Provisions governing the activity of high political office-holders in election or selection processes

A comparative analysis of the provisions and practices in the EU, its Member States and selected international organisations
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In its resolution of 28 April 2016 on the discharge procedure for the year 2014, the European Parliament instructed the European Parliamentary Research Service to undertake a study including 'a comparative analysis of the legal framework governing the compatibilities of candidates who run for election campaigns in other international organisations and in the Member States (election of prime minister, secretary general, chancellor, etc.).' This study therefore examines relevant rules on the use of public resources by high political office-holders in electoral/selection processes at EU, international and EU Member State level.

An initial version of this study was delivered to the Members of the Committee on Budgetary Control in October 2016. This revised version incorporates some minor changes following final verifications. Nonetheless, the information in this study does not reflect any further possible recent changes in any individual Member State.

Original manuscript, in English, completed in October 2016.

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EXECUTIVE SUMMARY

Whilst the possibility for high political office-holders to participate in electoral and other similar procedures in order to be re-elected to the same or another position is largely uncontested, there are often provisions in place in the respective legal orders requiring them to respect certain standards so as not to enjoy an unfair advantage over their competitors. To this end, guidelines have been adopted by the Council of Europe and the Organisation for Security and Co-operation in Europe aimed at prohibiting people vested with state authority from using the resources allocated to them for the exercise of their official functions to their personal advantage in an electoral race.

At EU level, this study has examined the relevant provisions governing the participation of Members of the European Parliament (MEPs) and of the European Commission in electoral and other selection processes. It should be noted in this respect that MEPs standing for re-election in EP elections will necessarily engage in election campaign(s) while at the same time exercising their current mandate, unless they decide to resign. Furthermore, there is no rule preventing MEPs from participating in (national) election campaigns during their term of office. Only local employees are encouraged to take electoral leave when they participate in election campaigns. However, when Members do participate in (national) election campaigns, they need to observe internal rules regarding reimbursement of expenses which they incur in the exercise of their mandate. With regard to expenditure relating to the political and information activities of the political groups, their funding may not be used to finance any form of European, national, regional or local electoral campaign.

The Code of Conduct for European Commissioners contains explicit rules applicable in situations when they stand for election and participate in election campaigns. These rules, for example, require Commissioners to withdraw from their duties for the period of (at least) the duration of the campaign and explicitly prohibits the use of Commission resources during this period.

All four international organisations analysed (United Nations, International Monetary Fund, Organisation for Economic Cooperation and Development and Council of Europe) operate on an intergovernmental basis. Accordingly, the high management of these organisations (e.g. secretaries-general, executive heads, managing directors) are normally selected and/or appointed by the member states constituting the organisation concerned, on the basis of its statutes, resolutions, conventions and rules of procedure, and taking into account various political considerations. In most cases, these high-level management positions are seen as separate from the 'staff' of the organisation, making it unclear in some cases to what extent the respective staff regulations, rules, and codes of conduct apply to their posts. There are in fact very few rules regarding individuals who, while occupying a top-level position in these organisations, intend to stand for elected office.

The research into the legal framework of the 28 EU Member States governing the participation of high political office-holders in electoral and selection processes showed that the Member States address this question in several ways. The relevant rules can be grouped in three major categories:

- Information activity versus political advertising during electoral campaigns: principles of neutrality and of equal opportunities for candidates

Several Member States have established rules limiting the information activity particularly of their national (and regional) governments, but also of other state
authorities, especially during electoral periods. The need to distinguish between the legitimate information work of state authorities and possible party-political activities is generally based on the constitutional principles of the freedom of the vote and of the neutrality of the public authorities. The principle of the freedom of the vote guarantees the freedom of the elections as a cornerstone of representative democracy and of the legitimising function of elections in the first place. The vote of the electors as an act of formation of a political will must not, therefore, be influenced by the public authorities. In the same way, the principle of neutrality (impartiality) of the public authorities guarantees the equal opportunities of the different political adversaries in the competition for electors' votes and is closely related to the principle of free elections. Accordingly, several Member States have rules in place obliging high political office-holders to refrain from using the authority of their office, as well as the resources at its disposal for party-political activities, in order not to gain an unjustified advantage over their political adversaries and not to influence the process of free formation of the will of the voters.

- Resources and facilities at the disposal of public officials to be used exclusively for the exercise of their duties

The second category of rules concerns provisions requiring any public office-holders (and sometimes specifically political office-holders) to refrain from using the resources and facilities which are provided to them only for the exercise of their duties and not for any other activities, regardless of their nature. In some cases, rules explicitly mention that such facilities must not be used for party-political activities and electoral campaigning. Exceptions to these rules have been identified in the legislation of some Member States, e.g. with regard to the use of certain facilities (e.g. vehicles, personal guards, etc.) for high-ranking office-holders when necessary for their protection.

- Funding of electoral campaigns and of political parties

A third category of rules identified in most Member States are those concerning the financing of electoral campaigns and of the activities of political parties in general. Most Member States' electoral and/or party funding legislation contains rules regarding the exclusiveness and transparency of electoral campaigns funding, which expressly or explicitly prohibit direct or indirect (through advantages) funding of electoral and party-political activities through public resources other than those specifically attributed to them by law.
TABLE OF CONTENTS

1. The issue at stake .................................................................................................................. 7
   1.1. Introduction .................................................................................................................... 7
   1.2. International standards and recommendations ............................................................ 8
2. Subject and methodology of this study ................................................................................... 12
   3.1. Summary of findings ..................................................................................................... 13
   3.2. European Parliament .................................................................................................... 14
   3.3. Members of the European Commission ......................................................................... 21
4. (Selected) international organisations ................................................................................... 27
   4.1. Summary of findings ..................................................................................................... 27
   4.2. United Nations (UN) ..................................................................................................... 28
   4.3. International Monetary Fund (IMF) ................................................................................ 32
   4.4. Organisation for Economic Co-operation and Development (OECD) ........................ 34
   4.5. Council of Europe (CoE) ............................................................................................... 35
5. Comparative analysis of EU Member States' rules and practices ........................................... 38
   5.1. Summary of findings ..................................................................................................... 38
   5.2. National rules ................................................................................................................ 39
6. Main references ....................................................................................................................... 55
   6.1. General .......................................................................................................................... 55
   6.2. EU legal framework ...................................................................................................... 55
   6.3. International organisations ............................................................................................ 56
8. Annex II – EU Member States' rules ....................................................................................... 60
   8.1. Belgium ......................................................................................................................... 60
   8.2. Bulgaria ........................................................................................................................ 61
   8.3. Czech Republic ............................................................................................................. 63
   8.4. Denmark ........................................................................................................................ 64
   8.5. Germany ....................................................................................................................... 64
   8.6. Estonia .......................................................................................................................... 68
   8.7. Ireland ........................................................................................................................... 70
   8.8. Greece ........................................................................................................................... 77
   8.9. Spain .............................................................................................................................. 78
   8.10. France .......................................................................................................................... 81
   8.11. Croatia ........................................................................................................................ 83
   8.12. Italy .............................................................................................................................. 84
   8.13. Cyprus ......................................................................................................................... 91
<table>
<thead>
<tr>
<th>Section</th>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.14</td>
<td>Latvia</td>
<td>91</td>
</tr>
<tr>
<td>8.15</td>
<td>Lithuania</td>
<td>95</td>
</tr>
<tr>
<td>8.16</td>
<td>Luxembourg</td>
<td>102</td>
</tr>
<tr>
<td>8.17</td>
<td>Hungary</td>
<td>103</td>
</tr>
<tr>
<td>8.18</td>
<td>Malta</td>
<td>104</td>
</tr>
<tr>
<td>8.19</td>
<td>The Netherlands</td>
<td>106</td>
</tr>
<tr>
<td>8.20</td>
<td>Austria</td>
<td>108</td>
</tr>
<tr>
<td>8.21</td>
<td>Poland</td>
<td>109</td>
</tr>
<tr>
<td>8.22</td>
<td>Portugal</td>
<td>112</td>
</tr>
<tr>
<td>8.23</td>
<td>Romania</td>
<td>112</td>
</tr>
<tr>
<td>8.24</td>
<td>Slovenia</td>
<td>116</td>
</tr>
<tr>
<td>8.25</td>
<td>Slovakia</td>
<td>118</td>
</tr>
<tr>
<td>8.26</td>
<td>Finland</td>
<td>119</td>
</tr>
<tr>
<td>8.27</td>
<td>Sweden</td>
<td>121</td>
</tr>
<tr>
<td>8.28</td>
<td>United Kingdom</td>
<td>123</td>
</tr>
</tbody>
</table>
## List of main acronyms used

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
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<tr>
<td>GRECO</td>
<td>Group of States against corruption</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>ODIHR</td>
<td>Office for Democratic Institutions and Human Rights</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organisation for Security and Co-operation in Europe</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNSG</td>
<td>United Nations Secretary General</td>
</tr>
</tbody>
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1. The issue at stake

1.1. Introduction

High political office-holders such as heads of state, members of parliaments and governments, secretaries-general of international organisations, etc. are often challenged to apply certain legal and/or ethical standards when participating in an election or a less formal selection procedure whilst still holding their current office. Most countries and international organisations have adopted provisions on the incompatibility between two or more particular offices in order to ensure constitutional principles such as the separation of powers, good governance, protection from conflict of interests, etc. The incompatibility between activities does not, however, imply the impossibility to stand as a candidate for one position whilst holding another one, but requires the office-holder/candidate to choose between the two, once the new position has been won.

Contrary to civil servants and those occupying positions which are rather unpolitical and administrative in nature, high political office-holders are not, as a general rule, required to permanently resign or even only temporarily suspend their current activity in order to be able to participate in an election or selection procedure. This tendency seems to be based on the assumption that whilst ‘non-political’ public offices (e.g. positions in state or regional administrations) are particularly exposed to the appearance of conflict of interests, political positions are not per se ideologically neutral, which makes any (political) positioning more transparent during any election/selection procedures and therefore less problematic for the exercise of public office. This is why provisions governing the compatibility of the exercise of public (but necessarily political) office will not automatically and analogically apply to political functions.

Furthermore, research shows that the possibility for high public office-holders to participate in an electoral/selection procedure whilst still in office seems not only to be ‘tolerated’, but even to be considered desirable, and to be promoted, and appears to be part of an established political culture. This can be explained by the interest of political forces in profiting from the experience and leadership of political actors precisely during electoral and other selection procedures. Indeed, this interest is seen in most jurisdictions as legitimate and any other approach as discriminatory against those political forces that have been successful in previous electoral/selection procedures.

Whilst the possibility for high political office-holders to participate in electoral and other similar procedures to be re-elected to the same or to another position is consequently widely uncontested, several issues have been identified regarding the use during the election/selection procedure in question of the authority and the resources accompanying the current office. In this sense, the following aspects have been addressed through statutory regulation or ethic codes at several regulatory levels:

- The office-holder might use his/her current position and related powers in order to gain an advantage over competitors.
- Office-holders might, furthermore, employ resources that they receive for the appropriate exercise of their current functions for objectives related to their candidature for the other position.

The existence or not of specific provisions governing the way in which the exercise of a public office and a candidacy for another political or high-level civil servant position are made compatible will often depend on the degree of formality of the selection process.
for the position in question. Whilst electoral campaigns for the election of directly eligible bodies (e.g. parliaments) are usually characterised by strict formal rules, many of the high-level positions at international organisations, but also in EU Member States, are assigned through appointment and not through an electoral process. In this respect, the degree of exposure of the candidate to public opinion and scrutiny during an electoral campaign or a mere appointment procedure, where decisions are often taken 'behind closed doors', is crucial in order to determine the criteria for the conduct of an incumbent during such a process; where positions are awarded in an informal selection procedure, the 'candidate' is often not a formal candidate until his/her very appointment.

1.2. International standards and recommendations

Several international bodies have pointed to possible issues arising from electoral activities of high-ranking office-holders.

The 2011 OSCE/ODIHR Guidelines on political party regulation\(^1\) state that the abuse of state resources is universally condemned by international norms. The Guidelines highlight that 'While there is a natural and unavoidable incumbency advantage, legislation must be careful to not perpetuate or enhance such advantages. Incumbent candidates and parties must not use state funds or resources (i.e., materials, work contracts, transportation, employees, etc.) to their own advantage.' Furthermore, the Guidelines recommend that relevant legislation clearly define what is considered an abuse, pointing out that whilst, for instance, incumbents are often given free use of postal systems (seen as necessary to communicate their acts of governance with the public), mailings including party propaganda or candidate platforms are a misuse of this free resource. Legislation must address such abuses.\(^2\)

On 16 December 2013, the Council of Europe's European Commission for Democracy through Law (Venice Commission) released a report on 'The misuse of administrative resources during electoral processes'.\(^3\) The report is based on the Council of Europe legal framework in electoral matters, as well as on the constitutional doctrine in some of its member states. It roots the need for establishing guidelines for the conduct of public office-holders during election processes in the principle of equality of opportunity for political parties and candidates and in the principle of neutrality of state organs in order for voters to be able to freely form their opinion - both aiming to guarantee free and fair elections as a pillar of representative democracies.\(^4\)

In particular, the principles of equal opportunities for parties and candidates, and of freedom of voters to form an opinion, are enshrined in the Venice Commission’s 2003 Code of Good Practice in Electoral Matters.\(^5\) Section I.2.3. of the Code establishes that equality of opportunity must be guaranteed for parties and candidates alike, which requires a neutral attitude by state authorities, in particular with regard to the election

\(^{1}\) OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Political Party Regulation, adopted by the Venice Commission on 15-16 October 2010.

\(^{2}\) Ibidem, sections 207-208, pp. 78, 79.


\(^{4}\) Ibidem, p. 7.

campaign, coverage by the media, notably by the publicly owned media, and public funding of parties and campaigns.

Under the Code, the freedom of voters to form an opinion as a principle deriving from the principle of free suffrage implies that state authorities must observe their duty of neutrality, concerning in particular media, billposting, the right to demonstrate and funding of parties and candidates (section I.3.1. of the Code of Good Practice).

The report refers only to electoral processes and not to more informal selection procedures. However, it adopts a rather broad definition of an 'electoral process' as a period going beyond the electoral campaign as strictly understood in electoral laws and covering in contrast the various steps of an electoral process 'as starting from, for example, the territorial set-up of elections, the recruitment of election officials or the registration of candidates or lists of candidates for competing in elections'. It includes all activities in support of or against a given candidate, political party or coalition by incumbent government representatives before and during election day.\textsuperscript{6}

Furthermore, the report offers a definition of 'administrative resources' in this context:

\begin{quote}
'Administrative resources are human, financial, material, in \textit{natura} and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support.'\textsuperscript{7}
\end{quote}

The report establishes a general framework to address the misuse of administrative resources in electoral processes. It highlights that the objective of any legal provisions in this context should be to secure a free and equal vote and warns at the same time of the risk of too drastic provisions that may deter some people from seeking public office. It calls, therefore, for striking a balance, especially through preventing the use of such legal provisions to prosecute political opponents who have run for re-election and have lost.\textsuperscript{8}

The report also presents different regulatory and self-regulatory options: charts of ethics for political parties, legislation sanctioning bribery and corruption, other legal provisions to be enshrined in criminal and/or public law, as well as in electoral legislation particularly with reference to financing of political parties.

The guidelines issued by the Venice Commission have been recently incorporated and further developed into a joint OSCE/Venice Commission document entitled '\textit{Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes}'.\textsuperscript{9} The Joint Guidelines refer amongst others to findings of the Council of Europe 'Group of States against corruption' (GRECO),\textsuperscript{10} which has observed during country evaluations regarding transparency of political financing a variety of

\begin{footnotes}
\footnote{Venice Commission, Report on the misuse of administrative resources during electoral processes, op. cit., p. 5.}
\footnote{Ibidem, p. 6.}
\footnote{Ibidem, p. 30.}
\footnote{European Commission for Democracy through Law (Venice Commission)/ OSCE Office For Democratic Institutions And Human Rights (OSCE/ODIHR), \textit{Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes}, Venice Commission Study No 778 / 2014, ODIHR Legis-Nr.: GDL-ELE-/285/2016, CDL-AD(2016)004, 14 March 2016.}
\footnote{\textit{Group of States against corruption} (GRECO).}
\end{footnotes}
situations where administrative resources are being misused, e.g. property and means owned at state level or by local authorities (human, financial, material and technical means) in the context of electoral processes. According to these findings, funds managed by ministries are particularly exposed to risks of misuse, including for political financing purposes, 'where elected authorities have excessive discretion or where special statutory rules provide for derogations to the general transparency and accountability requirements'. GRECO's country recommendations have therefore called in several cases 'to take appropriate measures to ensure that the regulation of party and electoral campaign financing is not undermined by the misuse of public office' and 'to provide clear criteria on the use of public facilities for party activity and election campaign purposes'.\(^{11}\)

Furthermore, the explanatory report to the Joint Venice Commission/OSCE Guidelines highlights that, with regard to members of parliaments, the lack of clear rules establishing that in-kind resources and financial means allocated to political groups in parliament are meant to support exclusively the parliamentary activity, has also occasionally led to questionable contributions from political groups to parties and candidates in elections. The report also points in this context to a persisting lack of distinction between state and governing party in some countries leading to a misuse of public resources even where explicit legal rules against such practices are in place.\(^{12}\)

The Joint Guidelines first set out some general principles whose observance is deemed crucial in order to address the issue at stake, such as the rule of law, political freedoms, impartiality and neutrality of state authorities, transparency and equality of opportunity. In particular, the Guidelines establish that 'a clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign should be made' and that 'the legal framework should provide for the availability of trustworthy, diverse and objective information to voters and political competitors on the use of administrative resources during electoral processes operated by public authorities as well as entities owned or controlled by public authorities'.

