, and the Spanish Socialist Workers' Party

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<sup>102</sup> Art. 1.6 of the French Socialist Party statutes establishes a women quota of 40 per cent in all lists for party office, although recognising the parity principle at all levels of the party as the final objective and entrusting women's representation at all levels of the organisation to a special commission (art.7.16 of the statutes). The provisions regulating electoral lists for public office, that will be analysed later, are much more demanding.

<sup>103</sup> Section 36 of the statutes of The Greens adopts the parity rule for candidate's lists for party office. Its combination with rank-order rules in candidates' lists for public mandate will be examined later. The Rule Book of the Labour Party of the United Kingdom contains an exhaustive regulation of the procedure to provide every party organ (from the delegates' assembly to the national committees, split into divisions whose members must be elected by different units of the party) with due respect of the necessary gender balance (within each division). See, for instance, section 4C.5 on the election of the National Policy Forum. Although the Rule Book does not explicitly establish a general principle or quota, the objective of gender parity is implicit in the particular rules governing the composition of each organ. Like the Liberal Democrats, though, the Labour Party assumes only a loose commitment to take positive action to ensure that considerably more women are nominated for public office (5.1.a.e).

<sup>104</sup> See art. 20 of the Party of the Italian Communists' statutes and art. 16 of the Green Federation's statutes.

<sup>105</sup> See art. 4 of the Swiss Socialist Party statutes, setting parity as the objective for both party bodies and electoral lists for public mandate, and art. 10.2 establishing the 40 per cent gender neutral quota for party organs. Art. 7 of the Belgian Socialist Party statutes admits a maximum of two thirds of representatives of the same sex in statutory bodies (7.1) and introduces the parity rule for electoral candidates' lists (7.7).

<sup>106</sup> See section 11.2 of the German Social Democratic Party statutes, introducing a gender neutral quota of 40 per cent both for party and public office. Art. 6 of the Democrats of the Left statutes (Germany) sets the same quota and provides for the reduction of the list of candidates or the application of the "best losers" system in case of non-compliance with the requirement, considered a serious violation of the statutes. Section 5.3 of the constitution of The Greens establishes a gender neutral quota of 40 per cent for all committees of the party and the selection of candidates for public office.

<sup>107</sup> See art. 9.1.4 of the French Socialist Party statutes, requiring gender parity and equal distribution of men and women through the list. In similar terms, rule 3 of the Swedish Social Democratic Party constitution requires that ballot papers be drawn in such a way that there is an even distribution according to gender.

and the United Left in Spain.<sup>108</sup> Rather limited rank-rules have been introduced by The Greens in Luxembourg and the Labour Party in Norway.<sup>109</sup>

97. In Central and Eastern European countries, mostly social democratic and socialist parties have voluntarily adopted women or gender neutral quotas.<sup>110</sup> Quotas for female candidates have been established by the Hungarian Socialist Party (20 per cent), the Social Democrats of the Czech Republic (25 per cent for women), the Social Democratic Party of Bosnia, the Labour Union in Poland, and the Social Democratic Party in Romania (30 per cent). Gender neutral quotas have been introduced by the Social Democratic Party of Croatia (40 per cent for either sex), the Social Democratic Party of Lithuania and the Social Democrats of Slovenia (33 per cent), as well as the Social Democratic Union of “the Former Yugoslav Republic of Macedonia and the Social Democratic Party of Serbia (30 per cent). The Democratic Left in Poland has committed to a 30 per cent quota both internally and for candidates’ lists composition. Also right-wing or centrist parties have introduced such internal measures in some countries, like the Union for National Self-Determination in Armenia (20 per cent quota for women), the Democratic Party in Romania (30 per cent) and the People’s Party of Slovakia, which has assumed a parity target. In spite of the *soft* and usually changing nature of these self-imposed rules, their limited scope of application (only to electoral lists, not internally) and the absence of rank-order or placement mandates that would enhance their efficacy, such measures are desirable in countries where no political parties have adopted quotas, like Albania, Bulgaria, Estonia, Georgia, Latvia and Montenegro.

98. The challenge of promoting women’s political participation goes beyond numbers. While a critical mass of women is necessary to ensure women’s representation, the quality of the representation is just as important. To enlarge the pool of female candidates, parties should on the first place, run parallel membership campaigns targeting women. Secondly, to avoid high female membership ratios without any visibility in the party leadership, they should provide leadership training with the aim of talent-spotting women who could run for office and increase their real possibilities of being elected for public mandate. Women aspirants need to be available for quotas to be effective. Therefore, other forms of encouraging women’s participation in political parties, such as training aimed at increasing their assertiveness, knowledge and experience, should not be neglected.

99. The statutes consulted for this study did not clearly provide for these measures. Yet, political parties could carry out such initiatives of campaigning for women’s participation and training them for political leadership through the women’s sections already constituted in some

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<sup>108</sup> Section 16.2 of the Austrian Social Democratic Party statutes sets a 40 per cent gender neutral quota to be applied both internally and in candidates’ lists for public office, combined with a *soft* rank-order rule requiring that “attention be paid” to observe such ratio not only within the total number of candidates but also among the positions of presumably eligible candidates. Likewise, art.7.1.k of the Spanish Socialist Workers’ Party statutes provides for the application of its quotas (maximum of 60 per cent, minimum of 40 per cent for either sex, deriving from the legally established “gender balance” principle) among presumably eligible posts. Section 15.5 of the Christian Democratic Union of Germany statutes adopts a rank-order rule for certain lists for public mandate, according to which every third candidate must be a woman. Art. 14 of the United Left statutes proclaim gender parity and the *zipper* system as desirable rules for the future but establish a gender neutral quota of 40 per cent and rather vague rank-order rules since the quota is required to be applied by sections of the lists but they are not determined.

<sup>109</sup> Section 12.10 of the Norwegian Labour Party statutes adopts the parity rule for both party and public office candidates’ lists and the limited rank-order rule that both genders must be represented at the two top positions. The same parity and rank-order rule is established by section 38 of the statutes of The Greens for public office, adding that the two top positions will be followed by the rest of candidates in alphabetical order.

<sup>110</sup> See IDEA’s Central and Eastern European Regional Report, *op. cit.*, p. 34.

parties as well as through the commissions in charge of guaranteeing gender equality in other parties. Women's sections are present, under different names and rules, in the structure of the Austrian Social Democratic Party, the Christian Democratic Union in Germany, The Greens in Luxembourg, the Women's Network in the Norwegian Labour Party, the Federal Department of Socialist Women in the Socialist Party of Portugal, the National Federation of Social Democratic Women of the Social Democratic Party in Sweden, and the Socialist Women Commission and Conference of the Swiss Socialist Party, as well as the Women's Forums of the United Kingdom Labour Party. Similar tasks could be assumed by the Commission for Gender Equality of the Socialist Party in Belgium, the National Commission for Women's Rights of the French Socialist Party, or the Secretariat for Equality of the Spanish Socialist Workers' Party. These bodies could make another valuable contribution supplying annual indicators measuring the advances made in equality between women and men.

100. Where levels of women's representation in parliament are lower (7.2 per cent in Albania, 8.6 per cent in Montenegro, 9.4 per cent in Georgia and Malta, 11.5 in Romania, 12.2 in Slovenia, 14.3 per cent in Cyprus, 15.5 per cent in the Czech Republic), political parties could make good use of previous successful experiences of gender parity promotion in the region, bearing always in mind that none of the practices stressed contains the final solution for gender balance worldwide since many different variables impacting on the representation of women must be taken into account, from the type of electoral system to the magnitude of electoral districts and ballot structure, among other circumstances of the country context.<sup>111</sup>

#### **IV. Funding**

101. Political parties need appropriate funding to perform their core activities, both during and between election campaigns, when they need to maintain their organisational structures. Yet, the cost of politics is nowadays spiralling out of control and political parties are increasingly being criticised and distrusted, often regarded as corrupt and as not serving the interests of the public at large because of the citizens' perception of their gradual loss of independence and their being improperly influenced through financial means. The decline in citizens' confidence tends to result in indifference towards politics, decreased participation in political life and low turn-out in elections, as main features of general disengagement from the whole democratic system. Therefore, the regulation of political parties' funding is essential to guarantee their independence from financial sources and opportunity to compete on an equal footing, although the approach to this issue differs among Council of Europe member states due to the diverse historical circumstances that brought about such regulation and the introduction of public funding of political parties, giving birth to a rather heterogeneous European model.<sup>112</sup>

#### **Basic principles**

102. In order to avoid the distorting effect that money may have on the democratic process, PACE Recommendation 1516(2001) on financing of political parties formulates basic principles and outlines more detailed rules which should inspire the Council of Europe Member States in

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<sup>111</sup> Such variables are clearly analysed and pondered in IDEA's *Designing for Equality* report. Focusing on the impact of electoral systems, the report provides countries with a valuable guide to identify best-fit, medium-fit and non-favourable combinations of electoral systems and gender quotas.