As for the legal framework to prevent the misuse of administrative resources, the Guidelines recommend that it:

'should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources.'\(^{13}\)

The Guidelines highlight that in addition to statutory provisions, charters of ethics or codes of conduct could be appropriate instruments to prevent the misuse of administrative resources during electoral processes.

\(^{11}\) Joint Venice Commission/OSCE Guidelines, op. cit., p. 3.

\(^{12}\) Ibidem.

\(^{13}\) Ibidem, p. 8.
As for the information activity of governments during election periods, the Guidelines recommend that:

'The ordinary work of government must continue during an election period. However, in order to prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns. This does not include announcements that are necessary due to unforeseen circumstances, such as economic and/or political developments in the country or in the region, e.g. following a natural disaster or emergencies of any kind that demand immediate and urgent action that cannot be delayed.'

In order to scrutinise the observance of the relevant rules, the Joint Guidelines recommend the creation of an independent authority in charge of auditing political parties and candidates in their use of administrative resources during electoral processes. In this context, the Guidelines state that political parties and candidates should be required to report on the origin and purpose of all their campaign finance transactions in order to facilitate transparency and the detection of potential misuse of administrative resources. Any permissible use of administrative resources for parties or candidates should be treated as a campaign finance contribution and be reported accordingly.\(^\text{14}\)

Furthermore, the Guidelines point to the need for awareness-raising in order to effectively prevent and combat practices of misuse of administrative resources in electoral processes. They recommend that public authorities, including electoral management bodies, launch information activities, through which citizens and civil servants, candidates and political party leaders, are made aware of their rights and responsibilities during electoral processes.

The Guidelines also contain provisions as to the enforceability of a legal framework sanctioning the misuse of administrative resources. According to these provisions, the relevant legal framework should provide for an effective system of appeals before a competent, independent and impartial court, or an equivalent judicial body and recommend that the first instance appeal body in electoral matters should be either an electoral management body or a court or an equivalent judicial body.\(^\text{15}\)

\(^{14}\) Ibidem, p. 9.

\(^{15}\) Ibidem, p. 11.
2. Subject and methodology of this study

The subject of this study, as assigned to EPRS, is the compilation and analysis of applicable legal norms and practices dealing with the standard of conduct that can be required from high political office-holders during their participation in electoral/selection procedures to be re-elected or elected for another position while still holding their current office. The study examines the legal situation with regard to high political public office-holders only (e.g. members of parliament, of government, president, etc.). Legislation and practices with regard to civil servants not exercising a political function is analysed only where the relevant provisions are also applicable to high-ranking political office-holders and where standards for the conduct of civil servants may have implications for the activities of high political office-holders.

The present study does not cover rules on ineligibility (impossibility to run for an office) or incompatibility of two or several offices. The latter constellation is covered only in cases where no rules on the use of public resources in electoral/selection procedures exist due to the impossibility of high political office-holders to participate in such procedures whilst holding their current position.

In a first step, the legal provisions (statute, codes of conduct, etc.) governing the conduct of Members of the European Parliament during election/selection procedures, as well as similar provisions regarding members of the European Commission, have been collected and analysed.

Second, it has also been examined how other international organisations (UN, OECD, IMF, Council of Europe) resolve such issues and whether they dispose of legal provisions governing the way in which office-holders should behave and what they should refrain from doing in order to avoid making any prohibited use of staff and other resources while standing for another office.

And third, the relevant legal framework in each of the 28 EU Member States has been identified and analysed in order to detect any measures prescribed by law and/or recommended by guidelines, codes of conduct, etc. seeking to ensure that candidates do not draw an unfair advantage over their competitors due to their current office (use of resources, staff, travelling, etc.).

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16 In the case of ineligibility, candidates are not eligible to run for a certain office (e.g. due to nationality, age, criminal conviction). The incompatibility between two offices refers to the fact that whilst public office-holders can stand as candidates (are eligible), they would need to choose between their current and their new position, if elected/appointed since the two positions are incompatible.
3. EU legal framework: European Parliament and European Commission

3.1. Summary of findings

The EU Treaties do not lay down explicit standards of conduct for Members of the European Parliament. Also, in contrast to members of the European Commission, no withdrawal requirement or duty to refrain from engaging in any other occupation applies in the case of Members of Parliament (with the exception of incompatible offices as listed in the 1976 Act). Clearly, this different legal framework should be seen in the context of the different nature, composition, functions and election/appointment processes of both bodies, as established by the EU Treaties.

The relevant rules concerning Members’ conduct are spread over a number of different documents and their implementing provisions, including Parliament’s Rules of Procedure, the Code of Conduct for Members of the European Parliament, the Statute for Members and its implementing measures, and the relevant Bureau decisions (in particular Bureau decision regarding budget item 400).

The Code of Conduct first and foremost obliges Members to observe the general principles of disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament’s reputation. Contrary to the Commission, no rule prevents MEPs from participating in (national) election campaigns alongside their term of office. Only local employees are encouraged to take electoral leave when they participate in election campaigns (Bureau Notice No 2/2015, internal link). However, when Members do participate in (national) election campaigns, they have to observe internal rules regarding reimbursement of expenses which they incur in the exercise of their mandate.

With regard to expenditure relating to the political and information activities of the political groups (budget item 400 of the general Union budget), the Bureau decision of 2003 (last amended in April 2015, internal link) makes clear that appropriations made under this item may be used for, inter alia, expenditure on political activities conducted by the political groups or non-attached Members in connection with the European Union’s political activities, but they may not be used to finance any form of European, national, regional or local electoral campaign.

As for members of the College of the European Commission, the Code of Conduct for Commissioners gives flesh to the Treaty provisions on Commissioners’ independence (Articles 17(3) TEU, Article 245 TFEU) and requires Commissioners standing for election to withdraw from their duties when they actively participate in an election campaign - the Commission President is expected to grant them unpaid electoral leave for (at least) the period of the campaign. During such periods, the use of Commission’s resources is explicitly prohibited. The Code makes rather detailed provisions regarding Commissioners’ external activities, including, inter alia, their political engagement (par.1.1). The main assumption under the current Code of Conduct seems to be that serving as a Commissioner (and thus in the European interest solely) is inevitably incompatible with standing as candidates in national/European elections. By requiring withdrawal, the Code rules out the possibility of any incompatibility, conflict of interest or (improper) use of Commission resources. This very assumption is now challenged by Commission President Jean-Claude Juncker, who from the very beginning of his mandate has aimed at making the Commission more politically accountable and thus closer to citizens. He draws a parallel with national ministers, who are not obliged to resign when
standing for re-election, suggesting that being closer to citizens means taking (political) responsibility for one’s actions.

According to the Framework Agreement between Parliament and Commission, the Commission - when considering a revision of the Code of Conduct’s rules relating to conflict of interest or ethical behaviour - is expected to seek Parliament’s opinion.  

3.2. European Parliament

3.2.1. General principles/independent mandate
According to Rule 2 of Parliament's Rules of Procedure, Members are to exercise their mandate freely and independently - they shall not be bound by any instructions and shall not receive a binding mandate.  

Members of the European Parliament are elected for a term of five years, starting from the opening of the first session following an election. A Member of Parliament remains in office until the opening of the first sitting of Parliament following the elections (Direct Election Act of 1976; Rule 4 Parliament's Rule of Procedure). Therefore, MEPs standing for re-election in EP elections will necessarily engage in election campaign(s) while at the same time exercising their current mandate, unless they decide to resign.  

There is no rule preventing MEPs from participating in (national) election campaigns alongside their term of office or engaging in another occupation besides the exercise of their mandate (they may, however, resign if they wish to do so). On the contrary, the permission to engage in outside activities is implicit in Article 4 of the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest. This provides that, in their declarations of financial interests, Members should include information regarding, inter alia, 'any other relevant outside activity that the Member undertakes, whether the membership or activity in question is remunerated or unremunerated' (Article 4(1) of Code of Conduct). The only (national or European) offices considered incompatible with the office of a Member of Parliament are those included in Article 7 of the 1976 Act which lists, inter alia, member of a government of a Member State, judge of the Court of Justice or an active official of the institutions of the European Union.  

A draft report on Transparency, Integrity and Accountability of EU institutions (Rapporteur Sven Giegold (Greens/EFA, Germany), currently before the AFCO  

Par. 8: 'When the Commission comes forward with a revision of the Code of Conduct for Commissioners relating to conflict of interest or ethical behaviour, it will seek Parliament's opinion.'

Also Statute for Members (Article 2, 3) and Act concerning the election of the representatives of the Assembly by direct universal suffrage.

A Member’s term of office also ends on death or resignation, Rule 4(1) Rules of Procedure.

A complete list contained in the 1976 Act includes: member of the government of a Member State, member of the Commission, judge, advocate-general or registrar of the Court of Justice, member of the Court of Auditors, member of the European Economic and Social Committee, member of committees or other bodies set up pursuant to the Treaties for the purpose of managing the Union’s funds or carrying out a permanent direct administrative task, member of the Board of Directors, Management Committee or staff of the European Investment Bank, and active official or servant of the institutions of the European Union or of the specialised bodies attached to them, member of the Committee of the Regions, member of the General Court, member of the Board of Directors of the European Central Bank, Ombudsman of the European Union and member of a national parliament; Act concerning the election of the representatives of the Assembly by direct universal suffrage, as amended by Decision 2002/772 of the Council of 25 June 2002 and of 23 September 2002.
Committee, suggests, inter alia, including a clear ban on Members holding side jobs (par. 19).

3.2.2. Standards of conduct, financial interests and conflict of interest

Rule 11 of Parliament's Rules of Procedure lays down the foundations for Members' conduct and first and foremost provides that Members' conduct:

'shall be characterised by mutual respect, be based on the values and principles laid down in the basic texts on which the European Union is founded, respect the dignity of Parliament and not compromise the smooth conduct of parliamentary business or disturb the peace and quiet of any of Parliament's premises. Members shall comply with Parliament's rules on the treatment of confidential information.'

[...]

The application of this Rule shall in no way detract from the liveliness of parliamentary debates nor undermine Members' freedom of speech.

It shall be based on full respect for Members' prerogatives, as laid down in primary law and the Statute for Members (addressed below).

It shall be based on the principle of transparency and be so undertaken that the relevant provisions are made clear to Members, who shall be informed individually of their rights and obligations.'

According to Rule 11, the transparency of Members' financial interests is governed by the Code of Conduct regarding such interests (addressed below).

The following paragraphs therefore consider both (1) the Code of Conduct for Members and (2) the Statute for Members. However, it should be pointed out that - contrary to the Commissioners' Code of Conduct (below) - both documents lack explicit references to situation(s) in which Members of Parliament are running for (re)election or stand as candidates in national elections. Nevertheless, both documents form the (ethics) framework for Members' activities (Code of Conduct) and/or stipulate the conditions for the performance of Members' duties (Statute). They lay down certain ground rules for Members' behaviour, inter alia regarding Members' interaction with third parties.

3.2.3. Code of Conduct for MEPs and implementing measures

The Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest first and foremost lays down the general principles applicable to Members' conduct. In particular, Article 1 stipulates that, in exercising their duties, Members of the European Parliament:

(a) are guided by and observe the following general principles of conduct: disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament's reputation,

(b) act solely in the public interest and refrain from obtaining or seeking to obtain any direct or indirect financial benefit or other reward.

• Conflict of interest

The remainder of the Code is primarily concerned with conflict of interest. According to Article 3 of the Code, 'a conflict of interest exists where a Member of the European Parliament has a personal interest that could improperly influence the performance of his or her duties as a Member. A conflict of interest does not exist where a Member
benefits only as a member of the general public or of a broad class of persons’ (emphasis added). Wherever a Member finds that he/she has a conflict of interest, he/she is expected to immediately take the necessary steps to address it and, if unable to resolve it, to report this to the President. In cases of ambiguity, a Member may seek advice (in confidence) from the Advisory Committee on the Conduct of Members. The Code further sets out requirements regarding declaration of financial interests to be submitted by Members (Article 4) and lays down the duty of Members to refrain from accepting gifts.\textsuperscript{21}

Further guidance regarding the implementation of the Code is laid down in the Bureau decision of 15 April 2013 (internal link), which addresses the issue of gifts received in an official capacity, invitations to events organised by third parties and others. By way of example, Article 6 of the decision lays down the duty of Members to 'disclose their attendance at events organised by third parties', where the expenses for such travel are covered by such parties. However, in case of political parties (and some other categories of third parties such as other international organisations or regional/local authorities), the obligation to disclose does not apply. This implies that attending events organised and paid by political parties (as opposed to, for example, economic actors) is not considered to give rise to a conflict of interest.

- Advisory Committee on the Conduct of Members

Article 7 of the Code of Conduct establishes the Advisory Committee on the Conduct of Members. The Committee gives confidential guidance regarding the interpretation and implementation of the provisions of the Code. At the request of the President, the Committee may also assess breaches of the Code of Conduct and advise the President on possible action to be taken (Article 7(4) of the Code). The Committee is composed of five members appointed by the President amongst the members of the Bureau and the coordinators of the Committee on Constitutional Affairs and the Committee on Legal Affairs (Article 7(2)).

A draft report on a general revision of the Parliament’s Rules of Procedure (rapporteur Richard Corbett (S&D, United Kingdom) currently before the AFCO Committee suggests making the eligibility criteria for the Advisory Committee less restrictive by scrapping the terms 'Bureau' and 'coordinators' from the wording of the rule (p. 406). Yet another suggestion is made in the draft report mentioned above on Transparency, Integrity and Accountability of EU institutions, which suggests, inter alia, complementing the Advisory Committee with external members (par. 16).

3.2.4. Statute for Members and implementing provisions

The Code of Conduct for Members, discussed above, lays down the guiding principles for Members’ conduct (inter alia, integrity, openness, honesty, respect for Parliament’s reputation) and is primarily concerned with (potential) conflict of interest (definition of conflict of interest, duty to declare financial interests and to refuse gifts). The Statute for Members of the European Parliament lays down conditions governing the performance of the MEPs’ duties and primarily covers financial aspects of Members’ mandates (in order, inter alia, to safeguard Members’ independence). For example, Article 2 reiterates the principle that Members are free and independent, and an 'appropriate salary' is to be paid to Members to safeguard such independence (Article 9). The remainder of the document is concerned with further (financial) rights including the right to inspect files,

\textsuperscript{21} With certain exceptions, such as gifts under €150 given 'in accordance with courtesy usage'.
salary, old-age pension, transitional allowance, insurance cover, reimbursement of travel expenses, parliamentary assistance etc.

The Committee responsible for modifications to the Statute is the Committee on Legal Affairs, while the Bureau is the authority responsible for the application of the rules of the Statute (Rule 10).

- The use of Parliament's resources

It was mentioned above that, according to the Code of Conduct, Members must disclose their attendance at events organised by third parties (where the expenses for such travel are covered by such parties) - unless such a third party is, for example, a political party. However, when such expenses are not covered by such a party, the issue of a (potential) use of Parliament's resources arises - the relevant rules are hence briefly addressed below.

Articles 20-22 of the Statute deal with reimbursement of (travel) expenses, assistance from personal staff and the use of Parliament’s facilities, equipment and vehicles. Further conditions regarding their application are laid down in the Bureau decision concerning implementing measures for the Statute of Members of the European Parliament (Internal link).  

Concerning reimbursement of (travel) expenses, Article 20 of the Statute states:

1. Members shall be entitled to reimbursement of expenses incurred in the exercise of their mandate (emphasis added)
2. Parliament shall reimburse the actual expenses incurred by Members in travelling to and from the places of work and in connection with other duty travel.
3. Other expenses incurred by Members in the exercise of their mandate may be reimbursed by means of a flat-rate sum.
4. Parliament shall lay down the conditions for the exercise of this right.
5. Article 9(3) shall apply mutatis mutandis.

This makes clear that this concerns expenses incurred when exercising one's mandate; this would not seem to cover participation in (national) election campaigns.

In a similar vein, Article 22 of the Statute provides that Members are entitled to use Parliament's office facilities, telecommunications equipment and official vehicles. The respective implementing rules governing, for example, transport arrangements (internal link) stress that official cars are reserved for Members 'undertaking duty travel in connection with the exercise of their parliamentary mandate'.

- Political groups' funding: Bureau decision regarding the use of appropriations from budget item 400

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23 Last amended on 14 December 2015;
Political groups are funded from the budget of the European Parliament. Appropriations to political parties are made available under budget item 400, which concerns 'current administrative expenditure and expenditure relating to the political and information activities of the political groups and non-attached Members'. In 2016, these appropriations amounted to €61 million. A Bureau decision of 2003 (last amended in April 2015, internal link) concerns the rules on the use of appropriations from this budget item and makes clear that appropriations made available under item 400 are intended to cover:

- the administrative and operational expenditure of the political groups/non-attached Members’ secretariat;
- expenditure on political and information activities conducted by the political groups/non-attached Members in connection with the European Union’s political activities.

But may not:

- be used to finance any form of European, national, regional or local electoral campaign.

Guidance on determining the electoral nature of a political and information activity is to be found in part 3 of the annex to the Bureau decision. According to these guidelines:

2.1 The electoral nature of an activity or action is determined by the general context of the activity. This means that even if expressions such as 'candidate', 'list', 'parties', 'vote' are not directly used, the electoral character may emerge from the direct or indirect purpose and general context of the activity.

An activity which is considered partially of an electoral nature will be rejected in its entirety.

The prohibition of an activity of an electoral nature applies whatever the nature of the activity or the medium used.

2.2 The following political and information activities are considered to be permitted by the rules:

- provision of information to the public about the date and the practical and technical arrangements for the elections and an invitation to citizens to participate in the elections;
- an activity report for the outgoing Parliament;
- any normal parliamentary activity undertaken under the direct responsibility of a political group or non-attached Member, such as the publication of press releases and policy statements; any such political and information activity, undertaken by a political group or non-attached Member one month before a European election, must not be co-sponsored, co-signed or supported in any other way by any European, national, regional or local political party or organisation and must not include names of Members of the European Parliament other than as bibliographical information; and
- political and information activities in relation to a referendum campaign on a European Parliament subject.

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24 See also Poptcheva, Eva-Maria, Rules on political groups in the EP, EPRS Briefing, June 2015.
2.3 As a guide, even if this is not an exhaustive list, the following are considered as electoral campaigning and are thus forbidden under Item 400:

- any use of the word candidate;
- any mention of a list or list number;
- any recommendation/request to vote for a list, a candidate of a political leaning or the direct or indirect use of the word vote in this context;
- any activity relating to the preparation of the electoral campaign;
- any mention of the fact that a sitting Member is standing as a candidate again and is seeking a vote/confidence/support; and
- the presence on any supporting material of the name/photo of standing candidates not currently Members of the European Parliament;
- any publicity item, whatever the medium used, for production and/or use 30 days prior to the electoral period in a European election year, which bears the photograph and the name of the Member concerned and which does not relay information relating to the activities of the outgoing Parliament.

**European political parties** are funded through a different budget line (item 402). Such funding is governed by Regulation (EC) No 2004/2003 on regulations governing political parties at European level and the rules regarding their funding. The regulation makes clear that the funding of political parties at European level from the general budget of the Union may be used to meet the expenditure directly linked to the objectives set out in the party's political programme (including administrative expenditure and expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications) but **may not** be used for the direct or indirect funding of other political parties, and in particular national parties or candidates (Articles 7 and 8).

- **Personal staff**

  Statute rules and corresponding rules regarding personal staff do explicitly refer to a situation of engagement by *local* staff in election campaigns. Regarding personal staff, Article 21 of the Statute states:

  1. Members shall be entitled to assistance from personal staff whom they may freely choose.
  2. Parliament shall meet the expenses actually incurred by Members in employing such personal staff.
  3. Parliament shall lay down the conditions for the exercise of this right.

  Regarding *local* employees, the Bureau Notice No 2/2015 ([internal link](#)) announced more stringent provisions regarding, inter alia, prevention of conflicts of interest. According to the notice, this includes:

  Obligation for local employees and natural persons who are service providers to **refrain from engaging in any activities with organisations which pursue a political objective**, such as a party, foundation, movement or parliamentary political group, that might be detrimental to the performance of their duties as assistants or give rise to a conflict of interest.
Obligation for local employees to provide details of any outside activity and **notify any intention to stand for election**. The Member concerned is then required to inform the Administration. In addition, the assistants concerned should take **paid or unpaid leave for the duration of the official campaign** and their contract will be terminated in the event of their being elected, unless they can show that their activities as an elected official are compatible with their duties as an assistant.

- **Study on the Code of Conduct for Commissioners – improving effectiveness and efficiency**

The current Code of Conduct for Commissioners was the subject of a **study** by the European Parliament’s Policy Department for Budgetary Affairs which addressed, inter alia, the question of whether and in how far the new code addressed the European Parliament’s recommendations for improvement.  

25 With regard to political activity of Commissioners, the study noted that the requirement to take unpaid electoral leave can be considered best practice, which could even be extended to similar positions in other EU institutions.  

26 Nevertheless, the study questioned the very compatibility of Commissioners’ political engagement with the requirement of independence and the obligation not to take instructions from any institution, body or entity.  

27 The study criticised the current code for:

- failure to define ‘availability of service’ (the code allows Commissioners being politically active, including membership in national and European political parties, provided that this does not compromise their availability for service in the Commission);
- failure to provide criteria for the President’s decision regarding the compatibility of a political activity with Commissioners’ duties (the code allows the President to ‘take into account the particular circumstances of the case’ when deciding on compatibility in cases other than those in which Commissioners stand for election and actively participate in the campaign);
- failure to define what constitutes an ‘active role’ in an election campaign; and
- failure to provide for a scenario in which the Commission president engages in political activity.  

28 It also suggested, inter alia, limiting political activity to passive party membership or (alternatively) defining ‘availability for service’, including criteria for assessing such availability.  

25 Update of the study on ‘The Code of Conduct for Commissioners - improving effectiveness and efficiency’ of Policy Department D (Budgetary affairs).

26 Ibidem, p. 40.

27 As also argued by W. van Gerven, Political, Ethical, Financial and legal Responsibility of EU Commissioners.


3.3. Members of the European Commission

3.3.1. General principles: EU Treaties

The overall framework for all Commissioners' activities is first and foremost formed by the principles of integrity and independence, which are laid down in EU Treaties (Articles 17 TEU and 245 TFEU). According to Article 17 TEU, the Commission promotes the general interest of the Union and takes appropriate initiatives to that end. The members of the Commission are to be chosen 'on the ground of their general competence and European commitment from persons whose independence is beyond doubt.' (Art. 17(3) TEU). Article 17(3) TEU further provides:

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

This principle is further elaborated in Article 245 TFEU, which, inter alia, foresees the possibility of a ruling of the Court of Justice regarding the (in)compatibility of Commissioners' actions with their duties:

'The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

'The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of his right to a pension or other benefits in its stead.'

The option of compulsory retirement is also envisaged in Article 247 TFEU:

'If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, compulsorily retire him.'

With regard to the interpretation of Article 245 TFEU, in the case Commission v Édith Cresson (2006), the Court held that the concept of 'obligations arising from their office' is to be construed broadly and that, having regard to the importance of the responsibilities assigned to them, it is important that the Members of the Commission observe the highest standards of conduct (par. 70). According to the Court, 'it is therefore the duty of Members of the Commission to ensure that the general interest of the Community takes precedence at all times, not only over national interests, but also over personal interests' (par. 71). However, according to the Court, while this means that

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30 Commission of the European Communities v Édith Cresson, Case C-432/04.
'Members of the Commission are thus under an obligation to conduct themselves in a manner which is beyond reproach, it does not, however, follow that the slightest deviation from those standards falls to be censured under Article 213(2) EC (now Article 245 TFEU). A breach of a certain degree of gravity is required. The case concerned a Member of the Commission (Edith Cresson) who offered a work contract to a close acquaintance as her personal adviser. The Court did not order any financial sanction, considering that 'the finding of breach constituted, of itself, an appropriate penalty' (par. 150).

3.3.2. **Code of Conduct for Commissioners**

The Treaty principles of Commissioners' integrity and independence are further fleshed out in the **Code of Conduct for Commissioners**, which explicitly governs the situation of Commissioners standing as candidates for election. In 2011, the Code was revised to include, inter alia, more explicit rules on political activities, including Commissioners' participation in electoral campaigns. Part 1 (in particular 1.1.) covers Commissioners' engagement in external activities *during* their term of office, including teaching, training, publishing and similar activities. Importantly, regarding Commissioners' political engagement, the Code allows Commissioners to be politically active, including membership in national and European political parties or trade unions, *provided* that this does not compromise their availability for service in the Commission or their independence in their functions. Equally, they may hold honorary or non-executive functions within political parties and trade unions and hold political functions in European political parties *as long as* such functions do not involve management responsibilities. Further, it is stated that 'Commissioners are expected to defend and support the decisions taken by the College. Their Commission duties must prevail over party commitment.'

Paragraph 1.1 of the Code, relating to outside activities during the term of office, goes on to state:

>'In respect of the principle of independence that must guide the performance of their duties, Commissioners should abstain from making public statements or interventions on behalf of any political party or trade union of which they are members, except where they are standing for election, as referred to hereafter. This rule is without prejudice to the right of Commissioner to express their personal opinions.'

Commissioners standing for election must observe the following rules:

>'Commissioners shall inform the President of their intention to participate in an election campaign and the role they expect to play in that campaign. If they intend to stand for election and to play an active role in the election campaign, they must withdraw from the work of the Commission for the entire period of active implication and at least for the duration of the campaign. In other instances, the President, taking into account the particular circumstances of the case, shall decide on whether the envisaged participation in the election campaign is compatible with the performance of the Commissioner's duties. When, in accordance with the previous paragraph, Commissioners withdraw from the work of the Commission or are requested to do so by the President, the latter shall grant them *unpaid electoral leave*. During their period of

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31 [Code of Conduct for Commissioners](#), memorandum to the Commission.
unpaid electoral leave, Commissioners may not use the Commission's human or material resources. The period of unpaid electoral leave of Members of the Commission participating actively in electoral campaigns as candidates for European elections shall start at least as of the end of the last part session of the European Parliament before these elections.

'The President of the Commission shall inform the President of the Parliament in due time of his decision to grant this leave and which Member of the Commission will take over the relevant responsibilities for that period of leave.'

The last paragraphs regarding elections to the European Parliament are in essence reiterated in the Framework Agreement on Relations between the European Parliament and the European Commission (par 4), which states:

'Members of the Commission participating actively in electoral campaigns as candidates in elections to the European Parliament should take unpaid electoral leave with effect from the end of the last part-session before the elections.

'The President of the Commission shall inform Parliament in due time of his/her decision to grant such leave, indicating which Member of the Commission will take over the relevant responsibilities for that period of leave.'

What differs, however, is that the Code of Conduct for Commissioners uses mandatory language ('must withdraw') in contrast to the Framework Agreement ('should').

It should also be noted that the Code of Conduct makes a distinction between 'active implication' and the 'duration of the campaign', by providing that Commissioners must withdraw from their work 'for the entire period of active implication and at least for the duration of the campaign.' This leave some flexibility and implies that the dates on which Commissioners withdraw from their work as Commissioners may, in principle, differ. This is not the case when it comes to European elections, as the Parliament and Commission Framework Agreement explicitly provides for a starting date of such electoral leave (end of the last part-session before the elections). Moreover, the Code of Conduct leaves open the possibility of standing as candidates without active participation in election campaigns and, in such cases, leaves leeway for the Commission President to take into account the particularities of a case in considering potential (in)compatibility with a Commissioner's duties ('In other instances (i.e. instances other than those in which a Commissioner stands for election and actively participates in campaign), the President, taking into account the particular circumstances of the case, shall decide on whether the envisaged participation in the election campaign is compatible with the performance of the Commissioner's duties').

To illustrate, on 2 April 2014, before European Elections and in accordance with the above-mentioned rules, the (then) Commission President Barroso announced that seven Commissioners would stand as candidates in European Parliament elections, with six of them taking electoral leave for the period between 19 April and 25 May (this concerned Commissioners Reding, Tajani, Ševčovič, Rehn, Lewandowski and Mimica32). In his announcement, Barroso stressed that this leave would be unpaid and that Commission's human and material resources could not be used during this period. Referring to the

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32 The period of electoral leave was slightly different for Commissioner Rehn.
above-mentioned provision granting the President discretion to taking into account the particular circumstances of an individual case, Barroso announced with regard to Commissioner De Gucht (Trade) that the latter would stand for election but would not be active in the campaign. Accordingly, no electoral leave was announced with regard to De Gucht. De Gucht had also declared that he did not intend to take up his seat at the Parliament in case of election.

3.3.3. Commission President Jean-Claude Juncker’s State of the Union speech on 14 September 2016
In contrast to the conclusions of the study referred to above stands the approach taken by Commission President Jean-Claude Juncker. In his State of the Union speech before the Parliament on 14 September 2016, he made an explicit reference to the Commissioners’ Code of Conduct, in particular the rules regarding Commissioners standing as candidates for election. He criticised the rule requiring Commissioners to withdraw from their office in such cases. With the aim of making the Commission politically accountable and closer to European citizens, Juncker expressed his aspiration to change the corresponding rule in the Code of Conduct, referring to the fact that national ministers in Member States do not have to resign from their posts, when they stand as candidates:

'Finally, taking responsibility also means being accountable to voters. That is why I will propose to change the — in my view ridiculous — rule that Commissioners must step down when they wish to run in European elections.

'Prime ministers and ministers in our Member States do not stop doing their job when they run for re-election. Nor should Commissioners.

'If we want a responsible Commission which is close to the people, we should encourage Commissioners to make a date with democracy and universal suffrage.'

According to the Framework Agreement between Parliament and Commission (para. 8), the Commission – when considering a revision of the Code of Conduct’s rules relating to conflict of interest or ethical behaviour – will seek Parliament’s opinion.  

EU Treaties assign a special role to the Commission and require Commissioners to act in the general interest of the Union and to refrain from any action incompatible with their duties. The main assumption under the current Code of Conduct is that – contrary to the situation regarding Parliament – serving as a Commissioner is inevitably incompatible with standing as candidates in national/European Parliament elections, and thus requires withdrawal from duties. As explained above, this assumption is now challenged by Juncker, who from the very beginning of his mandate has aimed to make the Commission more political, accountable and thus more democratic. Consequently, in its communication concerning the 2017 work programme (COM(2016) 710), the Commission announced that 'it will bring forward amendments to the Framework Agreement with the European Parliament to ensure that Members of the Commission can stand for European Parliament elections'.

3.3.4. Possible instruments in cases of non-compliance
The above paragraphs outlined the rules which are to be followed by Commissioners, in particular when engaging in external activities, including standing as a candidate in

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33 Par. 8: 'When the Commission comes forward with a revision of the Code of Conduct for Commissioners relating to conflict of interest or ethical behaviour, it will seek Parliament's opinion.'
elections. These rules comprise, in particular, the relevant Treaty provisions and the Code of Conduct for Commissioners. The following paragraphs outline potential measures which can be taken when Commissioners breach these rules.

- **Powers of the Commission President**

  The Commission President has far-reaching powers regarding the internal organisation/management of the Commission, including the power of the president to **reallocate** portfolios (Article 248 TFEU) or **request a resignation of a Commissioner** (a request which a Commissioner is obliged to follow according to Article 17(6) TEU). Moreover, according to the Parliament and Commission Framework Agreement (par. 5), the Parliament may ask the President to **withdraw confidence** in an individual. If the Parliament does so, the Commission President is obliged to 'seriously consider' the request, including explaining the decision before Parliament if the President decides not to follow the request.

  The **Framework Agreement on Relations between the European Parliament and the European Commission** (par 4) makes clear that the President of the Commission is 'fully responsible for identifying any conflict of interest which renders a Member of the Commission unable to perform his or her duties.' It further makes the President responsible for 'any subsequent action taken in such circumstances', including informing the President of Parliament immediately and in writing.

- **Ad hoc Ethical Committee**

  While, according to par. 2.3 of the Code of Conduct, the **Ad Hoc Ethical Committee** primarily delivers opinions regarding post term-of-office activities of former Commissioners, the President of the Commission may also request the Committee to deliver an opinion on 'any general question concerning the interpretation of the Code of Conduct' (no decisions regarding Commissioners' post-mandate occupations can be found on the relevant page of the Commission website, and no other decisions are available).

- **Compulsory retirement**

  In cases of breaches of obligations by Commissioners, Articles 245 envisages the possibility of a ruling of the Court of Justice, compulsorily retiring a Commissioner or depriving them of certain benefits (e.g. right to pension). Article 247 TFEU also provides for the possibility of compulsory retirement, should a Member of the Commission no longer fulfil the conditions for the performance of their duties.