<sup>112</sup> For a detailed examination of the different national contexts and systems of public funding of political parties developed during the 1960's and 1970's in Germany, Austria, Sweden, Finland, Norway and Italy, see Pilar DEL CASTILLO VERA, *La financiación de partidos y candidatos en las democracias occidentales*, Centro de Investigaciones Sociológicas, Madrid, 1985, pp. 88-118.

setting up their relevant legislation and could guide parties' self-regulatory instruments: strict rules concerning private donations; the need to ensure a reasonable balance between public and private funding; fair criteria for the distribution of state contributions to the parties; limits on parties' expenditure related to electoral campaigns; complete transparency of accounts; establishment of independent audit mechanisms and meaningful sanctions for violations. These principles were further developed by the Committee of Ministers' Recommendation (2003) 4 on common rules against corruption in funding of political parties and electoral campaigns, as summarised by the Secretary General's Report on the Freedom of Association, on which the ensuing paragraphs are based.<sup>113</sup>

## 1. Sources

### a. Private funding

103. According to the Council of Ministers' common rules, private financing is to be regulated by the state to avoid conflict of interests and secret donations as well as to ensure transparency and the independence of political parties. However, parties have the possibility to raise membership fees and so-called party taxes. Thus, the exact amount of membership fees to be levied is normally regulated by the parties themselves, usually fixing a minimum fee and applying a system of progressive contribution rates according to income or providing for a reduced fee for low income groups, which can be considered a good practice to encourage political participation and inclusion through affiliation<sup>114</sup>. More controversial a form of indirect financing is compulsory contributions from members of parliament, by which they pay a certain amount of their remuneration as a parliamentarian to the party which they represent. Arrangements of this sort are frequently laid down in the party statutes.<sup>115</sup> However, the practice of party taxes is problematic from a constitutional point of view, as it is questionable whether this form of financing is compatible with the notion that parliamentarians have a free mandate. [p.16, 17 Parties' self-regulation, para.1]

104. As concerns donations, in practice, two basic approaches have been retained in member states:<sup>116</sup> one quantitative, restricting the amount of donations (for example in France, Ireland, Portugal and Spain); another qualitative, regulating the qualification of donors or donations. The latter can take two forms: Germany provides a list of impermissible donors, outlining those which are excluded from making financial contributions to political parties or whose donations are strictly limited;<sup>117</sup> whereas the United Kingdom provides a positive list of permissible donors, proscribing any donation from a person or entity not included in the list.<sup>118</sup>

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<sup>113</sup> See the Council of Europe Secretary General's Report on the Freedom of Association (2006), vol. II, pp. 37-40. See also CDL-INF(2001)007 - Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001).

<sup>114</sup> The constitution of the Labour Party of Ireland empowers the National Executive Committee to reduce or even waive group membership or affiliation fees in any case of financial hardship (art. 12.1.b). The Labour Party of the United Kingdom explicitly establishes in its Rule Book exceptions to the payment of the minimum annual subscription in favour of unwaged persons, pensioners and other groups (2C.1).

<sup>115</sup> See art. 74 of the Belgian Socialist Party statutes; art. 9.7 of the French Socialist Party statutes; art. 45 of the Italy Ahead statutes; art. 26.3 of the Swiss Radical-Democratic Party statutes; section 8 of the Regulations of the parliamentary group of the Swedish Social Democratic Party; art. 57.1 of the Spanish United Left statutes.

<sup>116</sup> See the Council of Europe Secretary General's Report on the Freedom of Association, vol. II, paragraph 54.

<sup>117</sup> Art. 25 (2) of the German Law on Political Parties

<sup>118</sup> See section 54 of the Political Parties, Elections and Referendums Act 2000.

105. Other types of restrictions include the prohibition of donations from abroad or by other states or other public foreign organs. National legislation in the Council of Europe member states differs widely regarding this matter. In the old democracies, regulation varies from a total absence of provisions on political parties' financing in general (as in Switzerland or Sweden, where no statutory control over restrictions on party financing exists but voluntary agreements) to a specifically established ban on foreign contributions (as in France, "the Former Yugoslav Republic of Macedonia and Norway). Some countries prohibit such donations in principle but make specific exceptions, allowing financing from member states of the European Union (Spain and Germany, for instance). Other countries do not prohibit such donations (like Austria, Belgium, Cyprus, Denmark and Finland).

106. In Central and Eastern Europe, most of the countries are sensitive to external political influence, thus being mostly restrictive or prohibitive regarding foreign contributions, except in Bosnia and Herzegovina, the Czech Republic and Hungary, where such sources are not prohibited. Armenia and Ukraine prohibit all financial support from foreign states or foreign organisations and also from anonymous sources. In the Russian Federation, the list of restricted sources of donations is even longer and includes international organisations, stateless persons and Russian legal entities in which more than 30 per cent of the capital is foreign owned. Some countries, however, allow certain types of foreign donations (generally from individuals) while prohibiting others, like Bulgaria, Estonia and Hungary. An interesting case from the legal perspective is Latvia, where a law enacted in 2004 tries to prevent the influx of illegal money to political parties banning donations from former officials of the Soviet-era Committee for State Security and people convicted of economic crimes, among others.<sup>119</sup>

107. According to the Venice Commission Guidelines on the financing of political parties<sup>120</sup>, reaffirmed by its Opinion on the prohibition of financial contributions to political parties from foreign sources<sup>121</sup>, donations from foreign states or enterprises should, in principle, be banned but this prohibition should not prevent financial donations from nationals living abroad. The opinion recommends in its conclusions that "In order to establish whether the prohibition of financing from abroad is problematic in the light of Article 11 of the European Convention on Human Rights every individual case has to be considered separately in the context of the general legislation on financing of parties as well as of the international obligations of a State and among these the obligations emanating from membership of the European Union"<sup>122</sup>. A number of Member States prohibit corporate or business related donations (Belgium, France, Poland or Portugal) while others limit such contributions (Spain) or accept them under condition of disclosure (Germany, Italy, the Netherlands and the United Kingdom). Trade unions are allowed to donate money to political parties, for instance, in the United Kingdom or Denmark.

108. In order to ensure the necessary equilibrium between sources of finance, States should make a financial contribution from the public budget and carefully regulate the acceptable amount and origin of private contributions to prevent dependence on private donors, which may

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<sup>119</sup> See IDEA's Central and Eastern Europe Regional Report, *Political Parties in Central and Eastern Europe. In Search of Consolidation*, 2007, p. 26.

<sup>120</sup> See also CDL-INF (2001)008 Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001) .

<sup>121</sup> CDL-AD(2006)014 Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006).

<sup>122</sup> Ibid.



distort the democratic process in favour of certain private interests, as well as to place political parties on an equal footing so as to guarantee the equality of political parties' chances to enter the political arena. On the other hand, they should encourage citizens' participation, including their financial support to parties, since excessive reliance on state funding can lead to the weakening of links between parties and their social basis.

109. This healthy balance between public and private funding of political parties can be achieved through a system of public funding whereby the amounts of state subventions are legally regulated, like in Portugal and some countries in post-communist Europe, such as Poland, Romania, Russian Federation and Slovakia; or through a system of matching funds, whereby state subsidies are totally or partially provided on the condition that an equivalent amount of money has been raised from private donations, like in Germany.