3.3.5. **Other provisions**

The Code of Conduct for Commissioners also covers, inter alia, activities Commissioners engage in **after** the expiry of their term of office (par. 1.2) and declaration of interests (1.5.), which are not dealt with in detail here. Regarding former Commissioners' post-mandate activities, par. 1.2. requires notifying the intention to engage in an occupation (if taken up during 18 months after holding office) to the Commission and provides that the Commission shall seek an opinion of the **Ad Hoc Ethical Committee** if the planned occupation is related to the contents of the portfolio of the former Commissioner. When a former Commissioner engages in a **public office**, the opinion of the Ad Hoc Ethical Committee is not obligatory. In cases of doubt, the Commission President may nonetheless decide to seek such an opinion.

(Decisions of the Commission regarding former Commissioners' post-mandate activities can be accessed on the Commission website.)
• Ethics for staff

As mentioned, the 'ethics framework' for Commissioners is primarily formed by the respective Treaty provisions and the Code of Conduct for Commissioners. Ethical standards/rules regarding integrity, independence and conflict of interest of (Commission) staff can be found in the Staff Regulations (in particular Articles 11 - 19) and are not discussed in detail here. The Code for Good Administrative Behaviour for staff of the European Commission in their relations with the public applies to staff covered by the staff regulations and sets out the following principles to be followed in all dealings with the public: lawfulness, non-discrimination and equal treatment, proportionality and consistency.

Regarding the use of Commission resources, the relevant passage of the Code states:

'The Members of the Commission shall use their cabinets and Commission's infrastructure and resources, in full compliance with the relevant rules. The College's global envelope, which covers mission expenses and receptions/professional representation expenses, is fixed annually by the budgetary authority. It is distributed between all Commissioners according to their respective portfolios and real needs, under the responsibility of the President. Global envelope expenses are authorised by the Head of Cabinet of the Commissioner concerned (legal authorising officer), who also certifies the validity of invoices. They are paid on the basis of the invoice and proof of payment, under the responsibility of the Director of the Office for the Administration and Payment of Individual Entitlements (PMO, authorising officer for budgetary commitments and payments).'

34 For the relevant page of the Commission's website regarding the matter, see Ethics for Commissioners.
4. (Selected) international organisations

4.1. Summary of findings

All four international organisations analysed here – the UN, IMF, OECD and Council of Europe (CoE) – operate on an intergovernmental basis. Accordingly, the senior management of these organisations (e.g. secretaries general, executive heads, managing directors) are normally selected and/or appointed by the member states constituting the organisation concerned, on the basis of the respective body's statutes, resolutions, conventions and rules of procedure, and taking into account various political considerations. In most cases, these high-level management positions are seen as separate from the 'staff' of the organisation, making it unclear in some cases to what extent the respective staff regulations and rules, and codes of conduct apply to their posts.

Staff in all the organisations considered are subject to some rules if they intend to stand for elections. In general, the rules forbid staff to stand for political elections at any level; in some of these organisations, however, standing for an elected position is allowed after obtaining permission from the highest level of management. Some organisations (e.g. CoE) provide in their regulations that staff running for elections are placed on unpaid leave during the election campaign and that staff must not engage in any political activities while on the premises of the organisation or while on official missions.

By contrast, rules are scarce, however, with regard to persons who, while holding a top level position in these organisations, intend to stand for elected office.

In the UN system, a distinction is made in terms of appointment procedures and standards applicable between the executive heads of UN specialised agencies and the International Atomic Energy Agency, on the one hand, and the executive heads of UN funds, programmes and other subsidiary entities, on the other. While the latter are appointed by the UN Secretary General and are considered 'staff' of those entities, the former are appointed by the assemblies of the respective agencies and the staff rules do not apply to them - although some standards on conduct may be found in the terms of appointment and/or the oath of office they have to take. The same is true for the UN Secretary General. Moreover, each of these agencies and bodies has its own statutes and rules of conduct. While there is an absence of rules concerning the situation of executive heads and secretaries general standing for elected positions outside the organisation, some consideration has been given to the case where the executive head is running in internal elections for another term: so far, placing the executive head on special leave without pay (rule applicable to staff) during the internal campaign has been considered by many as impractical.

Similarly, in the case of the Secretaries General of the OECD and CoE, no rules are available to cover a situation in which they intend to stand for elected office. On the other hand, the terms of appointment of the current IMF Managing Director mention that she must not apply or accept any private or public position without the approval of the Executive Board, and under no circumstances engage in party political activities.
4.2. United Nations (UN)

Provisions about the Secretariat of the UN and the UN Secretary-General are included in the founding act of the organisation, the UN Charter, under Chapter XV, Articles 97-101.

**UN Charter, Chapter XV: The Secretariat**

*Article 97*

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

*Article 101*

The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

4.2.1. UN Secretary-General and the executive heads of the UN specialised agencies

- **The selection process**

The process of selecting the next UN Secretary-General started officially on 15 December 2015 with a joint letter of the Presidents of the UN Security Council (UNSC) and the UN General Assembly (UNGA) inviting Member States to propose suitable candidates. The procedure has also taken into account the UNGA resolution 69/321 from 11 September 2015 on the revitalization of the work of the UN General Assembly. It is important to point out that the procedures for appointing the UNSGs have evolved over time from complete secrecy surrounding the selection and respective debates in the UNSC, to a more open process; thus, many consider that the current process of selecting the UNSG may be the most transparent so far in the history of the UN.

According to the Charter, the General Assembly appoints the Secretary General on recommendation from the Security Council. While nothing in the Charter and other relevant documents preclude a recommendation from the UNSC containing more than one name, the practice until now has been to recommend one person to the UN General Assembly. Among the most important qualities of a UN SG, as underlined also by the Charter, are the highest standards of efficiency, competence, and integrity. In current practice, UN Security Council members express their preference or discouragement for the proposed candidates by organising rounds of straw polls, before the final vote on the recommendation. This is to avoid the risk of a veto at the final stage of the procedure. A series of hearings of the candidates so far have also been organised in the UNGA. At the final stage in the process, the UNGA adopts a resolution appointing as UN SG the person recommended by the UN Security Council.
Similarly to the UNSG, the executive heads of the specialised agencies of the UN system and of the International Atomic Energy Agency (IAEA) are elected by the member states of each organisation through a selection process in the respective legislative assemblies; the process is regulated by the statutes, conventions and the rules of procedure of those bodies, as well as by resolutions and decisions of those organisations. On the other hand, the executive heads of UN funds, programmes, other subsidiary organs and entities are appointed by the UN Secretary-General (with the exception of the UN High Commissioner for Refugees) and generally confirmed by the UN General Assembly.

- **Compatibilities of the UNSG and the executive heads of specialised agencies**

As far as compatibilities of the UNSG with certain activities/actions while in office or post-office employment are concerned, these must also be assessed against the practice when official documents and rules of conduct have scarce provisions on these issues.

- Applicability of staff regulations, codes of conduct/ethics

On the specific case of the UN Secretary General, the staff regulations and rules of the United Nations do not apply to him, since he is the chief administrative officer of the organisation and not a staff member. The status, basic rights and duties of the Secretary-General are outlined in the relevant provisions of the Charter, in particular Article 100. Conflict of interest issues are also addressed in the oath of office orally declared by the Secretary-General, as well as through his participation in the financial disclosure statements programme. Finally, General Assembly resolution 11 (I), in its paragraph 4 (b), sets out provisions covering conflict of interest issues following the end of the Secretary-General’s mandate.

The executive heads of United Nations funds, programmes and subsidiary bodies are appointed by the Secretary-General and are staff members of the United Nations; hence, the relevant provisions of the United Nations staff regulations and rules, code of conduct/ethics covering conflict of interest provisions and wrongdoing/misconduct apply to them.

At the specialised agencies and IAEA, provisions addressing conflicts of interest and any potential wrongdoing/misconduct are often incorporated into the terms of appointment of the executive head. The executive heads also sign an oath of office, which contains general clauses on good conduct, and abide by the code of conduct/ethics of their

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35 **UNGA Resolution 11 (I)** provides in paragraph 4 (b) that: *Because a Secretary-General is a confidant of many governments, it is desirable that no Member should offer him, at any rate immediately on retirement, any governmental position in which his confidential information might be a source of embarrassment to other Members, and on his part a Secretary-General should refrain from accepting any such position*. This is particularly significant presently, as there are rumours that the current UNSG, Ban Ki Moon, might seek the highest office in South Korea in the December 2017 presidential elections. This provision is a controversial one, as some consider the UNGA resolution as non-binding. However, it seems that previous Secretaries General have generally not taken partisan positions after leaving office, while those who ran for various political positions did so after 4-5 years after leaving the UNSG post (it is not clear if actively or due to circumstances). The category 'any governmental position' that secretaries-general should avoid 'immediately on retirement' could narrowly be construed as meaning appointed positions, and more broadly as referring to elected positions. **Post-employment restrictions** are currently being used by the UN organisations only for procurement staff, to support prevention of procurement irregularities. The JIU note, 'Procurement reform in the United Nations system', found that '[o]nly a few of the organizations have put in place clear policy instructions on post-employment restrictions of staff'.
respective organisations, if they exist, or the ICSC Standards of conduct for the international civil service. Finally, staff regulations and certain staff rules are also applicable to executive heads in many of the specialised agencies, either directly or through reference in the terms of appointment.

Nevertheless, in some organisations, staff regulations and rules do not apply to the executive head, as they are not considered staff members, while in others they only apply partially, with the consequence that many provisions addressing conflict of interest or other wrongdoing/misconduct are not applicable to executive heads. Furthermore, the provisions covering conflict of interest and wrongdoing/misconduct applicable to executive heads vary significantly in details and comprehensiveness from organisation to organisation. For instance, at several United Nations system organisations, there exist no provisions prohibiting remuneration for outside activities or membership on boards of non-governmental organisations (NGOs), and no restrictions on employment after the end of the mandate of the executive heads.

Finally, it seems there is a lack of procedures for handling cases of alleged conflict of interest or wrongdoing/misconduct involving the executive head, given that the final decision remains with the executive head as the chief administrative officer of the organisation. Such procedures exist only in exceptional cases, and address specific, limited situations.

- Internal candidates to positions of executive heads

According to the 2009 report by the UN's Joint Investigation Unit on the Selection and conditions of service of Executive Heads in the United Nations system organizations, one problematic situation that has arisen is that of internal candidates: internal candidates running for the post of executive head may misuse or abuse their functions and resources (e.g. contacts, travel, office facilities, staff, etc.) to serve their own campaigns. According to the report 'this situation would not only be unethical but would also result in unequal opportunities between internal and external candidates and may lead to staff division.'

'While the United Nations system organisations' staff regulations and rules, code of conduct, and other administrative issuances cover conflict-of-interest situations pertaining to internal candidates deciding to campaign for executive head positions, none of the United Nations system organizations, except for ITU, have formal procedures for internal candidates running for the post of executive head, including any mandatory or discretionary requirement for internal candidates to suspend their duties during their campaigns with a view to avoiding any potential conflict of interest or the misuse of their functions, staff and office facilities for their campaigns.'

The ITU's Staff Regulations and Staff Rules (revised 2014) provide:

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<tr>
<th>Regulation 12.2 Appointed staff of the Union standing for election or elected to an elected official post</th>
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<tr>
<td>1. a) An appointed staff member of the Union standing for election to one of the elected official posts referred to, respectively, in Article 9 of the Constitution and Article 2 of the Convention of the Union (Geneva, 1992) shall automatically be placed on special leave without pay by the Secretary-General, in accordance with Regulation 5.2 of the Staff Regulations and Staff Rules</td>
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Despite the absence of such procedures for internal candidates, the report mentions that there have been cases in some United Nations system organisations (such as in the United Nations, UNESCO and WHO), where, on an ad hoc basis, internal candidates running for the post of executive head took voluntary leave of absence and/or discontinued their involvement in the activities of the organisations.

The report lists the arguments for and against rules requiring internal candidates for the post of executive head to suspend their functions during their campaigns. On the one hand, it concludes that the issue of internal candidates for the post of executive head, including an executive head running for re-election, relating to the possible abuse of their functions to serve their campaigns, needs to be addressed in order to prevent the possible misuse of the 'organisation’s resources, negatively impacting on the management of the organisation, and in order to assert equal opportunities among all candidates. On the other hand, at the same time, the report underlines that the suspension of the functions of such internal candidates would not always be feasible in the case of an executive head running for another term:

'for instance, while it is conceivable that staff members of the United Nations who are candidates for the position of Secretary-General could be placed on Special Leave Without Pay (SLWOP), remaining subject to the staff regulations and rules, it would not be appropriate to place an incumbent Secretary-General, who is not subject to the staff regulations and rules, and is running for a second term, on SLWOP, given his mandate and functions.'

Nevertheless, the report insists that any wrongdoing by internal candidates in relation to the above situation needs to be covered by staff regulations and rules and/or the code of conduct/ethics of each organisation, and that the pertinent provisions should also be applicable to executive heads of the organisation. Procedures for investigating any alleged infringement of those provisions, including cases concerning the executive head, also need to be established where they do not exist.

4.2.2. UN staff

Applicable rules

According to the Standards of Conduct for International Civil Service and UN ethics principles, international civil servants do not have the freedom enjoyed by private persons to take sides or to express their convictions publicly on controversial matters. They retain the right to vote and belong to political parties but should not participate in certain political activities, such as standing for or holding local or national political office. Therefore, a UN staff member may not be a candidate for public office at any level. If a staff member decides to run for office, that person must resign from the Organization. (See staff regulation 1.2 (f) and (h), ST/SGB/2014/2, Staff Regulations; staff rule 1.2(s), ST/SGB/2014/1, Staff Rules and Regulations of the United Nations; and Section 5.3 – 5.5, ST/Al/2000/13, Outside Activities (to be revised)).

Moreover, according to the Staff Rules and Staff Regulations of the United Nations, Secretary General’s Bulletin, ST/SGB/2014/1, 1 January 2014:
**Regulation 1.2 Basic rights and obligations of staff**

(...)(g) Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour;

**Conflict of interest**

(m) A conflict of interest occurs when, by act or omission, a staff member’s personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member’s status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization;

(n) All staff members at the D-1 level and above shall be required to file financial disclosure statements on appointment and at intervals thereafter as prescribed by the Secretary-General, in respect of themselves, their spouses and their dependent children, and to assist the Secretary-General in verifying the accuracy of the information submitted when so requested. The financial disclosure statements shall include certification that the assets and economic activities of the staff members, their spouses and their dependent children do not pose a conflict of interest with their official duties or the interests of the United Nations. The financial disclosure statements shall remain confidential and will only be used, as prescribed by the Secretary-General, in making determinations pursuant to staff regulation 1.2 (m). The Secretary-General may require other staff to file financial disclosure statements as he or she deems necessary in the interest of the Organization.

**Use of property and assets**

(q) Staff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets;

(r) Staff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate the possible misuse of funds, waste or abuse.

**Rule 1.7 Financial responsibility**

Staff members shall exercise reasonable care in any matter affecting the financial interests of the Organization, its physical and human resources, property and assets.

**4.3. International Monetary Fund (IMF)**

The IMF is considered a specialised agency of the UN. It is led by the Board of Governors, an Executive Board and a Managing Director.

**4.3.1. The Executive Board and the Managing Director**

According to the Statute of the IMF (Articles of Agreement), the Executive Board manages the day-to-day business of the Fund, exercising the powers delegated by the Board of Governors (the latter is made up by one Governor and one Alternate designated by each Member State). The Executive Board consists of 20 Executive Directors (unless the Board of Governors decides to modify the number), with the Managing Director as chairman. Elections of Executive Directors shall be conducted at intervals of two years in accordance with regulations which shall be adopted by the Board of Governors. Currently the Executive Board has 24 Executive Directors.
The Managing Director (currently Christine Lagarde) is selected by the Executive Board and must not be a Governor or an Executive Director. The Managing Director shall be chairman of the Executive Board, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The Managing Director shall cease to hold office when the Executive Board so decides.

Christine Lagarde became the IMF’s eleventh Managing Director on 5 July 2011 for a five-year term. Ms. Lagarde was selected to serve a second five-year term starting on 5 July 2016.

The Articles of Agreement also provide in Section 4 that:

(b) The Managing Director shall be chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Board, the ordinary business of the Fund. Subject to the general control of the Executive Board, he shall be responsible for the organization, appointment, and dismissal of the staff of the Fund.

(c) The Managing Director and the staff of the Fund, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each member of the Fund shall respect the international character of this duty and shall refrain from all attempts to influence any of the staff in the discharge of these functions.