## **b. Public funding**

110. The Venice Commission Guidelines on the financing of political parties<sup>123</sup> acknowledge that public financing must be aimed at each party represented in Parliament. A question then arises as to the system of allocation of state subsidies. Taking into account that almost all electoral systems tend to have a concentrating effect in favour of larger parties when translating votes into parliamentary seats and popular support being the main criterion for distribution, it would seem more appropriate to consider the number of votes (like in Armenia, Estonia, Norway and, as complementary criterion, in Romania) or an alternative direct measure of popular support such as party membership, rather than an indirect measure which automatically incorporates the distorting effect of the electoral system.<sup>124</sup> It has been also argued that this system tends to preserve the *status quo* by making it more difficult for new parties to enter the political arena. New initiatives in this field include the proposal of introducing vouchers for financing political parties with the aim of shifting responsibility for the allocation of public funds from the state towards citizens.<sup>125</sup>

111. The legislation of Member States generally awards state financing for purposes such as electoral campaigns or regular functioning of political parties, either directly or indirectly (in the form of free time in the media, for example). Three general models of public financing can be distinguished:<sup>126</sup> systems where more than 50 per cent of income comes from the state, like Spain or Italy; mixed systems of financing, based on proportionality, as Austria, Belgium, Germany, Greece, Ireland or Turkey; and very little state financing, like the United Kingdom - except Northern Ireland- where not central parties but only parliamentary groups receive direct financial support from the state, or Azerbaijan, that only provides funding for election campaigns. Switzerland is unique among the west European democracies in that, on the federal level, no public subsidies are available for political parties.

112. Good examples of public funding policy linkage to basic principles of political parties' behaviour are present in some member states' legislation, either imposing a series of conditions for political parties to qualify for public subsidies or providing for their suppression in certain

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<sup>123</sup> See footnote 121.

<sup>124</sup> Cfr. Ingrid VAN BIEZEN, *Financing political parties and election campaigns – Guidelines*, Integrated project "Making democratic institutions work", Council of Europe Publishing, 2003, pp. 45 and 46.

<sup>125</sup> See *Reflections on the future of democracy in Europe*, Contributions to The Future of Democracy in Europe Conference, Project on "Making democratic institutions work", Council of Europe Publishing, 2005, p. 87.

<sup>126</sup> Council of Europe Secretary General's Report on the Freedom of Association, vol. II, p. 37.

cases. For instance, where such regulation requires political parties to commit themselves to the constitutional principles (as in Liechtenstein) or to function democratically on the basis of political pluralism (as in Spain), and where national rules allow the partial or total withdrawal of public funding for political parties which promote hostility towards the rights and freedoms protected by the ECHR (Belgium and the Netherlands for the particular case of racism, and Turkey regarding human rights in general) or do not respect gender quotas (France).<sup>127</sup>

## 2. Restrictions

113. Limits on the maximum expenditure permitted should be established during election campaigns. These limits may consist of an absolute sum per candidate or party (such as in the United Kingdom), a certain amount relative to a statutory yardstick such as the minimum wage (as in Portugal, “the Former Yugoslav Republic of Macedonia or the Russian Federation) or a maximum sum fixed depending on the number of inhabitants in the constituency (like in France and Spain). The legislation does not impose any such limit in some states, like Denmark, Germany or Norway. Yet, a good example of self-regulatory practice can be found in Germany, where political parties have traditionally covered the lack of legally endorsed limits to campaign expenditure with voluntary agreements fixing convenient expenditure ceilings.<sup>128</sup> According to the Council of Ministers’ common rules, states should require that records be kept of all direct or indirect expenditure for each political party and that the expenditure ceiling be fixed in proportion to the number of voters concerned.

## 3. Supervisory mechanisms

114. Whatever the source, the financing procedures of political parties should be governed by the principles of transparency and accountability, operating at two levels. The first concerns ordinary and campaign funds, the details of which must be set out in a special set of carefully maintained accounts and made public. The second level involves monitoring the financial status of elected representatives before, during and after their term of office.

115. If a State decides to establish rules, to ensure transparency, party financing legislation could include stipulations regulating the obligations of disclosure and reporting to the appropriate institution of political parties’ financial accounts, levels of income, identity of donors and expenditure; providing for an independent body to inspect and control party accounts, and for a legal system of sanctions to ensure that regulations on party financing are not evaded and to impose penalties when the law is breached. A situation, such as that in Switzerland, where parties receive no public funding and where no disclosure or reporting rules exist, remains an exception. Another is that of Sweden, where respect for the internal autonomy of parties outweighs concern with public control, thus basing its policy on voluntary agreements rather than compulsory state legislation.

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<sup>127</sup> For the case of Turkey, see art. 69.8 of the constitution in relation with art. 68.4. Regarding France, the Act of 6<sup>th</sup> June 2000 first established that public subsidies would be adjusted to the gap between men and women fielded by political parties to parliamentary elections and the Act of 31<sup>st</sup> January 2007 has increased financial penalties for the case of non compliance with the rule of gender parity (art. 5).

<sup>128</sup> Pilar DEL CASTILLO VERA refers to this practice as a tradition initiated in the late sixties in *op. cit.*, p. 97; and the European Parliament Working Paper W13, *Legislation governing elections to the European Parliament*, section III, available at [http://www.europarl.europa.eu/workingpapers/poli/w13/country\\_en.htm](http://www.europarl.europa.eu/workingpapers/poli/w13/country_en.htm), refers to the subsistence of this practice regarding elections to the European Parliament.

116. Transparency implies an obligation to regularly present the accounts -at least annually- to an independent supervisory authority and publish them. Any system of publication which relies exclusively on either comprehensive or comprehensible accounts is bound to impede the openness and transparency of party financing in one way or another. One way to strike a balance between these seemingly contradictory requirements is for the law to oblige parties (or the relevant authorities) to provide for two separate reports, one detailed and comprehensive and one summary, and to require each to be published in an appropriate medium. Belgium, France and Italy provide good examples of this dual system.<sup>129</sup>

117. For the purpose of controlling and sanctioning possible violations, states should empower independent auditing bodies to supervise the accounts of political parties and expenses linked to electoral campaigns. The accounts of political parties should be submitted to control by specific public organs. In practice, supervision can be done through different means including by the competent supervisory body, which differs among member states; by Constitutional Courts, or by state financial bodies. The sanctions to be imposed by states in case of violation of the transparency rules should be effective, dissuasive and proportional to the severity of the offence. The Guidelines on financing envisage the following sanctions: the loss or the total or partial reimbursement of the public contribution; the payment of a fine or another financial sanction, or the annulment of the election. Imposition of the sanctions has to be enforced by the election judge, be it constitutional or other.

118. At the second level, good practices for the financing of political parties and the funding of electoral campaigns imply developing internal rules which complete and strengthen national legislation regarding transparency and accountability; enabling monitoring of the financial status of elected representatives before, during and after their term of office; ensuring transparency, high standards of conduct and sound management in parties' public performance in order to maintain the confidence of citizens; reinforcing and supporting preventive and repressive measures aimed at combating corruption; setting up independent disciplinary bodies to investigate and apply sanctions to corruption within parties; strengthening evaluation, monitoring and disciplinary processes.

119. A good model in this area can be found in France, where two commissions have been established with the objective of ensuring transparency and accountability of political parties at the two levels indicated: the National Campaign Accounts and Political Funding Commission, in charge of monitoring and publishing the accounts of political parties, which must keep accounts, have them audited and submit them to the Commission to obtain public funding;<sup>130</sup> and the Commission for Financial Transparency in Political Life, to check that elected representatives have not gained wealth in an irregular way as a result of their political mandates, through the sworn statements on their property that all members of government, deputies, members of the European Parliament and local elected representatives must submit on their election and at the end of their term of office.<sup>131</sup>

120. At the same time, many statutes expressly commit themselves to the principles of transparency and accountability regarding the party's accounts but develop their implications to

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<sup>129</sup> See Ingrid VAN BIEZEN, *op. cit.*, 2003, p. 63.

<sup>130</sup> Act of 15<sup>th</sup> January 1990.

<sup>131</sup> Act of 11<sup>th</sup> March 1998.

a variable degree.<sup>132</sup> Few statutes provide clear preventive and repressive measures against corruption or independent disciplinary bodies.<sup>133</sup> Most of them entrust internal financial control and annual audit of the party's accounts to special commissions like the Finance Sub-committee of the Irish Labour Party, the Financial Control Commission of the French Socialist Party, the Federal Commission for Accounts Supervision of the Spanish Socialist Workers' Party or the Finance and Administration Committee of the Liberal Democrats in the United Kingdom.<sup>134</sup> Yet, the independence of the bodies in charge of this responsibility is still to be achieved since these commissions are elected by and accountable before the parties' organs.<sup>135</sup> Some statutes provide for external audits but only as a possibility in special cases.<sup>136</sup> Interesting requirements of economic disclosure have been introduced by some parties to monitor the financial status of their elected representatives with the aim of fighting corruption.

## V. Political functions

121. The main purpose of the existence of a political party as a specific form of association is participation in political life of the country with the ultimate objective of reaching a position of decision making power in the public sector. In so doing, political parties perform essential institutional and social functions for representative democracy.

### i. Programme

122. In accordance with the intra-party democracy principle, party members get involved in the development of party policy. The majority of political parties explicitly include the participation of members in this procedure among their basic rights.<sup>137</sup> From a theoretical standpoint, most parties will ask party members to vote on specific policy positions. More common and less inclusive a practice is, though, asking party conference delegates to endorse a set of commitments prepared by a platform committee. An intermediate option would be integrating party members in the deliberation process at least, holding consultation meetings around the country or opening the procedure for comments via the Internet. To assess the degree of internal democracy of these practices, it is important to analyse who may call for policy votes and the advisory or binding nature of the result, among other relevant aspects.<sup>138</sup> Taking these

<sup>132</sup> See art. 59 of the statutes of United Left, in Spain, for a clear commitment with these principles and that of austerity regarding, in particular, the need to limit campaign expenditure.

<sup>133</sup> See below, title 4.f of this study, for an overview of disciplinary rules and special bodies in charge of their application.

<sup>134</sup> See art. 9.5.b of the Irish Labour Party constitution; art. 10.1 of the French Socialist Party statutes; art. 57 of the Spanish Socialist Workers' Party statutes; and art. 8.2 of the Liberal Democrats constitutions.

<sup>135</sup> The statutes of the United Left in Spain (art. 47) include an interesting clause, restricting eligibility for the Federal Commission of Financial Control to skilled persons who do not hold any public office or organisational responsibility within the party by the time of their appointment. The statutes of the Swiss Radical Democratic Party (art. 16) refer to the possibility of constituting the organ of financial control with an independent society. Similarly, the statutes of the Norwegian Labour Party (section 11) envisage the possibility of employing an auditor or company of auditors to do the revision of the accounts in case the Control-committee of the party makes such recommendation to the Executive Committee; and the Guidelines for the county branches of the party (section 9) require the board to engage an auditor or company to audit the accounts.

<sup>136</sup> See art. 66 of the Spanish Socialist Workers' Party statutes.

<sup>137</sup> See, for instance, art. 4.d of the Irish Labour Party constitution and art. 6.a of the Spanish Socialist Workers' Party statutes.

<sup>138</sup> See Susan SCARROW, *op. cit.*, pp. 10 and 11.

elements into account, the parties studied show interesting formulas to promote the inclusion of party members in the definition of party policy.

123. Some parties provide for the consultation of party members on relevant policy issues at different levels and under diverse conditions, like the Democratic Union of the Centre and the Socialist Party in Switzerland; the Liberal Democrats in the United Kingdom; the Norwegian Labour Party; the United Left in Spain; the Social Democratic Party in Sweden; and the Socialist Party in France.<sup>139</sup> Consultation can be specifically linked to the issue of electoral coalitions or government arrangements. It is the case in Ireland, for example, where the Labour Party requires the approval of the party conference to enter pre-electoral or post-electoral coalitions and the Green Party demands that eventual agreements concluded by the parliamentary group with other parties obtain the ratification of a special National Convention to be effective.<sup>140</sup>

124. Other parties have developed quite decentralised and institutionalised deliberative procedures to determine party policy through the coordination of party units at the different levels. The Labour Party in the United Kingdom provides for a National Policy Forum whose composition tries to ensure the representation of all party units (from local constituencies and trade unions to members of parliamentary groups, young Labour and women) and regulates Local Policy Forums (and specific ones for women and minorities) to guarantee to all party members the opportunity to contribute to the development of the aims and policies of the party.<sup>141</sup> Still in the United Kingdom, the Liberal Democrats constitutions require the Federal Policy Committee to consider policy proposals from individuals just like those from state parties, regional parties in England, local parties and associated organisations.<sup>142</sup> The French Socialist Party calls for a yearly conference of militants to debate political issues.<sup>143</sup> The Spanish Socialist Workers' Party and the United Left in Spain present a similar and interesting practice: their respective organisations in sectors or areas are designed as direct participation platforms to involve members in policy definition through collective elaboration and to encourage them to move proposals to the party organs.<sup>144</sup> Furthermore, the United Left adopts the principle of consensus as primary rule for decision-making in these areas, so that not only inclusive procedures but inclusive outcomes are achieved. Similarly, the Green Party in Ireland opts for a

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<sup>139</sup> The statutes of the Democratic Union of the Centre in Switzerland empower the cantonal sections to request from the central committee the organisation of a referendum at the federal level (art. 5.9) and the Swiss Socialist Party members are entitled to request a general voting on a relevant policy issue by themselves (10 per cent of the members, according to art. 22.2 of the party statutes). The Liberal Democrats constitutions empower the Federal Policy Committee to call a party-wide ballot on any fundamental question where, in its judgment, the values and objectives of the party are in issue. The Norwegian Labour Party statutes envisage the possibility of a consultative ballot called by the National Delegates Meeting, County Councils or Municipal Meetings to seek advice on important political or organisational issues from members of the party (section 9). In rather generic terms, the United Left statutes recognise the right of members to be consulted regarding issues of relevance (art. 20.o) and the Swedish Social Democratic Party constitution (section 11) and the French Socialist Party statutes (art. 6.11) authorize different bodies of the party to allow a general voting/consultation of party members on an issue raised.

<sup>140</sup> Cfr. art. 10.10.11 of the Labour Party constitution and section 5.8.4 of the constitution of The Greens.

<sup>141</sup> See clause V.1 and clause II.2.d of the rules for Labour Party Constituencies in the Labour Party Rule Book.

<sup>142</sup> See art. 5.5 of the Liberal Democrats constitutions.

<sup>143</sup> See art. 6.9 of the French Socialist Party statutes.

<sup>144</sup> See art. 23 of the Spanish Socialist Workers' Party and art. 12 of the United Left statutes, for more details on the different thematic areas: from education, economics and health in both parties to the areas for peace and solidarity, migration, feminism and recovery of historical memory in the particular case of United Left.

consensus-based development of policy if possible, providing for a *preferendum* or multiple-choice referendum when more than two options are available.<sup>145</sup>

125. Tightly connected to the issue of policy determination, the question arises as to the admission of the right to tendency or faction and to create more or less organised currents of opinion within the party to influence policy definition. The most restrictive approach to this matter is represented by the Party of the Italian Communists, which in spite of proclaiming intra-party democracy, free debate and pluralism, bans the creation of currents of opinion or any organised groups and adopts the principle of democratic centralism. More permissive are the parties that recognise the right to tendency to their members, so that they can identify themselves with different currents of opinion, like the Socialist Party in Belgium, France and Portugal, the Union for a Popular Movement in France and the Spanish Socialist Workers' Party. Organised tendencies are formally prohibited by the statutes of these parties but, at the same time, they provide for the representation of the different currents of opinion in the party bodies.<sup>146</sup> Practice nevertheless shows the existence of currents within political parties. The most permissive practice is represented by United Left in Spain, which not only concedes the members' right to *organise* themselves in currents of opinion but commits to grant them material and financial assistance.<sup>147</sup>

[p.34-36 Defining policy positions]

## 2. Training

126. Among other institutional and social functions which are essential for representative democracy, political parties perform a kind of spontaneous educational function in favour of all citizens through their ordinary external activity -which contributes to the citizens' political socialisation- and through their internal democratic functioning -which helps strengthen democratic values and culture. They also conduct a planned educational function primarily addressed to their members and sympathisers.<sup>148</sup> Yet, through the mediation of political parties' supporters and the activities of their outreach platforms, like the young and women's sections, forums for debate, centres for political research and studies, and other structures open to the participation of all citizens, their programme for democratic education can also reach the society at large.

127. Firstly, since information is the basis of education in democratic citizenship, assuring citizens' access to information concerning local affairs and all forms of participation would be the

<sup>145</sup> See section 6 of the constitution of The Greens.

<sup>146</sup> See art. 9 of the Belgian Socialist Party statutes, recognising the possibility of forming tendencies and their right to speak before the Congress if they obtain the support of 20 per cent of the Federal Assembly. Art. 5 of the Portuguese Socialist Party statutes admits currents of opinion but proscribes their autonomous organisation. The statutes of the Union for a Popular Movement regulate the *movements* as platforms for the expression of the different political, historical, philosophical and social sensitivities that compose the party and establish the requirements for their constitution and representation at the Political Bureau (arts. 15-18). Similarly, art. 1.4 of the French Socialist Party statutes asserts free debate in the party and establishes strict rules for the representation of currents of opinion at the different levels of the organisation, while banning organised tendencies. The Spanish Socialist Workers' Party statutes recognise the freedom of expression within the party, either individually or through currents of opinion (arts. 3.2 and 4) that can be represented and have voice at the Federal Congress (art. 30.2.3) although organised tendencies will not be tolerated.