(d) In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

There is a Code of Conduct for the Members of the Executive Board, separate from the Code of Conduct for the IMF staff. As the Managing Director is not considered an Executive Director, it is not clear if the Code applies to the Managing Director’s position. Nevertheless, the Terms of Appointment of the Managing Director contain the necessary information about the role and conduct of the Managing Director; there is also a provision that, subject to the Terms of Appointment, the Managing Director must observe the standards of conduct applicable to IMF staff.

Accordingly, as regards the Managing Director:

2. As Managing Director, you are expected to observe the highest standards of ethical conduct, consistent with the values of integrity, impartiality and discretion. You shall strive to avoid even the appearance of impropriety in your conduct. In the performance of your duties as Managing Director, you have an exclusive duty of loyalty to the Fund and shall avoid any conflict of interest or the appearance of such a conflict. Subject to the provisions of this agreement, you shall observe the standards of conduct applicable to staff members of the Fund, as may be amended from time to time, and you shall participate in the ethics training program provided by the Fund’s Ethics Advisor that is required for all Fund staff.

(a) It is understood that you have resigned from any public or private position that you may have held. It is further understood that you will not, without the approval of the Executive Board, apply for or accept any public or private employment or position, whether or not you would receive any compensation for such employment or position, or engage in any business activity.

(d) While you may be a member of a political party and contribute funds to the party or to individual candidates, you will not, in your personal capacity, attend political party meetings, assume any leadership role within a political party, or otherwise engage in partisan political activity, as this would not be compatible with your duties as Managing Director of the Fund.

According to the Code of Conduct for the Executive Directors:
4. Executive Directors should observe the highest standards of ethical conduct. In the performance of their duties, they are expected to carry out the mandate of the Fund to the best of their ability and judgment, and to maintain the highest standards of integrity.

and

8. Executive Directors should ensure that Fund property and services are used by themselves and persons in their offices for official business only.

4.3.2. IMF Staff

Staff members need permission to engage in political activities, except for activities such as voting, making legal political contributions, and participating at the local, grass roots, or community level. Staff members may not run for elected public office without obtaining permission. A staff member who accepts a political appointment must offer to resign from the IMF staff. The rules for public statements apply if, for example, IMF staff wish to make a public statement endorsing a national political candidate.

According to the By-Laws Rules and Regulations of the IMF:

N-7. Persons on the staff of the Fund, during their terms of service, including periods of leave with or without pay, shall not hold other public or private employment, engage in any occupation, business activity, or profession, that, in the opinion of the Managing Director, is incompatible with these Rules or the proper performance of their official duties or inconsistent with their position as international civil servants. (Adopted as N-6 September 25, 1946, amended June 22, 1979).

N-8. Persons on the staff of the Fund shall not engage in such political activity as, in the opinion of the Managing Director, is inconsistent with, or reflects adversely upon, the independence and impartiality required by their position as international civil servants. Any person on the staff of the Fund who accepts an office of a political character shall immediately offer to resign from the staff of the Fund. (Adopted September 25, 1946, amended June 22, 1979).

Concerning the use of IMF property, facilities, and supplies, staff has the responsibility to ensure that IMF resources are used for the official business of the IMF and they are expected to devote their time during working hours to the official activities of the IMF. A rule of reason applies to the personal use of IMF premises or equipment.37

4.4. Organisation for Economic Co-operation and Development (OECD)

4.4.1. OECD Secretary-General

The Secretary-General chairs the OECD's Council and heads the Secretariat. Decision-making power is vested in the OECD's Council, made up of one representative per member country and the European Commission. The Council meets regularly at the level of ambassadors to the OECD and decisions are taken by consensus.

The current Secretary General, Angel Gurría, was nominated after several rounds of consultations by the OECD Council in 2006. His mandate was renewed for the period 2016-2021.

No specific code of conduct or other rules were found for the position of OECD Secretary General. It is not clear if the staff regulations applying to OECD officials are also applicable to the Secretary-General.

37 There are also some post-IMF employment restrictions and staff in certain positions must observe a cooling-off period.
4.4.2. **Staff of the OECD**
Regarding political activities, Regulation 4 of the Staff Regulations requires officials to **refrain from seeking or holding public office unless they have the authorisation of the Secretary General**. There is no other rule or defined procedure regarding the situation where the Secretary-General gives the authorisation to the official for seeking/holding public office.

➢ **Relevant rules**

**REGULATION 3**
a) Officials shall:
   i) carry out their duties in accordance with the **highest standards of integrity and loyalty**;
   ii) conduct themselves with **objectivity and impartiality and avoid any conflict of interest**, or appearance of conflict of interest, in the performance of their duties;
   iii) carefully manage the resources of the Organisation for which they are responsible;
   iv) **not use the Organisation's resources for their own personal benefit or for the benefit of third parties**;
   v) report any fraud, corruption or misuse of the Organisation's resources;
   vi) not use their position within the Organisation, its name or logo or any information acquired in the course of their official duties to obtain undue benefits for themselves or third parties, or for any other inappropriate purpose.

**REGULATION 4**
Officials shall:
   a) carry out their official duties and conduct themselves with the tact and discretion that the international character of their duties and the interests of the Organisation require;
   c) **refrain from seeking or holding public office, unless authorised by the Secretary-General**;

**Instructions: Public activities**

104/1 Public activities of a political nature other than seeking or holding public office, though not covered by Regulation 4c), shall nevertheless be subject to other provisions of the Staff Regulations, in particular, Regulations 2a), 3a) ii) and vi), 4 a) and b). Common sense and good judgement are required. For example, an official shall refrain from playing an active or prominent role in a non-governmental organisation which may seek to influence public policy debates within the Organisation. Similarly, an official shall refrain from playing a prominent role in partisan politics in a Member country which may impair the official's working relationship with representatives of the country concerned.

4.5. **Council of Europe (CoE)**

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<th>Statute of the CoE</th>
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**Chapter VI – Secretariat**

**Article 36**

a) **The Secretariat shall consist of a Secretary General, a Deputy Secretary General and such other staff as may be required.**

b) The Secretary General and Deputy Secretary General shall be appointed by the Consultative Assembly on the recommendation of the Committee of Ministers.
c) The remaining staff of the Secretariat shall be appointed by the Secretary General, in accordance with the administrative regulations.

d) No member of the Secretariat shall hold any salaried office from any government or be a member of the Consultative Assembly or of any national legislature or engage in any occupation incompatible with his duties.

e) Every member of the staff of the Secretariat shall make a solemn declaration affirming that his duty is to the Council of Europe and that he will perform his duties conscientiously, uninfluenced by any national considerations, and that he will not seek or receive instructions in connexion with the performance of his duties from any government or any authority external to the Council and will refrain from any action which might reflect on his position as an international official responsible only to the Council. In the case of the Secretary General and the Deputy Secretary General this declaration shall be made before the Committee, and in the case of all other members of the staff, before the Secretary General.

f) Every member shall respect the exclusively international character of the responsibilities of the Secretary General and the staff of the Secretariat and not seek to influence them in the discharge of their responsibilities.

4.5.1. CoE Secretary-General

The Statute of the CoE expressly includes the Secretary-General and the Deputy Secretary General in the Secretariat of the CoE; however, the Staff Regulations define Staff members as those 'appointed in accordance with the conditions' laid down in the Staff Regulations, and under 'under the authority of the Secretary General and answerable to him or her'. In this sense, it is to be assumed that the Staff Regulations do not apply to the CoE Secretary-General as a member of the Staff.

It is the Statute of the CoE which gives some indication on the incompatibilities of the Secretary-General with other positions - Article 36 (d) above:

No member of the Secretariat shall hold any salaried office from any government or be a member of the Consultative Assembly or of any national legislature or engage in any occupation incompatible with his duties.

However, no mention is made about the situation of the Secretary-General wishing to stand for elections while still in the position of leading the CoE.

4.5.2. CoE staff

According to article 33 of the CoE Staff Regulations, any staff member who stands for election to a national parliament or the parliamentary assembly of the CoE or another international parliamentary assembly must notify the Secretary-General who will place the staff member on unpaid leave for the duration of the campaign.

If the staff member runs for public office at local or regional level, the Secretary General will decide according to the interests of the service if the staff member may be granted leave of absence or if he/she must take unpaid leave.

**Article 33 – Incompatibilities**

1. A staff member may not be a member of a national parliament, the Parliamentary Assembly or any other international parliamentary assembly, or hold a post remunerated by a government.

2. A staff member standing for election to a parliament or assembly as referred to in paragraph 1 must notify the Secretary General, who shall place him or her on unpaid leave for the period of the election campaign. If the staff member is elected and chooses to serve his or her political mandate, he or she shall resign from the Council.
Article 34 – Election campaign for an elective mandate at regional or local level

A staff member wishing to stand for public office at regional or local level shall inform the Secretary General, who, in the light of the interests of the service and the duration of the election campaign, shall decide whether the staff member may be granted leave of absence or whether he or she must take unpaid leave.

Article 35 – Acceptance of an elective mandate at regional or local level

The Secretary General shall determine whether and to what extent a staff member may, in addition to his or her official duties, hold an elective mandate at regional or local level or whether he or she must take unpaid leave.

Also of importance is Rule No 1236 of 14 December 2006 on secondary activities of staff members and on publications and lectures dealing with subjects relating to the activities of the Organisation (Articles 27 and 32-35 of the Staff Regulations). Article 5 below also specifies the rules relating to campaigning and election to public offices of CoE staff:

Article 5 – Additional conditions relating to political activities

a. Staff members must not engage in any party political activities on the premises of the Council of Europe or during official journeys.

b. Staff members may not be members of a national parliament, the European Parliament or an international parliamentary assembly.

c. Staff members wishing to stand for election to a national parliament the European Parliament or an international parliamentary assembly must notify the Secretary General who shall place them on unpaid leave for personal reasons for the duration of the election campaign.

d. Staff members wishing to stand for elective office at regional or local level must notify the Secretary General who shall decide whether the staff members concerned shall be granted ordinary leave or unpaid leave for personal reasons for the duration of the election campaign.

e. The Secretary General shall determine whether and to what extent a staff member may, in addition to his or her official duties, hold an elective mandate at regional or local level or whether he or she must take unpaid leave.
5. Comparative analysis of EU Member States’ rules and practices

5.1. Summary of findings

The research into the legal framework of the 28 EU Member States governing the participation of high political office-holders in electoral and selection processes showed that whilst there are a few Member States without any specific or general rules on this matter, the vast majority of the Member States address this question in several ways.

5.1.1. Categories of rules

The relevant rules can be grouped in three major categories, although it should be noted that sometimes the three categories overlap and a strict differentiation is not always possible. Furthermore, it should be pointed out that in some cases, provisions of more than one (or even all) of the categories are present in one and the same Member State.

- Information activity vs political advertising during electoral campaigns: principles of neutrality and of equal opportunities for candidates

Several Member States have established rules limiting the information activity particularly of their national (and regional) governments but also of other state authorities, especially during electoral periods. The need to distinguish between the legitimate information work of state authorities and possible party-political activities is generally based on the constitutional principles of the freedom of the vote and of the neutrality of the public authorities. The principle of the freedom of the vote guarantees the freedom of the elections as a cornerstone of representative democracies and of the legitimising function of elections in the first place. The vote of the electors as an act of formation of a political will must not, therefore, be influenced by the public authorities. In the same way, the principle of neutrality (impartiality) of the public authorities guarantees the equal opportunities of the different political adversaries in the competition for electors’ votes and is closely related to the principle of free elections.

Accordingly, several Member States have rules in place obliging high political office-holders to refrain from using the authority of their office as well as the resources at its disposal for party-political activities in order not to gain an unjustified advantage over their political adversaries and not to influence the process of free formation of the will of the voters.

- Resources and facilities at disposal of public officials to be used exclusively for the exercise of their duties

The second category refers to provisions requiring any public office-holders (and sometimes specifically political office-holders) to use the resources and facilities which are provided to them only for the exercise of their duties and not for any other activities, regardless of their nature. In some cases, rules explicitly mention that such facilities must not be used for party-political activities and electoral campaigning. Exceptions to these rules have been identified in the legislation of some Member States, e.g. with regard to the use for certain facilities (vehicles, personal guards, etc.) for high-ranking office-holders when necessary for their protection.

- Funding of electoral campaigns and of political parties

A third category of rules identified in most Member States are those relative to the financing of electoral campaigns and of the activities of the political parties in general.
Most Member States’ electoral and/or party funding legislation contain rules regarding the exclusiveness and transparency of electoral campaigns funding, which expressly or explicitly prohibit direct or indirect (through advantages) funding of electoral and party-political activities through public resources other than the ones specifically attributed to them by law.

5.1.2. Type of legal norms
The national legal norms addressing the question at stake are of different legal rank:

- Constitutional jurisprudence developing certain constitutional principles;
- Statutory legal provisions contained in electoral legislation, internal rules of procedure or statutes of parliaments and governments;
- Legally non-binding codes of conduct, guidelines and handbooks.

5.1.3. Enforcement
Our research showed that even where there are specific and/or general rules in place addressing the use of public resources for candidates’ campaigning activities, there are barely efficient enforcement rules.

Rules based on the constitutional principle of free elections meet the challenge of providing proof that the activity in question, despite being of party-political nature and yet using the authority and the facilities at the disposal of a public office-holder, has had a bearing on the outcome of the elections; the declaration of the invalidity of elections is seen as an absolute ultima ratio under the application of the principle of proportionality. Rather, political adversaries are often given the possibility to seek an injunction before the national courts so that the office-holder in question refrains from a further use of the resources and the authority of his/her office in an electoral context (e.g. Germany). Some Member States (e.g. Lithuania) provide for the possibility to mark political advertising as such in order to prevent an undue influence of the voters’ choice by using the authority and facilities of a public office.

In the case of rules addressing the issue at stake from the perspective of the electoral campaign funding, in some Member States legislation provides that public resources spent unduly for electoral campaigning are counted as electoral campaign spending and are reimbursed to the electoral authority in order to restore the equality between political adversaries (e.g. Ireland).

5.2. National rules

5.2.1. Information activities vs party-political activities during electoral periods: principles of neutrality of public authorities and of equal opportunity for candidates

Several Member States (Austria, Belgium, Estonia, France, Germany, Italy, Latvia, Lithuania, Malta, the Netherlands, Spain, United Kingdom) expressly impose certain limits on the activities of persons vested with state authority in the run-up to elections so as not to influence the voters’ choice through the use of the authority inherent in certain high-ranking offices as well as the resources at its disposal. Furthermore, such rules seek to prevent that office-holders draw an advantage over their competitors which would breach the principle of equal opportunity for participants within electoral processes.

German constitutional jurisprudence in particular has been cutting-edge for establishing criteria for the co-existence of the exercise of high political public offices with party-
political activities, with case-law dating back to the 1970s. The Court held that statements and the publication of reports on the activity of the state organ in question and other public communication (Öffentlichkeitsarbeit) may not intervene in the electoral campaign and the elections in favour or to the disadvantage of a political party or candidate. Whilst such public communication regarding the activities and results achieved by a state organ are not only possible, but necessary, in a democracy where state power is accountable to the citizens, who should be equipped with the necessary information enabling them to hold public authorities accountable in the first place, public communication finds its limits in the campaign advertising. This is because elections should be transmitting the will of the people to the state authorities and not the other way around. State organs must as such act neutrally during election campaigns (principle of neutrality of state organs).  

If the principle of neutrality of the state organs is violated, then there is also a violation of the principle of equality of opportunities (Chancengleichheit) for political parties and candidates, which is closely related to the principle of equality of the vote, both in its active and passive aspects (Articles 21(1) and 38 of the German Constitution). These principles imply that every political party and candidate are accorded the same opportunities in the election campaign and in the electoral procedure itself so that they have the same chance in the battle for the votes.  

The criteria for the observance of the principle of neutrality is, according to the Bundesverfassungsgericht, to be established separately for each single state authority, taking into account the specific rights and obligations conferred upon them by the Constitution. In this sense, the Court held that the Federal President enjoys a wider scope of discretion than, for instance, members of the Federal Government, taking into account particularly the fact that the Federal President does not stand in a direct competition with political parties for the winning of political influence.  

The Court accordingly imposes higher standards of neutrality on the Federal Government and its members than on other state organs, taking into account its intrinsic relation with the political parties as well as the financial and other means and possibilities of their office that could be used, during an electoral campaign, for purposes other than intended. In this sense, criteria such as the authority with which the state organ in question is equipped, as well as the state resources at its disposal, such as personal, technical, media and financial means, should be taken into account to assess the possibility for the state organ in question to exert influence on the will formation of the people and to cause distortion in the competition between political parties and candidates standing for election.  

- Action as a state authority, politician or private person

The principle of neutrality and the obligation of state organs not to violate the principle of equality of opportunities of political adversaries does not mean, however, according to the Federal Constitutional Court, that persons vested with state authority cannot take  

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38 Ruling of the German Federal Constitutional Court, Second Senate, 16.12.2014, -2 BvE 2/14, para. 33; See also Ruling of the German Federal Constitutional Court, Second Senate, 2.03.1977, -2BvE 1/76, BVerfGE 44, 125.