<sup>147</sup> See art. 11.A.6 and 11.B.1-B6 of the United Left statutes.

<sup>148</sup> See, for instance, art. 56 of the Democratic Convergence of Catalonia statutes, regarding the training institute for party members; and section 58 of the Austrian Social Democratic Party statutes, concerning education and training activities within the party.

first step to encourage their involvement in public life. The organisation of social activities, mentoring and training with the objective of connecting with civil society is one of the responsibilities of the Young Labour groups and Women's Forums of the Labour Party in the United Kingdom.<sup>149</sup> With the purpose of facilitating contacts between local authorities and citizens, political parties could set up *local offices* open to all citizens interested in local public affairs and where parties' public local representatives could collect their queries, following the examples of the *parliamentary offices* regulated by the Spanish People's Party and of the open local assemblies required by the United Left statutes to be held at least twice a year with the aim of assessing the electorate's opinion on the performance of the party in society and public institutions.<sup>150</sup>

128. Secondly, the organisation of conferences and civic forums may help provide citizens with useful information, knowledge and practical skills for actively engaging in political life through "learning by doing". Many parties regulate these activities in their statutes for the specific purpose of policy debate and inclusive elaboration of the programme, like the thematic forums of the Italian Green Federation and the Spanish People's Party, the Local Policy Forums of the Labour Party in the United Kingdom, the thematic areas open to the participation of social movements in the Spanish United Left, the *ateliers citoyens* of the Belgian Reform Movement, and the *political clubs* of the Portuguese Socialist Party. Yet, the organisation of civic forums or focus groups for more generic debate on topics related to the rights and responsibilities of citizens in a democracy, the constitution, political parties, and elections or the role of civic society, would also be desirable.

129. Finally, among the existing practices of political parties, the collaboration agreements with cultural and professional associations, universities or social movements -like the ones envisaged by the Spanish Socialist Workers' Party- as well as the centres for political research and studies -like the ones established by the Belgian Socialist Party or the Union for a Popular Movement in France- may facilitate the better understanding of democracy and politics, promote critical thinking and create more informed citizens through the opening of spaces for the exchange of ideas.

130. If we agree that independent and well-informed citizens are more likely to participate in the political processes of democracy, education for democratic citizenship has to be recognised to have a beneficial effect on the role of political parties and they should do more to advance such activities. Some of the proposals made on the occasion of the Council of Europe's Forum on the Future of Democracy<sup>151</sup> could be implemented not only by the authorities but also by political parties or in cooperation with them. For example, political parties could make a valuable contribution to the *democracy kiosks*' purpose of creating a politically aware citizenry; conceived as distribution points for official publications and advice about laws and regulations, they could also serve for political parties' representatives to keep citizens aware of their policies, programmes, principles, and ways to get involved.<sup>152</sup> Similarly, political parties could provide volunteers to participate in the *citizenship mentors programme* (not only for migrants but for students too) as mentors representing a particular party, thereby complementing the explanation of the basics of the political system with an insight into the ideology, operation and

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<sup>149</sup> See clause VIII.3 and section 11 of the Labour Party Rule Book, regarding Young Labour groups, and section 10.6 with concern to the tasks of Womens' Forums.

<sup>150</sup> See art. 17 of the People's Party statutes and art. 29.1 of the United Left statutes.

<sup>151</sup> Forum 2006 (18 - 19 October, Moscow): 'The role of political parties in democracy-building'.

<sup>152</sup> See *Reflections on the future of democracy in Europe, op. cit.*, p. 143.

channels for participation of each party.<sup>153</sup> Political parties could also offer *internships* for younger students to serve for a day or two as assistants to activists in parties, as another way of learning through experience.<sup>154</sup>

### 3. Elections

131. Free elections and freedom to associate in political parties are closely linked in any democracy, since political parties exist for the purpose of winning political power through free and fair elections.<sup>155</sup> Elections and the principle of equality between parties are therefore essential for the fulfilment of the task of participation in public life of the country.<sup>156</sup> Equality of opportunity must be guaranteed for parties and candidates alike and entails a neutral attitude by state authorities, in particular with regard to the election campaign, coverage by the media (in particular by the publicly owned media), public funding of parties and campaigns.<sup>157</sup>

132. As it was suggested before, parties are a specific kind of association, their status being thus guaranteed under the right of freedom of association. They can only be subject to restrictions prescribed by law. Therefore, internal party procedures for decision-making should be presided by the principle of self-governing, and in many countries these rules are only set in the party statutes. Nevertheless, their relevance for the working of the whole system implies that the constitution or the law may set up some rules, usually requiring parties to respect democratic principles in their internal organisation and working.<sup>158</sup> In any case, it seems that the very respect of the democratic principle should suffice to exclude any possibility of changing the order of candidates within a list after voters have cast their ballots, as for instance seems to be possible in some specific countries.<sup>159</sup>

133. Good practices in selecting and nominating candidates should promote democratic principles and, in particular, transparency and equality of opportunities, at all levels, including national, regional and local. The process has to be initiated from the bottom-up with great respect for the local party level and encourage the participation and nomination of members from underrepresented groups (young people, minorities, immigrants, among others). These issues are particularly important in proportional systems with closed party lists, where the place in the list accorded by the party to each given candidate will be decisive. The establishment of a long-term strategy, including special projects and training aimed at increasing assertiveness, knowledge and experience of underrepresented groups within the party, is also important for the effective implementation of such inclusive procedures.<sup>160</sup>

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<sup>153</sup> See *ibid.*, pp. 143 and 144.

<sup>154</sup> See *ibid.* p. 147.

<sup>155</sup> Venice Commission's Report on the participation of political parties in elections (2006), paragraph 2.

<sup>156</sup> See the Venice Commission's Guidelines and explanatory report on legislation on political parties (2004), paragraph 16 of the explanatory report.

<sup>157</sup> See the Venice Commission's Code of good practice in electoral matters (2002), section I.2.3 of the Guidelines on elections.

<sup>158</sup> See CDL-AD(2006)025 Report on the Participation of Political Parties in Elections adopted by the Venice Commission at its 67th plenary session (Venice, 9-10 June 2006), paragraphs 17 and 18. Some examples of the legal regulation on this matter have also been analysed above, in the section on internal functioning.

<sup>159</sup> See the Joint recommendations (by the Venice Commission and the OSCE/ODIHR) on the Electoral Law and the Electoral Administration in Albania, paragraphs 66-68.

<sup>160</sup> Good practices for the election process suggested by Mr VAN DEN BRANDE'S Report, p. 3.



134. An interesting model is represented by the Labour Party in the United Kingdom, which commits to select candidates representative of society and to promote the training and nomination of underrepresented groups in particular, regulating specific structures (like the Women's and Ethnic Minorities Forums or the Young Labour groups) to ensure the effectiveness of such commitments.<sup>161</sup> Where inclusive procedures for internal selection of candidates have been introduced, the establishment of special bodies in charge of the organisation, proper administration and supervision of the regularity of internal electoral processes is also desirable. A good example of these organs can be found in the Commission for the organisation and control of electoral operations regulated by the statutes of the Union for a Popular Movement in France.<sup>162</sup> The Spanish People's Party and the Belgian Reform Movement regulate the Electoral Committees and the Spanish Socialist Workers' Party provides for the Federal Commission of Lists, with a specific responsibility upon the elaboration of candidates' lists.<sup>163</sup>

135. An electoral campaign itself provides numerous opportunities for abuse on the part of political parties competing sometimes for votes without mercy over their rival parties. Some of these unfair actions are not necessarily foreseen or prevented by national legislation and need other forms of regulation setting general standards for conduct during the electoral campaign. A Code of conduct in elections may prove a quite effective alternative, specially when political parties voluntarily undertake to abide by the terms of the code as the outcome of negotiations entirely among themselves or moderated by a third party, rather than when the code is imposed by an external authority.<sup>164</sup> Such codes of conduct may be defined as "a set of rules of behaviour for political parties and their supporters relating to their participation in an electoral process, to which the parties ideally will voluntarily agree and which may subsequent to that agreement be incorporated in law".<sup>165</sup>

136. A good example of such alternative regulation can be found in the code of conduct for elections voluntarily signed by the main political parties in "the Former Yugoslav Republic of Macedonia, prior to the parliamentary election of 2006, with the aim of promoting conditions conducive to a free and fair election and a climate of democratic tolerance in which political activity could take place during the election period without fear of coercion, intimidation or reprisals."<sup>166</sup> For this purpose, the parties committed to respect the rule of law and, in particular,

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<sup>161</sup> Section 5A.1.e of the Labour Party Rule Book asserts that "[t]he party will take action in all selections to encourage a greater level of representation and participation of groups of people in our society who are under-represented in our democratic institutions". Section 5C.4 adds that "[t]raining will be made available to interested nominees and targeted action will be taken to increase the representation of women, ethnic minorities and disabled members (...)".