40 Ruling of the Federal Constitutional Court, Second Senate, 10.06.2014, -2 BvE 4/13-, para. 27.


42 Ibidem, para. 45.
part in electoral campaigns and electoral processes outside their official function. Rather, this would amount to an unjustified discrimination against that person, as well as against the political party to which he or she belongs, if that is the case. According to the Court, political parties in particular have a legitimate interest in involving leading party personalities, occupying high public offices, in electoral campaigns and elections and so to take advantage of their experience in leadership positions. Restricting the participation of persons vested with state authority in electoral processes would lead to an unjustified discrimination against political parties that have come out as a winner of the last elections. Furthermore, the Court highlights that the undertaking of a public office should precisely not lead to a detachment of the person in question from his/her party-political engagements and thus to a de-politicisation of the public authority.

However, in so far as the holder of a public office takes part in the political battle, it must be ensured that he or she does not resort to resources and possibilities related to the office held. If the office holder makes use of the authority of their office or of the resources connected with it, he or she is subject to the principle of neutrality of all state organs.

According to the Federal Constitutional Court, in assessing if there is a violation of the principle of neutrality, one should take into account that no strict distinction is possible between the spheres of activity of the person in question as public office-holder, party politician and private person. The Court established this not only with regard to members of the Federal Government, but also, for instance, for members of the Bundestag. In this sense, there is a breach of the principle of equal opportunities in the political competition where the office-holder in question made use of possibilities that are at his or her disposal because of the office he or she holds, and which are therefore unavailable to his or her political adversaries.

According to the Court, it should be assumed that a public office-holder invoked the authority of his/her office if he or she made statements referring explicitly to his/her office or where the statement refers exclusively to measures and undertakings belonging to his/her current office. Public communication using the official channels of his/her office, such as official website of the office, press release etc., are also seen as an indication for the use of the authority of the office in question. The same applies to the use of resources conferred upon the office-holder for the exercise of his/her official functions with relation to public communication. The Court also sees a use of the authority of an office where a public office-holder makes statements within the framework of an event organised by the institution to which s/he belongs or where s/he participates in an event only due to his/her current office.

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43 Ibidem, para. 50.
44 Ibidem, para. 52.
46 Ibidem, para. 53.
47 Ibidem, para. 54.
49 Federal Constitutional Court, -2 BvE 2/14-, op. cit. paras. 55, 56.
50 Ibidem, para. 57.
51 Ibidem.
In contrast, according to the Court, a public office-holder merely takes part in the political competition if s/he acts in a party-political context. Statements within the framework of party conventions or similar party events have no such effect on the formulation of the will of the voters as to be regarded as violating the equality of opportunities of political adversaries since in this case the person in question is perceived as acting primarily as a party politician.\footnote{Ibidem, para. 58.}

The Court held, furthermore, that the participation in debates, talk shows etc. needs to be assessed in a differentiated manner. The office-holder can participate in these formats in his/her capacity as an office-holder, as a party politician or as a private person. Such debates, particularly if there is a larger number of speakers, aim at the exchange of political arguments and positions regarding a particular issue so that they can be allocated to the political battle. The fact that the public function owner uses his/her official office title is as such no indication of use of the office authority and resources since, according to the Court, office-holders are allowed to use their official office designation also privately.\footnote{Ibidem, para. 59, referring to the ruling of the Constitutional Court of Rheinland-Pfalz, 21.05.2014, op. cit., para. 26.}

The Austrian Federal Constitutional Court has established a similar jurisprudence based on the constitutional principle of the freedom of elections and has found that the use by a public office-holder of the personnel and resources at the disposal of the office-holder presented an intrusion by State authorities into the electoral campaign which was incompatible with the constitutional principle of free elections.\footnote{Austrian Federal Constitutional Court VfSlg 3000/1956.}

In Belgium, Chapter II of the Act governing the limitation and the control of electoral expenses\footnote{Loi relative à la limitation et au contrôle des dépenses électorales engagées pour l'élection de la Chambre des représentants, ainsi qu'au financement et à la comptabilité ouverte des partis politiques - nederlandstalige versie (Act of 4 July 1989 (amended by the Act of 19 May 1994 and the Act of 6 January 2014).} regulates the official communications by the federal government and the presidents of the federal Chambers. More precisely, Article 14(2) states that Ministers and Presidents of the Chambers are only allowed to diffuse communications or information campaigns financed by public money on subjects which are linked to their official functions.

In France, the 1986 Act on freedom of communication\footnote{Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard).} contains rules on political communication. Outside the election period, the Audio-visual Council must distinguish between those interventions by the President of the Republic linked to the national political debate and those that are not. The latter ones are considered to be political communication subject to the rules on pluralism (i.e. equal treatment of speech time reflecting political diversity) whereas the former ones are not. During the election period, according to the Council 2011 guidelines for ensuring pluralism in election time,\footnote{Conseil supérieur de l'audiovisuel, Délibération n° 2011-1 du 4 janvier 2011 relative au principe de pluralisme politique dans les services de radio et de télévision en période électorale.} the interventions of the President of the Republic which, given their content and their context can be associated to the electoral debate (including the political backing of a candidate or a list of candidates or a party), should be accounted for separately. The

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\footnote{52}{Ibidem, para. 58.}
\footnote{53}{Ibidem, para. 59, referring to the ruling of the Constitutional Court of Rheinland-Pfalz, 21.05.2014, op. cit., para. 26.}
\footnote{54}{Austrian Federal Constitutional Court VfSlg 3000/1956.}
\footnote{55}{Loi relative à la limitation et au contrôle des dépenses électorales engagées pour l'élection de la Chambre des représentants, ainsi qu'au financement et à la comptabilité ouverte des partis politiques - nederlandstalige versie (Act of 4 July 1989 (amended by the Act of 19 May 1994 and the Act of 6 January 2014).}
\footnote{56}{Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard).}
\footnote{57}{Conseil supérieur de l'audiovisuel, Délibération n° 2011-1 du 4 janvier 2011 relative au principe de pluralisme politique dans les services de radio et de télévision en période électorale.}
editors of audio-visual services should take into account this fact to ensure that other candidates, lists and parties have, in return, a fair access to the audio-visual channels.

Furthermore, the 2016 law on the modernisation of the rules applicable to the election of the President has also introduced some amendments with regard to the treatment of speech times at election time. Consequently, during the election period, from the date of publication of the list of candidates in the Official Journal to the official date of opening of the campaign (i.e. 15 days before the election), audio-visual editors must ensure 'a fair treatment' of speech times allotted to the candidates. During this period the candidate are no longer subject to the 'same duration' of speech time.

In 2012, a question was put by a member of the Parliament to the Minister in charge of communications on how to account for the speech time of President Hollande during an electoral period. In his reply, the Minister stressed that, under the applicable legal framework, the TV channels must distinguish between the interventions of the President of the Republic according to the topics. Time devoted to interventions on the political debate should therefore account for allotted speaking time of officially declared or presumed candidates.

In Estonia, the principle of equal opportunities for candidates in elections is considered to be enshrined in Article 60 of the Constitution.

In Italy, in Article 9 of the Law 28/2000, where limits to institutional communication are set for the duration of the electoral campaign, it is forbidden to all public administrations to carry out communication activities other than those carried out in an 'impersonal way' and 'essential' for the effective performance of their functions. Institutional communication is defined by Law 150/2000; with this law, 'institutional communication has raised to the role of a function at the service of citizens', in compliance with constitutional principles of impartiality and good functioning of the administration (Article 97 of the Constitution).

The Latvian Law on Pre-election Campaign establishes in Article 33 that 'Placement of interviews with deputy candidates or candidates for the post of the Prime Minister or a Minister, nominated by administrative bodies of a political party or association political parties, as well as to place such articles in which it is indicated that the person mentioned in it is a deputy candidate for the post of the Prime Minister or a Minister nominated by administrative bodies of a political party or association of political parties, is prohibited on election day, as well as 30 days prior to the election day in publications issued by a

59 Available here.
60 Question d'actualité au gouvernement n° 0768G de M. David Assouline (Paris - SOC) publiée dans le JO Sénat du 27/01/2012.
62 See the clarification given by CORECOM - FVG (the regional regulatory Authority for communications in Friuli Venezia Giulia), Guidelines on the rules on communications in election period: the level playing field at local level, Udine February 22, 2008, (pp.2-25).
63 Ibidem p. 27, where the statement of a former Director of AGCOM, Prof. Mazzella, is reported.
State authority or an authority of derived public persons or capital companies, in which
the capital shares (stocks) owned by one or more State capital companies or capital
companies of derived public persons individually or in aggregate exceed 50 per cent.'

The **Maltese** Code of Ethics of Ministers, Parliamentary Secretaries and Parliamentary
Assistants\(^{64}\) establishes that Ministers are required to ensure that there is not conflict of
interest regarding their public duties and their personal interests. They are also required
to separate their role as ministers, members of parliament and their role as members of
a political party.

In the **Netherlands**, the Handbook for upcoming Ministers and State Secretaries\(^{65}\)
establishes, as regards the weekly press conference and TV and radio interview of the
Prime Minister on the decisions of the cabinet and current affairs, that, as a rule, both
the conference and the interviews are suspended in the weeks prior to a general election
and during the time after the dissolution of parliament and before the appointment of a
new cabinet when the outgoing cabinet is taking care of current affairs.

In **Spain**, the Representation of the People Institutional Act\(^{66}\) provides in Article 50(2),
that, between the call of elections and Election Day, public authorities are forbidden to
directly or indirectly organise or finance any event that may contain allusions to
achievements or accomplishments or use images or expressions identical or similar to
those used in the by the political formations concurring in the election.

Regarding the use of official communication channels, the **United Kingdom** Ministerial
Code provides with regard to government ministers that, 'Ministers must only use official
machinery, including social media, for distributing texts of speeches relating to
Government business. Speeches made in a party political context should not be
distributed via official machinery.' (section 8).

The **Lithuanian** Law on Elections to the Seimas of the Republic of Lithuania (Electoral
Law)\(^ {67}\) sets outs conditions applicable for activities of the election campaign, which are
aimed at **influencing voters' behaviour**. Most importantly, Article 54 prohibits taking
advantage of one's official position while engaging in such activities:

>'1. **Anyone shall be prohibited from taking advantage of his official position** in
state or municipal institutions, establishments or organisations, as well as in the
state or municipal mass media for any form of election campaign, or from
instructing other persons to do so, or from trying to exert influence upon the will
of voters in any other manner taking advantage of one's official position. State or
municipal officials, public servants shall be prohibited from taking advantage of
their official position in order to create exclusive conditions for campaigning for
themselves or for their party. A person who violates the provisions of this Article
may be held administratively or criminally liable in accordance with the
procedure laid down by law.'

Legally, this prohibition applies to Members of Parliament too. However, according to
available information, given the fact that Members' political activities are difficult to
dissociate from political agitation/electoral campaign activities, the scope of this

\(^{64}\) Available [here](#).

\(^{65}\) [Handboek voor aantredende bewindspersonen](#).

\(^{66}\) Ley Orgánica 5/1985, de 19 de Junio, del régimen electoral general (LOREG).

\(^{67}\) [Law on Elections to the Seimas of the Republic of Lithuania](#) of 9 July 1992, last amended on 22 March
2016.
prohibition is narrow in practice. A Member of Parliament may not use resources aimed at financing their parliamentary activities for purposes of their political agitation/campaign, and assistants of a MP may not participate in the Member's electoral campaign. Administrative liability in these cases is governed by Article 207 et seq of the Administrative Offences Code, which envisages administrative penalties for infringement of the above rules.

A provision analogous to Article 54(1) laying down the prohibition to take advantage of one's official position is also to be found in the Law governing presidential elections (Law on Presidential Elections, Article 47).

Besides the prohibition to take advantage of one’s official position, the Electoral Law and other acts lay down further conditions and requirements applicable to any form of political advertising. They need to be seen in the context of the principle of equality to be ensured for candidates and political parties. The principle is laid down in numerous documents, including Article 46 of the Electoral Law.\(^68\) The Law on Political Parties equally stipulates that all political parties enjoy equal rights to participate in (European) parliamentary, presidential and municipal elections (Article 13) and that their candidates shall have equal conditions in using public media according to applicable laws.

As for the use of media during election campaign, Article 54(2)2 of the Electoral Law provides that 'If the fulfilment of their duties requires releasing important news to the mass media, they can do so only at a press conference. State mass media or publicly financed programmes of the mass media may broadcast only a recording of the conference or a part thereof which contains no elements of election campaign.' A provision analogous to the above provision is to be found in the law governing presidential elections (Law on Presidential Elections, Article 47).

Further rules regarding political advertising in general as well as its financing are laid down in the Law on Funding (and Control over Funding) of Political Campaigns (in the following Law on Funding) and the accompanying guidelines established by the Central Electoral Commission (Vyriausioji Rinkimų Komisija, VRK). It should be added that the Law on Funding (and Control of Funding) of Political Campaigns applies not only to the elections to Seimas but more generally, including the elections of the Republic's President, European Parliament elections, municipal councils' elections and referendums.

- **Duty to mark and clearly distinguish political advertisement**

  Article 2(8) of the Law on Funding defines political advertising as information which is 'disseminated by a state politician, political party, its member, political campaign participant, on its/his/her behalf and/or in its/his/her interest, in any form and by any means, with or without payment, during the political campaign period or between political campaigns, where such information is intended to influence the motivation of voters when voting in elections or referendums, or where such information is disseminated with the purpose of campaigning for a state politician, a political party, its member or political campaign participant as well as their ideas, objectives or programme.' According to Article 15 of the same law, during a political campaign, 'political advertising must be marked in accordance with the procedure laid down by the

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\(^{68}\) Article 46 Electoral Law: 'after the announcement of the names of candidates and lists of candidates by the Central Electoral Commission, the candidates for Seimas member in constituencies shall have equal rights to speak at voters' meetings or any other meetings, gatherings, conferences as well as through the state mass media, and to announce their respective election programmes.'
law by indicating the source of funding and clearly distinguished from other disseminated information.' Political advertising which is not marked according to the above provision shall be regarded as 'hidden' political advertising and is thereby prohibited; dissemination of such advertising entails liability established by law (Article 2 Law on Funding).

Further guidance regarding the above mentioned rules applicable to political advertising (e.g. duty to mark and clearly distinguish political advertising) is laid down by the Central Electoral Commission (Vyriausioji Rinkimų Komisija). In a decision adopting 'Recommendations regarding political advertising during political campaign', adopted on 4 May 2016, the Commission, inter alia, clarifies what does and what does not constitute political advertising (Chapter I) and reaffirms the principle of equality (par. 17). This recommendation, as it explicitly states, presents the Electoral Commission’s opinion regarding political advertisement which does not enjoy the same legal status as a legal act.

Article 2(8) of the Law on Funding defines political advertising as information which is:

'disseminated by a state politician, political party, its member, political campaign participant, on its/his/her behalf and/or in its/his/her interest, in any form and by any means, with or without payment, during the political campaign period or between political campaigns, where such information is intended to influence the motivation of voters when voting in elections or referendums, or where such information is disseminated with the purpose of campaigning for a state politician, a political party, its member or political campaign participant as well as their ideas, objectives or programme.'

The recommendation referred to gives further detail of what the Central Electoral Commission shall or shall not consider as political advertising. While, for example, 'regular' announcements of informative nature which are done in the course of performing one's work duties and which regard politicians'/parties'/candidates' activities, shall not be regarded political advertisement, such announcements will be regarded as political advertising when they become exceptionally frequent or systematic. The following shall also be considered political advertising: announcing information, pictures or statements of party leaders, party members or other persons performing public (trust) functions, which are not related to the said persons' activities in state institutions of such institutions' competence (par. 4.6 of Recommendations regarding political advertising during political campaign' – in Lithuanian).

The recommendations explicitly address the issue of political advertising via means of electronic communication, by stating that the requirements regarding such advertising are analogous to the requirements regarding any other means of political advertising. As mentioned above, these requirements include the duty to mark political advertising (including reference to its funding source) and to clearly distinguish it (as well as prohibition of external political advertisement in the specified places/locations, including, for example, buildings of public administration). According to paras. 21, 22, the mark of political advertisement in social networks etc. needs to be an inseparable part of the advertisement (so the mark remains attached to the advertisement whenever other network participants share the link). Paragraph 23 recommends to political parties, candidates and other political campaign participants to refer on their own social pages, aimed at political (referendum) campaign, to the fact that this is the (social network) page of the party, candidate or political campaign respectively.
5.2.2. Ban on the use of resources and facilities at the disposal of public officials for activities other than the exercise of their duties

Specific norms on the use of public resources and facilities at the disposal of public office-holders have been identified in the legal orders of several Member States (Croatia, Denmark, Germany, Greece, Ireland, Luxembourg, the Netherlands, Slovenia and the United Kingdom). Whilst some of these provisions are of a fairly general character, referring merely to the obligation of public office-holders to use such resources exclusively for the exercise of the duties inherent to their function, others explicitly establish a prohibition to use such resources for electoral campaigning or other party-political activities.

In this context, Ireland and the United Kingdom both have a very comprehensive set of rules and guidelines.

In Ireland, the Code of Conduct for Members of Dáil Éireann other than Office Holders (as speaker, committee chair, etc.) states that '9. In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended.' In addition, the Code of Conduct for Office Holders stipulates that:

'2.2.3. Office holders are provided with facilities at public expense in order that public business may be conducted effectively. The use of these facilities should be in accordance with this principle. Holders of public office enjoy an enhanced public profile and should be mindful of the need to avoid use of resources in a way that could reasonably be construed as an inappropriate raising of profile in the context of a General Election. Official facilities should be used only for official purposes. Office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which, undoubtedly, are attached to office.'

Furthermore, Ireland has specific rules in place for the use of public facilities by Members of the Parliament (Oireachtas) upon dissolution before general elections. The Houses of the Oireachtas Commission is responsible for drawing up guidelines for Members on the use of public resources following dissolution. The guidelines cover the services and facilities, which continue post dissolution, namely, secretarial staff, use of office and ICT equipment, access to Parliament offices and the use of Parliament telephone, fax and copying facilities. The guidelines also cover the use of facilities which cease to be available on dissolution but which can be retained for use following dissolution, such as material printed in the Parliament printing facility, pre-paid envelopes and stationery/consumables. In addition, the guidelines specify how Members will be required to certify and reimburse the Oireachtas Commission for use of services and facilities provided out of public funds other than in respect of duties as a public representative. The most recent Guidelines on Dissolution (2015) for outgoing

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69 The Irish Parliament (Oireachtas) consists of two chambers: the lower House of Representatives (Dáil Éireann, 158 members), and the upper Senate (Seanad Éireann, 60 members).

70 The Dáil (lower House) is dissolved automatically before the general election and during an interim period between this date and the beginning of the new Parliament. Members of the Dáil stand down on dissolution whereas Ministers only stand down when a new Government is elected. The Seanad Éireann is not dissolved and senators continue to serve as public representatives during the pre-election period.

71 An official summary is also available here.
Members of the Dáil and serving Senators contesting the Dáil General Election, who are not Office Holders, provide that where services and facilities provided out of public funds are used by an outgoing Member of the Dáil or Senator candidate, other than in respect of duties as a public representative during the election period, they must pay the appropriate charge. Staff employed by Members fall within the definition of 'facilities' and any work carried out by such staff for a Member’s general election campaign must be reimbursed to the Commission. Each Member is separately notified of the actual salary of each employee to allow for any such reimbursement. Staff may choose to take annual leave in the dissolution period in order to work in an unpaid volunteer capacity for a Member's General Election campaign, but there is no obligation on the employee of any Member to do so. Members are advised to ensure that adequate holiday records are kept. Section F of the Guidelines stipulates that each individual outgoing Member or Senator candidate must assess the charges payable to the Oireachtas Commission, based on the percentage of his/her use of services/facilities for purposes other than in respect of duties as a public representative in the election period. The responsibility to make such enquiries and maintain such records as are necessary to enable assessment of the charges payable to the Oireachtas Commission rests with each individual outgoing Member or Senator candidate. **Ministers and Ministers of State** must use an official declaration form to declare the use of Oireachtas-provided material and record facilities provided by their Department separately.

As for the **enforcement** of these rules, it should be noted that the Ethics Acts (Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001, together known as 'the Ethics Acts') established an independent 'Standards in Public Office Commission' and a Select Committee on Members' Interests in each House of the Oireachtas, with the aim of monitoring implementation of the requirements and sanctioning members who break the guidelines. The Standards in Public Office Commission is an independent body whose functions include supervising the disclosure of donations and election expenditure, the expenditure of state funding received by political parties and the registration of lobbying and the disclosure of interests and compliance with tax clearance requirements. Complaints regarding Members of Parliament who are office holders are also submitted to the Standards in Public Office Commission for investigation. Complaints about non-office holders are submitted to bodies set up within the Parliament structure, the Committee on Members' Interests of the Dáil Éireann and the Committee on Members' Interests of the Seanad Éireann. As well as investigating and reporting possible contraventions of the Ethics Acts, these committees are also responsible for drawing up the codes of conduct, publishing guidelines and providing advice to ensure compliance with the Acts. Examples of reports published following investigations include a case concerning the use of public resources to support candidates in local elections.

In the United Kingdom, the duties of MPs are set out in a **Code of Conduct and Rules of the House**. The current version of this code, approved by Parliament in March 2015, states that,

'15. Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters. Members shall ensure that their use of public resources is always in support of their parliamentary duties. It should not confer any undue personal or financial benefit on themselves or anyone else, or confer undue advantage on a political organisation.'
MPs receive support from the House of Commons, including an office in Westminster, IT, House of Commons stationery and some insurance and travel expenses. They may also apply for funding from the Independent Parliamentary Standards Authority (IPSA) for a constituency office, meetings with constituents (‘surgeries’), staff, accommodation (if their constituency is outside the London area), travel and subsistence and a number of other essential costs. IPSA stresses that all the costs, which are funded publicly are designed to support MPs in carrying out their parliamentary functions. They are not provided for party political purposes (like campaigning), for any government role, or for private gain.

MPs must apply for reimbursements of expenditure under the MPs’ Scheme of Business Costs and Expenses. The Scheme lists a number of activities, which are not considered necessary for the performance of MPs’ parliamentary functions. These are mostly related to party political activity (which should be paid for by the party or MPs themselves). For example, with regard to staffing costs, ‘staff should not undertake party political duties during office hours, when they are being paid from public funds’. With regard to office expenditure, newsletters and material containing a party political logo or emblem cannot be funded.

The Committee on Standards and the Parliamentary Commissioner for Standards are responsible for monitoring compliance with the Code of Conduct for MPs, in accordance with Standing Orders Numbers 149 and 150 of the House of Commons, respectively. Since the Parliamentary Standards Act 2009, the administration of MPs' salaries and allowances has been controlled by the Independent Parliamentary Standards Authority (IPSA), which has a general duty 'to have regard to the principle that members of the House of Commons should be supported in efficiently, cost-effectively and transparently carrying out their Parliamentary functions'. IPSA is responsible for the system of allowances for MPs, which includes regular and routine publication of MPs' costs and expenses. The Compliance Officer is responsible for investigating allegations of impropriety in relation to allowances, for example, the use of public resources for political campaigning purposes. IPSA has reported that, overall, there has been a high degree of compliance by MPs with the Scheme rules, with only a small number of investigations undertaken by the Compliance Officer.

Government ministers are also bound by further rules and conventions, which are set out in a Cabinet Manual. The manual notes (Chapter 3) that the principles underpinning the standards of conduct expected of ministers are set out in a ministerial code, issued by the Prime Minister of the day. Under the current Ministerial Code, Ministers 'are expected to behave in a way that upholds the highest standards of propriety, including ensuring that no conflict arises or appears to arise, between their public duties and their private interests'. Regarding the use of government property and resources, it is noted (section 6) that, 'Ministers are provided with facilities at Government expense to enable them to carry out their official duties. These facilities should not generally be used for Party or constituency activities. [...] Official facilities and resources may not be used for the dissemination of material, which is essentially party political.'

Regarding the use of official communication channels, section 8 stipulates that, 'Ministers must only use official machinery, including social media, for distributing texts of speeches relating to Government business. Speeches made in a party political context should not be distributed via official machinery.'

As for travel, it is stipulated (section 10) that, 'Official transport should not normally be used for travel arrangements arising from Party or private business, except where this is
justified on security grounds. [...] Where a visit is a mix of political and official engagements, it is important that the department and the Party each meet a proper proportion of the actual cost. The Prime Minister, and any other Minister for whom the security authorities exceptionally consider it essential, may use their official cars for all journeys by road, including those for private or Party purposes'.

In **Croatia**, Article 16(3) of the Political Activity and Election Campaign Financing Act states that: 'Funds from the state budget or from the budgets of local or regional self-government units which are otherwise used by candidates as officials of the Republic of Croatia or authorised local officials in the performance of their duties shall not be used for the purposes of election campaigns. Business premises, company vehicles and office equipment of governmental bodies and local and regional self-government units shall not be used for the purposes of election campaigns, save for individuals subject to special rules on protected persons.' 'Protected persons' are defined by Ordinance on the determination of protected persons, objects and space and the implementation of their protection and security\(^72\) and they include highest state officials like President of the Republic and of the Parliament, Prime Minister and vice presidents of the Government, President of the Constitutional Court, and of the Supreme Court, certain ministers and some other high state officials.\(^73\)

In **Denmark**, whilst no statutory provisions exist, a 2004 report of the Committee on officials' advice and assistance to the Government\(^74\), as well as the 2013 report on special advisors of the ministers\(^75\) stipulate that Ministers should refrain from using 'their' officials and advisors for campaign purposes (but only for their ministerial duties) during the electoral campaign period. When elections are called, the officials and special advisors are relieved of their duties with immediate effect. This practice is specified in a standardised contract for special advisers (in Danish) of ministers, as published by The Agency for the Modernisation of Public Administration, in accordance with the Agency's 2015 guidelines. However, it must be noted that these reports and guidelines are **not legally binding**. The Parliament's President follows the above mentioned practice. The resources of MPs in contrast are provided by their political parties so that they are not subjected to similar guidelines during election period.

In **Germany**, with regard to the Members of the Bundestag, the Act on Members of Parliament\(^76\) stipulates in Article 50(4) that political groups may use financial and other benefits that have been attributed to them only for their work according to the Constitution, the Act on Members of Parliament and the Rules of Procedure of the Bundestag. Political groups must not use these financial and in-kind benefits for party-related activities, for instance the financing of electoral campaigns.

In **Greece**, a recently (2016) adopted deontology code for Members of Parliament provides that 'Members of Parliament should ... make prudent use and management of

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\(^73\) Articles 11-13 of the Ordinance on the determination of protected persons, objects and space and the implementation of their protection and security (available only in Croatian).

\(^74\) Betænkning fra Udvalget om embedsmænds rådgivning og bistand til regeringen/ report nr. 1443, chapter 5.2.3 and 6.2.5.1.

\(^75\) Report nr. 1537 om Ministrenes særlige rådgivere.

resources and allowances the Parliament makes available to them, solely for the unhindered exercise of their work and the fulfilling of their parliamentary duties’.

In **Luxembourg**, the 2014 Code of Conduct for Members of Government\(^{77}\) establishes in Article 6(1) that the resources made available by the State to the members of the Government (e.g. human resources, telephone, fax, PC) are reserved for the exercise of their functions.

In the **Netherlands**, with regard to a possible improper use of resources (personal and material) provided to Members of Parliament, the Regulation Financial Support Groups\(^{78}\) is applicable. The Regulation, which provides parliamentary groups (factions) with financial support to cover their personal and materials costs with a view to promoting their functioning, explicitly forbids, under its Article 3, the use of these resources to cover expenses for which the MPs’ or the political parties may subsequently receive funding pursuant to the Act on Indemnities Members of the House of Representatives\(^{79}\) and the Act on financing of political parties.

More detailed integrity rules for members of government are contained in the ‘**Handbook for upcoming Ministers and State Secretaries**’.\(^{80}\) Chapter 5 of the Handbook is dedicated to aspects related to the legal position of ministers and state-secretaries and the **facilities they are provided with to enable them to carry out their official duties**, as laid down in the Act on the legal position of members of government\(^{81}\) and further elaborated in the Decree on facilities for members of government.\(^{82}\) As a general rule, these facilities fall to the public purse and must be **made visible and accounted for in the budget of the relevant ministry**. When paid by the minister or state-secretary at their own account, the ‘functionality’ of the expenses must be explicitly justified in order to be reimbursable. Since 2013, ministers’ and state secretaries’ expense claims are published online for transparency reasons.\(^{83}\)

Furthermore, the rules as set out in the two following parliamentary papers can be considered relevant for public office holders running for re-election or participating in a selection procedure. In a letter to the House of Representatives, dated 13 October 1978 (**Parliamentary paper 15300, Chapter III, no. 9**), the Prime Minister stipulated that any **intention** a minister or state secretary in office may have to accept an ancillary function or to have talks on a future post should be submitted to the Prime Minister. A similar letter, dated 30 March 1983, adds that the aforementioned provision should be reviewed in such a way that ‘with regard to the acceptance of functions after resignation no arrangements are allowed to be made during the term of office. Only in exceptional circumstances and with the approbation of the Prime Minister a derogation of this behavioural line can be allowed’ (**Parliamentary paper 1755, no. 52**).

In **Slovenia**, Article 8 of the **Code of conduct for civil servants** adopted in 2001 states that civil servants shall not make use of their position for private interests. The Code of Conduct applies *mutatis mutandis* also to ministers and other state officials. Slovenia has

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78 Regeling financiële ondersteuning fracties Tweede Kamer 2014.
79 Wet schadeloosstelling leden Tweede Kamer.
80 Handboek voor aantredende bewindspersonen.
81 Wet rechtspositie ministers en staatssecretarissen.
82 Voorzieningenbesluit ministers en staatssecretarissen.
83 Freedom of Information Act - Wet openbaarheid van bestuur.
not yet adopted a Code of Ethical Conduct for Members of Parliament despite calls for it being made by the Council of Europe GRECO. On 7 November 2014 a group of MPs submitted a proposal for a recommendation of the code of ethical conduct for the Members of Parliament. Article 6 of the proposed recommendation states ‘A Member of Parliament cannot use information received in connection with exercising his/her function for his/her own material benefit or material benefit of related persons. When implementing his/her own private interest he/she may not benefit from any additional rights or benefits compared to other citizens of the Republic of Slovenia.’ The proposal for a recommendation was rejected in December 2014 by the Legal Service of the Parliament as well as on in January 2015 by the Slovenian Government.

5.2.3. Funding of electoral campaigns and of political parties

Virtually all Member States have specific rules, either in their electoral legislation or in legislation regarding political parties, regarding the financing of electoral campaigns and political parties in general.

Some national rules limit themselves to enumerate in an exclusive manner the possible sources for funding of electoral campaigns, thus implicitly excluding the use of other resources to this end, which can be exported to the use of public resources by high political office-holders for their electoral campaigns. Conversely, other provisions state explicitly that no public resources other than those attributed to political parties and other election candidates may be used for electoral campaigning.

By way of example, some national rules are presented below.

In Belgium, in 2007, the Commission de contrôle des dépenses électorales et de la comptabilité des partis politiques (Committee for the control of the election expenses and the accounting of political parties) published its commentaries on the Act of 19 May 1994 governing the limitation and the control of electoral expenses and stated under the comments on Article 4 that the parties and the candidates may not use the help of cabinets, institutions and the administration or the help of any public organism or service for their electoral campaigns (see point E on page 59). Before the last federal elections in 2014, the conference of the presidents of all Belgian parliaments confirmed in their agreement of 21 January 2014 that the above mentioned commentaries were still valid. Members of the Parliament or the Government who breach these rules can be sued before the Court of Justice under Article 245 of the Penal Code.

In France, the members of government running for re-election are subject to the general legal framework governing elections enshrined in the Electoral Code as recently modified by the 2016 Law on the modernisation of the rules applicable to the election of the

84 ‘E. Attention !

La Commission de contrôle rappelle que les partis, les listes et les candidats ne peuvent mener aucune campagne électorale avec la collaboration de cabinets ministériels, d'institutions et d'administrations fédérales, régionales, communautaires, provinciales et communales, ni avec la collaboration d'un organisme ou service public, quel qu'il soit.’


86 Code Pénal - nederduitstalige versie - deutschsprachige Fassung.
President. Pursuant to Articles L.52-4 and L.52-12 of the Electoral Code, all funds received within the 12 months prior to the election date for financing the campaign of a candidate must be declared. Resources and spending must be clearly identified in a campaign account (‘compte de campagne’). The candidate must estimate and include as resources and spending all advantages direct or indirect and all services and gifts in nature he/she receives. Furthermore, Article L.52-8 of the Electoral Code forbids the participation of legal persons other than political parties or groups to the financing of the electoral campaign of a candidate in whatever form (e.g. gifts, services, and other direct or indirect advantages).

The national commission for campaigns (‘Commission nationale des comptes de campagne et des financements politiques’) is the administrative body in charge of assessing compliance with the electoral code of the candidates' campaign expenditures. The Commission issued an opinion in 2011 on how some costs incurred by the State with regard to Mr. Sarkozy, who was at the time acting President (and presumably a potential candidate for re-election), should be considered. The Commission held that:

- the costs related to travels of the President of the Republic and his staff and as well the cost of the security and protection measures linked to his travel cannot be considered as costs of campaign (‘dépenses du compte de campagne’) because they cannot be dissociated from the exercise of the presidential mandate;
- the costs related to political events in which the President takes part - before he officially announces his candidacy - and where he discusses elements which can be considered to be part of a political programme of a future candidacy, must be re-integrated into the costs of the official campaign after his candidacy has been made official.