<sup>162</sup> See art. 29 of the statutes of the Union for a Popular Movement.

<sup>163</sup> See arts. 48 and 49 of the People's Party statutes, art. 29 of the Belgian Reform Movement statutes, and art. 49 of the Spanish Socialist Workers' Party statutes.

<sup>164</sup> See IDEA's *Code of Conduct for Political Parties – Campaigning in Democratic Elections*, International IDEA Code of Conduct Series, 1999, pp. 8 and 9.

<sup>165</sup> See *ibid.*, p. 7.

<sup>166</sup> The document was signed, among others, by the leaders of the four main political parties, the ruling center-right Internal The Former Yugoslav Republic of Macedonian Revolutionary Organisation-Democratic Party for The Former Yugoslav Republic of Macedonian National Unity and its partner, the Democratic Party of Albanians, alongside with the Social-Democrats and the main Albanian opposition, the Democratic Union for Integration. The full text is available on the website of the National Democratic Institute for International Affairs ([www.ndi.org/worldwide/cee/macedonia.asp](http://www.ndi.org/worldwide/cee/macedonia.asp)).

to cooperate with the State Electoral Commission, to condemn any resort to violence or intimidation, to eradicate all forms of electoral fraud, as well as to accept the final outcome of elections lawfully declared and certified by the State Electoral Commission, among other issues that constitute the core substantive principles that any code of conduct in elections should include.<sup>167</sup>

137. Codes of conduct for elections in general provide a certain guarantee that the principle of *fair play* will be observed during the electoral campaign. Yet, the codes to which political parties voluntarily subscribe as instruments of self-restraint present an added value, not only because they are more likely to be respected but because their very process of elaboration puts into practice the style and culture of campaigning that these codes aspire to inoculate into political parties.<sup>168</sup>

138. Internal rules which ensure compliance with legislation on fair and transparent funding of electoral campaigns are also important to guarantee the principles of transparency and equality of opportunities in the election process.<sup>169</sup> Most of the provisions related to finance control in political parties' statutes make a general commitment with transparency and accountability, establishing bodies for the supervision of party financing and accounts in general.<sup>170</sup> Only a few parties make special reference to the control of campaigning expenditure, like United Left in Spain, committing to the principle of austerity due to the need to limit campaigning expenditure;<sup>171</sup> and the Belgian Socialist Party, which explicitly refers to the legal limits imposed to campaigning expenditure when entrusting financial management to a specific body.<sup>172</sup>

139. When talking about elections, it is also important to bear in mind that contemporary societies are mainly "information" societies: elections are fought in a very particular context, so that access to mass media (press, radio, television and, increasingly, the Internet) is possibly the best instrument for parties to transmit their message to electors. Therefore, that is possibly the main resource that parties may seek and, at the same time, the least expensive of the aids that state authorities may offer, through granting access to publicly-owned media.<sup>173</sup> The Code of good practice in electoral matters requires that equality of opportunity be guaranteed for parties and candidates alike, implying a neutral attitude by the state authorities, especially with regard to the election campaign and the coverage by the media, in particular by the publicly-owned media.<sup>174</sup>

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<sup>167</sup> For a model of such codes of conduct, see IDEA's *Code of Conduct for Political Parties – Campaigning in Democratic Elections*, pp. 14-21.

<sup>168</sup> See *ibid.*, p. 9.

<sup>169</sup> The main principles of legislation on this issue have been analysed above, in the section on campaigning expenditure, within title 3.d of this study.

<sup>170</sup> See above, note 28.

<sup>171</sup> See art. 59 of the United Left statutes.

<sup>172</sup> See art. 64 of the Belgian Socialist Party statutes.

<sup>173</sup> See the Venice Commission's Report on the participation of political parties in elections (2006), paragraph 34.

<sup>174</sup> See the Venice Commission's Code of good practice in electoral matters (2002), section I.2.3.a of the Guidelines on elections.

140. In Europe, different forms of ownership –public as well as private- prevail and there are usually prohibitions on too great a concentration of market share in the hands of a single firm or consortium; television stations are required as a condition for their licensing to provide free time to the candidates of competing parties during electoral campaigns; and many countries have set up independent regulatory agencies to verify that radio and television stations cover political events and personalities in an equitable fashion, and to ensure that the time and attention devoted to government and opposition is not disproportionate.<sup>175</sup> Without access to information, citizens can neither form their preferences accurately nor decide reliably what course of action to take, which policies to accept or reject, or which ruler to support or oppose.<sup>176</sup>  
[p.47 Media and information para1,2]

#### 4. Performance in office and opposition

141. For the purpose of preserving political pluralism, as a necessary element for representative democracy to function properly, the constitutional principle of equality imposes obligations both on the states and political parties. Among the latter, the principle implies that incumbent parties should not abuse or seek advantage from their ruling position to create discriminatory conditions for other political forces but respect equality in inter-party competition.  
[p.5 Equality para.1]

142. Political parties in the opposition play an extremely important role in a democratic society, both in general public debate and inside parliaments, presenting political alternatives and controlling the government. They enjoy a number of freedoms to conduct their activities with the ultimate aim of attaining decision-making power through the next elections.

143. A good example of formal recognition of the beneficial effect of the opposition can be found in the regulation of the rights and privileges of Her Majesty's Loyal Opposition or the Official Opposition in the United Kingdom;<sup>177</sup> in particular, in the practice of granting public funding to assist the opposition in carrying out its parliamentary duties as well as in developing alternative policies, encouraging them to establish a shadow programme.<sup>178</sup> Accordingly, the Labour Party Rule Book explicitly refers to the "Shadow Cabinet" when the party is in the opposition and the Liberal Democrats' and the Conservative Party's websites present the Liberal Democrat shadow ministerial team and the Conservatives' shadow cabinet.<sup>179</sup> Yet, being

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<sup>175</sup> This overview of the most salient features of the regulation of this issue throughout Europe is extracted from *Reflections on the future of democracy in Europe, op. cit.*, pp. 148 and 149.

<sup>176</sup> See *ibid.*, p. 149 *in fine*.

<sup>177</sup> The British opposition constitutes the most developed or institutionalised model, according to the Venice Commission's Opinion no. 443/2007, Comments on the role and legal protection of the opposition, p. 2. Its privileges include the "Opposition days" reserved to discuss the matters of the opposition with precedence over the government business, certain powers in the agenda-setting process, among others outlined in the Standard Note SN/PC/3910 available on the website of the parliament (<http://www.parliament.uk/commons/lib/research/notes/snpc-03910.pdf>).

<sup>178</sup> The first source is exclusively available to opposition parties whereas the second (introduced by the Political Parties, Elections and Referendums Acts 2000 as the *Policy Development Grant*) is allocated between all political parties with more than two members in the House of Commons. For more details, see the abovementioned Standard Note, p. 3.

<sup>179</sup> See clause VIII.e of the Labour Party Rule Book. All the information on the *shadow cabinets* of the Liberal Democrats and the Conservative Party is available at <http://www.libdems.org.uk/party/people/spokes.html> and <http://www.conservatives.com/tile.do?def=people.shadow.cabinet.page>, respectively.

in the opposition entails not only rights but also obligations which are rarely addressed by the national legislation.<sup>180</sup>

144. The main duties of parties placed in the opposition are checking and criticising, always in a responsible and constructive manner, as well as rendering the majority in power to account, since citizens have to know what government does, and why, if they are supposed to govern.<sup>181</sup> These duties are implicitly recognised, self-imposed and regulated in the provisions of some parties' statutes therefore embodying good practices in this area. For instance, internal party rules imposing reporting obligations to the parliamentary group so that the party can evaluate the fulfilment of the group's task of watching over the government's activity or supporting the application of the party political project when it is in government.<sup>182</sup>

145. Furthermore, some parties present good models of organisational structures which could promote active and sound political opposition through constant work on the different policy areas which constitute the party (shadow) programme, and which help keep the machinery of the party functioning as an alternative (shadow) government always ready to replace the party in public office. Examples of such structures can be found in Spain, in the Sectorial Organisations and Secretariats of the Spanish Workers' Socialist Party, the Executive Secretariats regulated by the People's Party and some bodies within the United Left, as well as in the Standing Committees for policy development of the Green Party in Ireland.<sup>183</sup>

146. The penalisation of the practice of party defection by an elected representative of a given party who deserts to another with the aim of altering the majorities of government or equilibrium of forces derived from the electoral results is also important to maintain the credibility of political parties and the whole democratic system as well as to prevent corruption, which usually stands as the main explanation for such practices, rather than sudden ideological changes. However, measures against "crossing the floor" and defecting to another party must carefully respect the equilibrium between the need to prevent corruption, on the one hand, and the principle of free and independent mandate of deputies, on the other.

147. A good practice in this area can be found in Spain, where party desertion does not entail deprivation of the defector's seat but has been self-regulated by parties in collaboration with the government to overcome its negative effects and fight its usually obscure motivations. The main political parties voluntarily signed an agreement establishing a code of conduct regarding party defection in local corporations. Signed in 1998, the content of the code has been regularly

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<sup>180</sup> See Mr VAN DEN BRANDE'S Report, p. 11.

<sup>181</sup> See the Venice Commission's Opinion on the draft law on the parliamentary opposition in Ukraine (CDL-AD(2007) 019, Comments on the role and legal protection of the opposition, p. 5.

<sup>182</sup> Among the parties studied, such reporting requirement is regulated in similar terms by the Belgian Socialist Party statutes (art. 49.1), the French Socialist Party statutes (art. 9.9), the Spanish Socialist Workers' Party (art. 35.e), and still in Spain, by the United Left Statutes (art. 38.k).

<sup>183</sup> See art. 23 of the Spanish Socialist Workers' Party statutes regulating the Sectorial Organisations of the party as platforms for direct participation of affiliates in the development of party policy on education, environment, citizens' participation, and health, among others, enabling them to raise proposals to the decision-making organs of the party, so that the policy is built through bottom-up procedures. Arts. 17-26 of the Regulation on the functioning of the Federal Executive Commission provides for the Secretariats to work on the policy areas of institutional relations, international relations, local policy, education and science, economic policy and employment, among others, in coordination with the relevant Sectorial Organisations. Similar Executive Secretariats are developed by art. 45 of the People's Party statutes and art. 12 of the United Left statutes, analysed as instrument for intra-party democracy in title 4.e of this study. The Standing Committees of the Irish Green Party are regulated as agents for policy development and implementation in section 5.4 of the party constitution.

updated (in 2000 and 2006) and its application is guaranteed by a Follow-up Commission chaired by the government and composed of parties' representatives and which may submit dubious cases to a Commission of Independent Experts. By virtue of this agreement, Spanish political parties commit to close their political groups to defectors from their original party, to refuse their support to alter majorities of government, to deny support to any motion promoted by them, and to extend the application of the agreement to the regional and national level of government. Furthermore, the parties committed to strengthen the agreement adopting disciplinary measures which can be found in their statutes. With a dissuasive purpose, United Left and the Spanish Socialist Workers' Party consider the support given to a censure motion proposed by another party against elected representatives of one's own party as a serious infringement, just like the Spanish People's Party considers the use of defectors to alter majorities.<sup>184</sup>

148. As far as the link between parties and the civil society<sup>185</sup> is concerned, the existence of a critical mass of members used to be considered as necessary for inclusive procedures to operate effectively. This precondition cannot be taken for granted nowadays, when most of the parties have only 2 or 3 per cent of their voters formally enrolled as members, in contrast with the "mass membership parties" which managed to have around 10 per cent of them.<sup>186</sup> Large membership rosters confer legitimacy to political parties, enhance their linkage to supporters and, ultimately, to the wider community, among other benefits. Therefore, parties should consider introducing open conditions for membership and the rights of members, clearly defining the requirements to participate in internal procedures like the selection of party leaders, candidates and the determination of party policy positions. Such rules opening membership (without distinction on any ground) and opening party governance to the members constitute inclusive practices in themselves and a means to increase democratic dividends (legitimacy, connection with society) through boosting membership figures.

149. Possible actions that parties could implement include party manifesto conferences and meetings open to non-members and to civic organisations with a view to bringing in new blood. For example, the Green Party in Germany and the United Left in Spain organise meetings, generally held at a local or regional level, often open to all party supporters, not just paid-up party members, as well as to social organisations, although non-members are excluded from decision making. Moreover, the United Left statutes require local assemblies to be open (at least twice a year and preferential rule for their celebration in any case) to supporters, social organisations, trade unions, among others, with the main aim of collecting the electors' opinion on the performance of the party in society and public institutions.<sup>187</sup> Other parties providing for the organisation of seminars, conferences or forums open to the participation of the society at large include the Reform Movement in Belgium, with the already mentioned citizens' workshops (*ateliers citoyens*), the People's Party in Spain and the Green Federation in Italy, with thematic forums open to everyone.<sup>188</sup> Similarly, the Portuguese Socialist Party allows militants to create

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<sup>184</sup> See art. 24.4.c of the United Left statutes; art. 44.b of the disciplinary regime contained in the regulation for affiliates of the Spanish Socialist Workers' Party statutes; and art. 11.2.a of the People's Party statutes.

<sup>185</sup> The next overview of the mechanisms developed by party statutes in this area builds upon the suggestions included in Mr VAN DEN BRANDE'S Report, pp. 16 and 17.

<sup>186</sup> See Susan SCARROW, *op. cit.*, p. 13.

<sup>187</sup> See art. 29.1 of the United Left statutes.

<sup>188</sup> See art. 25 of the Reform Movement statutes; art. 17 of the People's Party statutes; and art. 3 of the Green Federation statutes.

*political clubs* -independent of the party but entitled to use its premises- to discuss relevant political issues with persons who are not members or direct supporters of the party.<sup>189</sup>

150. Another possibility is the establishment of working or advisory groups within the party structure composed of party and non-party members who can act as a bridge between the party and civil society. Their experience, expertise, knowledge and ideas can also ensure that parties' policies are more geared towards the actual requirements of society. Good examples of this practice can be found in the different mechanisms developed by the parties studied to integrate non-members in special bodies or in the deliberative organs of the party. In this vein, the Spanish Socialist Workers' Party regulates the conclusion of the already mentioned collaboration agreements with cultural and professional associations, social movements and universities, among other civil society organisations, which can be entitled to participate in the meetings of the main party organs.<sup>190</sup> And still in Spain, the People's Party refers to the openness of its commissions of study to social participation and experts' collaboration, and the United Left provides for the participation of social movements in the thematic areas of the party.<sup>191</sup> With the express purpose of strengthening the link between the party, its supporters and society at large, the statutes of the Portuguese Socialist Party encourage party organs to invite independent citizens to their assemblies and require all levels of the party to call an annual meeting with citizens identified with the party programme to debate the political situation.<sup>192</sup>

151. In the Central European and Baltic countries, political parties' cooperation with ideologically close think-tanks and assembling of groups of experts to deal with specific topics taking public opinion into account are a common practice, as well as the subsequent discussion of their findings and suggestion at the different levels of the party organisation.<sup>193</sup> Some of the parties studied, like the Union for a Popular Movement in France and the Socialist Party in Belgium have opted for establishing their own think-tanks as centres of study and research in the areas of society, economy, culture, science, ethics, environment and international relations, with the aim of keeping pace with society's concerns and developing proper responses.<sup>194</sup>

152. The very purpose of political parties' existence demands that they be open to public accountability, essential for confirming to citizens that their government and its institutions are working in their interest and making them responsive to the citizens' needs and concerns.<sup>195</sup> The political parties examined in this study constitute good examples of transparency and accountability to civil society, at least of its minimal expression, since their statutes –on which this study is based- were available on the parties' websites (sometimes together with the party programme or election manifesto) or could be requested there for consultation.

153. All party statutes or constitutions should be publicly available as a first step. However, greater levels of transparency are desirable to maintain the trust of the citizenry and the objective could be achieved through the institutionalisation of the practices that will be

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<sup>189</sup> See art. 111 of the Portuguese Socialist Party statutes.

<sup>190</sup> See art. 13 of the Spanish Socialist Workers' Party statutes.

<sup>191</sup> See art. 20.9 of the People's Party statutes and art. 12.B.1 of the United Left statutes.

<sup>192</sup> See art. 21 of the Portuguese Socialist Party statutes.

<sup>193</sup> Cfr. IDEA's Central and Eastern European Regional Report, *op. cit.*, p. 30.

<sup>194</sup> See art. 51 of the Belgian Socialist Party statutes and art. 43 of the Union for Popular Movement statutes.

<sup>195</sup> Mr VAN DEN BRANDE'S Report, p. 11.

suggested in the ensuing paragraphs to guarantee proper accountability, some of which are starting to be introduced by a few parties.<sup>196</sup>

154. First, not only the party in public office but all political parties with representation in public institutions should periodically monitor and report on the results achieved by their representatives, keeping the reports available on the party website. The Liberal Democrats in the United Kingdom have developed an interesting practice which comes close to the one suggested, offering valuable information (covering the proceedings if not reporting the outcomes) on the work of the Liberal Democrats in Parliament: reports from recent debates and the Liberal Democrats' position regarding the major bills are available on the party's website. This practice resembles the MP-monitor module discussed as part of the wider proposal of a futuristic "virtual election platform" in the framework of the Council of Europe's Conference on the Future of Democracy and relies upon the idea that information and communication technologies can provide a partial remedy to citizens' alienation from politics and growing distrust vis-à-vis their political representatives through offering new and smarter mechanisms for accountability.<sup>197</sup> Such ambitious platform would be set up by the state but, ideally, political parties could start advancing some of the already applicable proposals as a sign of their renewed commitment with citizens.

155. Second, regarding the party in public office in particular, the electoral programme should be kept on the party's website during the length of its legislative mandate so that it can be publicly scrutinised and action should be taken by the party to keep citizens informed about the fulfilment of electoral promises. Before the next elections, parties should provide the public with an assessment of the party programme, indicating to what extent it has been translated into public policies and justifying why some promised policies have not been implemented. In this vein, the Spanish Socialist Workers' Party statutes entrust to the parliamentary group the task of giving a proper explanation to the society on the reforms endorsed by the party when it is in government and requires the presentation of an annual report of its activity to the Federal Committee.<sup>198</sup> In the United Kingdom, the Labour Party's website provides plenty of information on "the top 50 achievements of the Labour Party since 1997" but no reports are available on those promises that have not been developed. The Christian Democratic Union, in Germany, undertakes responsibility for the realisation of its programme and commits to report on its success in doing so to the party and the public at regular intervals, conceding that "credibility comes from reliability and openness".<sup>199</sup> In countries like Bosnia and Herzegovina, proceedings can be initiated against a party for non compliance with the political goals presented in its programme.<sup>200</sup>

156. Some of the practices analysed in previous sections can also help enhance transparency and public accountability, like the open local assemblies designed by the United Left in Spain to collect the electors' opinion on the performance of the party in society and public institutions, the *parliamentary offices* regulated by the Spanish People's Party or the obligations of disclosure of politicians' assets and economic activities before, during and after having served in public

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<sup>196</sup> The following recommendations are extracted from Mr VAN DEN BRANDE'S Report, p. 12.

<sup>197</sup> For a detailed explanation of the four major modules of the "virtual election platform", see *Reflections on the future of democracy in Europe*, *op. cit.*, pp. 46-48.

<sup>198</sup> See art. 74 of the Spanish Socialist Workers' Party statutes. The report could not be found on the website.

<sup>199</sup> Cfr. the last paragraph of the Christian Democratic Party Principles, available at the party's website.

<sup>200</sup> See the Council of Europe Secretary General's Report on the Freedom of Association, vol. II, p. 31.

administration.<sup>201</sup> The Conservative Party in the United Kingdom offers another good example of transparency keeping the party accounts available on the party's website for members of the party and public in general to scrutinise themselves.

157. Other activities to strengthen the links with civil society can include the creation of youth commissions inside the party. In the United Kingdom, the Labour Party requires the National Executive Committee to promote Young Labour groups, including the organisation of more social activities at every level among their aims and values of these groups. The Women's Forums of the Labour Party are also entrusted with the task of connecting with civil society through the mentoring and training of women not only to hold party or public office but to become involved in their communities, particularly establishing relationships with voluntary organisations.<sup>202</sup> The French Socialist Party charges this responsibility upon each individual member of the party, imposing an *associative* obligation to its adherents, who must be members of a trade union and at least one association either for the defence of human rights, for education or consumers' protection, among others.<sup>203</sup>

158. The party should put strong emphasis on developing and enhancing the membership abilities, invigorating the membership through the organisation of regular conferences and debates and the establishment of a quick answer service reporting back on members proposals, mapping the social network in the municipality and contacting those organisations with which they might share objectives, encouraging local residents to become involved in the design of the party manifesto. Good models could be the Belgian Socialist Party's initiative (*Action Commune Culturelle Socialiste*) of cooperation with civic associations working for common objectives in the fields of lifelong education, political participation of foreigners and young people, and development, among others;<sup>204</sup> and the commitment of United Left in Spain to use 1 per cent of its budget to advance solidarity projects.<sup>205</sup> On the other hand, public officers should reserve office hours at the party local branch to receive those citizens or organisations that wish to put forward any claim or complaint. The *parliamentary offices* regulated by the People's Party statutes to collect citizens' suggestions and enquiries to the party public representatives are a good example in this area.<sup>206</sup>

159. Given the diversity of parties' circumstances and political outlooks, there is no single "one size fits all" set of "best practices" for intra-party governance. In short, expanding intra-party democracy may benefit those parties that implement these reforms as well as the wider society, but these changes may entail high costs for parties so party leaders ought to judiciously consider the practicalities of certain party procedures and assess their respective merits.<sup>207</sup>

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<sup>201</sup> See art. 29.1 of the United Left statutes, and title 2.d on the People's Party *parliamentary offices* regulated by art. 17 of the party's statutes and note 109 of this study regarding the requirement of economic disclosure.

<sup>202</sup> See clause VIII.3 and section 11 of the Labour Party Rule Book, regarding Young Labour groups, and section 10.6 with concern to the tasks of Women's' Forums.

<sup>203</sup> See art. 2.4 of the French Socialist Party statutes.

<sup>204</sup> See arts. 56-59 of the Belgian Socialist Party statutes.

<sup>205</sup> See art. 59.2 of the United Left statutes.

<sup>206</sup> See art. 17 of the People's Party statutes.

<sup>207</sup> Mr VAN DEN BRANDE'S Report, p. 13.



160. To satisfactorily perform their role as vehicle for representative democracy and essential link between citizens and states, political parties should be much more receptive and attentive to the challenges faced by their social context and be ready to react rapidly and effectively with pertinent responses. Good examples in this area can be found in the *parliamentary offices* entrusted with the collection of citizens' suggestions and enquiries by the Spanish People's Party statutes, as well as its *forums* and the similar citizens' workshops (*ateliers citoyens*) conceived by the statutes of the Belgian Reform Movement as discussion forums open to all citizens to formulate proposals that can be assumed and further developed by the party.<sup>208</sup>

161. Modern information and communication technologies represent both a challenge and a precious opportunity for political parties to fulfil this responsibility, establishing proper channels to receive citizens' queries and mechanisms to guarantee accountability. Nowadays, most of the parties keep an updated website which can be designed to serve both the party's outreach objectives and citizens' legitimate and desirable aim to participate in public life. The innovative practices of political parties in this area will be examined in the ensuing sections. Closer cooperation with non-governmental organisations can be another response to contemporary challenges, enabling political parties to formulate and deliver policies that better serve their societies.<sup>209</sup>

[p.6 4.receptiveness, accountability and responsibility]]

## **5. International co-operation**

162. Following the accession of new Member States to the European Union, regulation on political parties could be up-dated in the sense of giving more opportunities for international and regional cooperation between partner organisations in different countries. Allowing legally resident foreigners who are members of a party in their country of origin to join a similar party in their country of residence constitutes a good starting point but the establishment of further ties, beyond individual membership sharing, could be very useful to communicate good practices too.

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<sup>208</sup> See art. 17 of the Spanish People's Party statutes and art. 25 of the Belgian Reform Movement ones.

<sup>209</sup> Some parties, like the Spanish Peoples Party, expressly commit to maintain fluent communication with civic associations (art. 17 of the statutes), although concrete channels for this to be achieved are not specified.