The Conseil constitutionnel, which oversees the regularity of the legislative and presidential elections in France, has also provided some guidance on this issue. In a 2013 ruling (Decision n° 2013-156 PDR of 4 July 2013), it upheld a decision of the French national commission for campaigns accounts and political financing stating that expenditures in relation to a public meeting held by Mr Sarkozy (then elected President) before he declared his candidacy (for a second presidential mandate) should have been incorporated in the campaign account because of their electoral nature.

Under Article 168(3) of Bulgaria’s Election Code, the gratuitous use of public administrative resources in connection with the election campaign is prohibited.

The Croatian Political Activity and Election Campaign Financing Act prohibits state officials from using the resources at their disposal for performance of their regular duties for financing election campaigns (Article 16(3)).

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87 Loi ordinaire et loi organique du 25 avril 2016 de modernisation des règles applicables aux élections et à l’élection présidentielle.
88 See Article 2 of Act n° 2016-508 of 25 April 2016 modifying Article L. 52-12 of the electoral code.
89 CNCCFP, Réponse de la commission à M. Daniel Vaillant, député de Paris, mandataire de François Hollande, 13 décembre 2011.
90 Article 16(3) of the Political Activity and Election Campaign Financing Act: ‘Funds from the state budget or from the budgets of local or regional self-government units which are otherwise used by candidates as officials of the Republic of Croatia or authorized local officials in the performance of their duties shall not be used for the purposes of election campaigns. Business premises, company vehicles and office equipment of governmental bodies and local and regional self-government units shall not be used for
In Estonia, Article 121(3) of the Political Parties Act provides that 'A political party is prohibited to use public funds for conducting or organising the election campaign of the political party or a person running in the list of the political party, except for the allocations from the state budget based on this Act. An election coalition, a single candidate, a person running in the list of a political party and a person running in the list of an election coalition are prohibited to use public funds for conducting or organising their election campaign.' Pursuant to subsection 8, a political party is required to draw up a quarterly report on their expenses and submit it to the Political Party Funding Supervision Committee. The Committee was established in 2011, on the basis of the Political Parties Act, to verify the legality of how political parties, election coalitions and single candidates receive and spend funding and follow other rules pursuant to the Political Parties Act. Regarding the usage of administrative resources by candidates in the framework of an electoral campaign, the Chancellery of the Riigikogu has taken note that there are no legislative measures, but it is mostly regulated on the basis of codes of conduct of different public institutions. The Chancellery also refers to public scrutiny and ethics as factors that prevent abuse by state officials.

In Italy, Act n. 515/1993 on electoral campaigns sets a limit to sustainable spending by both individual candidates and political parties or groups participating in the election campaign. Members of both Chambers are required, within three months of proclamation, to present at the Office of Presidency of the Chamber (and to the relevant Regional Board for electoral guarantee) a declaration of expenses incurred or the evidence that they have used only propaganda means provided by their own party.

The Latvian Law on election campaign provides in Section 33 that the use of administrative resources in election campaign is prohibited.

In Poland, the only source of financing an electoral committee of a political party may resort to is – under Article 132 of the Electoral Code – the financial means of that party. Electoral committees may not receive any non-pecuniary gifts, save for unpaid labour of individuals distributing posters and leaflets, as well as office work performed without remuneration by natural persons (Article 132(5)).

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the purposes of election campaigns, save for individuals subject to special regulations on protected persons.'
6. Main references

6.1. General


OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Political Party Regulation, adopted by the Venice Commission on 15/16 October 2010.


6.2. EU legal framework

- European Parliament
  

  Rules on the use of appropriations from budget item 400, adopted by the Bureau on 30 June 2003, last amended on 27 April 2015.

  Bureau Notice No 2/2015: New decisions concerning the implementation of the Statute for Members regarding parliamentary assistance.


  Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest.

- Statute for Members of the European Parliament.


- European Commission

  Code of Conduct for Commissioners.

  Code for Good Administrative Behaviour for Staff of the European Commission.

- Other sources


  Case C-432/04, Commission v Edith Cresson.


  Van Gerven, W., Political, Ethical, Financial and legal Responsibility of EU Commissioners.

  Update of the study on 'The Code of Conduct for Commissioners - improving effectiveness and efficiency' of Policy Department D (Budgetary affairs).
6.3. International organisations

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The role of the Secretary-General and Ethical Standards, UN website.

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UN General Assembly Resolution 11 (I) on the Terms of appointment of the UN Secretary General, adopted on 24 January 1946.


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The Roadmap, UN Ethics Office, April 2014.

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- International Monetary Fund (IMF)

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'Making a Difference: A Five-Year Review', Annual Report 2014, the Ethics Office, IMF.

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- Organisation for Economic Co-operation and Development (OECD)

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Provisions governing the activity of high political office-holders in election or selection processes

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Council of Europe (CoE)

Statute of the CoE

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Resolutions on the Council of Europe Staff Regulations.

Resolution Res(2004)5 amending the Staff Regulations (Articles 33, 34, 35 and 45, paragraph 3), Committee of Ministers, 8 July 2004.

Charter on professional ethics of 15 July 2005.

Rule No 1236 of 14 December 2006 on secondary activities of staff members and on publications and lectures dealing with subjects relating to the activities of the Organisation (Articles 27 and 32-35 of the Staff Regulations).

Implementing measures (internal link) for the Statute for Members of the European Parliament:

Article 10

Entitlement to reimbursement for duty travel

1. Members shall be entitled to reimbursement of expenses actually incurred in undertaking:

(a) journeys to and from Parliament’s places of work or the venues for meetings of one of its official bodies, as defined in paragraph 3, hereinafter referred to as 'ordinary travel expenses';

(b) journeys undertaken in the performance of their duties outside the Member State in which they were elected, in keeping with the conditions laid down in Article 22, hereinafter referred to as 'additional travel expenses';

(c) journeys undertaken in the Member State in which they were elected, in keeping with the conditions laid down in Article 23.

2. The following shall also be regarded as ordinary travel expenses: travel expenses incurred by Members in undertaking any specific mission authorised by the President, the Bureau or the Conference of Presidents.

2a. The following shall also be regarded as ordinary travel expenses: travel expenses incurred by the Chairs of committees or sub-committees in attending Council meetings.

3. 'Official Parliament bodies' shall mean Parliament bodies, as defined in Title I, Chapter 3, of Parliament's Rules of Procedure, along with the parliamentary committees, the interparliamentary delegations and other delegations constituted on the basis of those Rules of Procedure, the political groups and the other bodies authorised by the Bureau or the Conference of Presidents.

Subsection 2 – Provisions applicable to ordinary travel expenses

Article 16

Days on which travel is undertaken

1. The journeys referred to in Article 10(1), point (a) must be undertaken only for the purpose of attending official activities taking place on days set aside for them in Parliament's official calendar of business.

2. The journeys referred to in Article 10(2) and (2a) must be undertaken on the days fixed by the body empowered to authorise travel.

Article 18

Arrangements

1. Members shall be entitled to reimbursement of the expenses incurred in making one return journey per Parliament working week between their place of residence or the capital of the Member State in which they were elected and a place of work or meeting venue (hereinafter referred to as 'main journey').
2. Except during weeks set aside in Parliament's official calendar of business for activities away from its places of work, Members shall also be entitled to reimbursement of the expenses incurred in making one return journey in the middle of a Parliament working week between a place of work or a meeting venue and their place of residence or another point of departure in the Member State in which they were elected (hereinafter referred to as 'intermediate journeys').

3. The entitlement to reimbursement of expenses incurred in making intermediate journeys shall be independent of the entitlement to reimbursement of the travel expenses incurred in making journeys within the Member State in which a Member was elected, as referred to in Article 10(1), point (c).

4. Members shall not be entitled to any reimbursement in respect of journeys undertaken using a means of transport made available by Parliament.

5. Members who were unable to use an official car shall be entitled, on presentation of supporting documents, to reimbursement of taxi fares incurred in making journeys between the airport or station of arrival or departure and the place of work or meeting venue. The rules governing the reimbursement of taxi fares, and the reimbursement ceilings, shall be laid down by the Bureau.

Article 19

Entitlement to the distance and duration allowances

1. In respect of journeys within the European Union, Members shall be entitled to distance and duration allowances intended to cover all travel-related expenses. This entitlement shall apply only to the main journey within the meaning of Article 18(1).

3. No entitlement to the distance and duration allowances shall arise in respect of the journeys referred to in Article 10(1), points (b) and (c) or in the cases referred to in Article 18(4).

Article 22

Additional travel expenses

1. The maximum annual amount which may be reimbursed in respect of travel expenses incurred in the cases referred to in Article 10(1), point (b) shall be EUR 4 264.

Article 23

Travel expenses incurred in the Member State of election

1. The entitlement to the reimbursement of travel expenses incurred in the Member State in which a Member was elected, as referred to in Article 10(1), point (c), may not exceed, per calendar year:

(a) 24 (return) journeys by air, rail or boat; Members elected in mainland France may not make more than two journeys to the overseas departments and regions.
8. Annex II – EU Member States' rules

8.1. Belgium

Any expenses by the political parties and their candidates who run for elections fall under the law of 4th July 1989 (amended by the law of 19th of May 1994 and the law of 6 January 2014) governing the limitation and the control of expenses. Article 4 of this law defines the meaning of 'expenses linked to electoral propaganda' by 'all expenses and all financial commitments related to verbal messages, writings, sound and visuals for favourably influencing the result of a political party and its candidates' and this within the 4 month preceding the elections.

Chapter II of the law regulates the official communications by the federal government and the presidents of the federal Chambers; more precisely Art. 14/2 states that the ministers and presidents of the Chambers are only allowed to diffuse communications or information campaigns financed by public money on subjects which are linked to their attributions.

In 2007 the Commission de contrôle des dépenses électorales et de la comptabilité des partis politiques (control committee of the election expenses and the accounting of political parties) published its commentaries on the law of 19th of May 1994 and stated clearly under the comments on Article 4 that the parties and the candidates may not use the help of cabinets, institutions and the administration or the help of any public organism or service for their electoral campaigns (see point E on page 59).

Before the last federal elections in 2014, the conference of the presidents of all Belgian parliaments confirmed in their agreement of 21 January 2014, that the above mentioned commentaries were still valid.

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91 4 JUILLET 1989. - Loi relative à la limitation et au contrôle des dépenses électorales engagées pour l’élection de la Chambre des représentants, ainsi qu’au financement et à la comptabilité ouverte des partis politiques - nederlandstalige versie (Dutch version).

92 'Art. 4, § 1. Sont considérées comme dépenses de propagande électorale pour l’application de la présente loi toutes les dépenses et tous les engagements financiers afférents à des messages verbaux, écrits, sonores et visuels destinés à influencer favorablement le résultat d’un parti politique et de ses candidats et qui, selon le cas sont émis dans les quatre mois précédent les élections organisées en application de l’article 105 du Code électoral ou dans le cas d’élections extraordinaires pendant la période qui prend cours le jour de la publication au Moniteur belge de l’arrêté royal portant convocation des collèges électoraux de la Chambre de représentants et se termine le jour des élections. Toutefois si, en cas d’élections extraordinaires, la publication dudit arrêté royal a lieu après le début de la période précitée de quatre mois, le délai déjà écouté est pris en compte.‘

93 'Art. 14/2, § 1er. Le gouvernement fédéral, un ou plusieurs de ses membres, et les présidents des Chambres fédérales ne peuvent diffuser des communications ou mener des campagnes d’information destinées au public et financées directement ou indirectement par des fonds publics que sur des matières qui relèvent de leurs attributions.’

94 'E. Attention !

La Commission de contrôle rappelle que les partis, les listes et les candidats ne peuvent mener aucune campagne électorale avec la collaboration de cabinets ministériels, d’institutions et d’administrations fédérales, régionales, communautaires, provinciales et communales, ni avec la collaboration d’un organisme ou service public, quel qu’il soit.’
Members of the Parliament or the Government who breach these rules can be sued before the court of justice under Article 245 of the Penal Code.

**Sources:**

- The Constitution
- The official website on elections and especially:
  - Réglementation - Le Code électoral (coordination officieuse jusqu’au 15.02.2014)
  - Les conditions d’éligibilité
  - Dépenses électorales

**Parliament:**

- Règlement de la Chambre and the Annexes
- Code déontologique des membres de la Chambre des représentants
- Fiches info parlementaires, especially
  - 09.00. La Chambre des représentants - Élection
  - 20.00. Le gouvernement fédéral - Démission

### 8.2. Bulgaria

- Legal framework - overview

The legal framework applicable to members of government standing as candidates in elections in Bulgaria comprises the Constitution of the Republic of Bulgaria (Конституция на Република България) and the Election Code (Изборен Кодекс). The Election Code entered into force on 5 March 2014 and applies to elections for Members of the National Parliament; President and Vice President of Bulgaria; Members of the European Parliament for Bulgaria; municipal councillors; municipality mayors, borough mayors and mayoralty mayors.

Since Bulgaria's Election Code of 2014 was adopted just two years ago, case law and academic studies on its implementation are relatively scarce. In a Joint Opinion on the Draft Election Code of Bulgaria, the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) identified certain issues of concern and made recommendations to address them.

In its Limited Election Observation Mission Final Report on Republic of Bulgaria Early Parliamentary Elections 5 October 2014, the OSCE/ODIHR noted that a new Electoral Code was used for the first time for parliamentary elections, after being adopted in
Provisions governing the activity of high political office-holders in election or selection processes

March 2014 and subsequently amended in April. The report points out that, although the new Electoral Code generally provides a sound basis for the conduct of democratic elections, a number of previous OSCE/ODIHR recommendations remain unaddressed. The authors of the report are worried that certain provisions contravene OSCE commitments and international standards, including concerning the principles of universal and equal suffrage and the use of national minority languages to campaign. The report also makes a number of priority and other recommendations. As regards the election campaign, the OSCE/ODIHR recommends that the authorities issue clear and comprehensive guidelines on the use of public and private space for campaign purposes to ensure equal opportunity and sufficient access for all electoral contestants.

According to Article 57(1) of the Election Code, the Central Election Commission shall, inter alia:

1. Implement the activities and exercise control as to the application of this Code and the statutory instruments related thereto;
2. Implement methodological guidance and exercise control over the operation of the election commissions;
3. Issue methodological guidelines for the operation of the election commissions in application of this Code.

However, no specific guidelines issued by the Central Election Commission regarding members of government standing as candidates have been identified.

- **Applicable legal provisions**
  Bulgarian law contains specific provisions imposing obligations and restrictions in order to ensure that members of government and civil servants standing as candidates in elections in Bulgaria do not draw an unjustified advantage over their competitors. These obligations and restrictions could be divided in three groups as follows:

  - **Candidates’ leave**

    Under Article 65(2) of the Bulgarian Constitution, a candidate for a National Parliament seat who is in civil service shall suspend its performance upon the registration of his candidacy.

    In its Decision No 8 of 6 May 1993 on Constitutional case No 5/1993 r, the Constitutional Court of Bulgaria pointed out that there is no legal definition of the term ‘civil service’ and therefore the meaning and content of this concept must be interpreted in accordance with the specific objectives of the legal provisions in question.

    Furthermore, in its Decision No 9 of 8 May 2001 on Constitutional case No 9/2001, the Constitutional Court of Bulgaria held that the provision of Article 65(2) of the Bulgarian Constitution does not apply to the Prime Minister, Deputy Prime Ministers and Ministers. They are political figures and members of government who carry out the domestic and foreign policy of the Republic of Bulgaria. In order not to leave the country without a legitimate government, they can exercise their functions also in the case of registering their candidacies for Members of the National Parliament.

  - **Article 161(1)**

    Article 161(1)\(^{99}\) of Bulgaria’s Election Code provides that any candidate, who is a central or local government authority or who holds office in the administration of a central or local government authority, with the exception of any candidate for municipal councillor,\(^{99}\)
shall **mandatorily use**, at his or her choice, either **unpaid service leave or paid annual leave** for the period commencing upon the registration and ending upon the declaration of the election results.

**Article 161(2)** stipulates that any candidate for municipal councillor, who has entered civil service, shall **mandatorily use a leave** for the days on which he or she participates in election campaign events during working time.

According to **Article 161(5)**, the provisions of **Article 161(1) shall not apply** to the Prime Minister, the deputy prime ministers, the ministers, the President and the Vice President of the Republic. The credentials thereof shall subsist even after the registration thereof as candidates.

**Article 161(6)** stipulates that the provisions of **Article 161, paragraphs (1), (3), (4) and (5) shall furthermore apply** to the candidates for Member of the European Parliament for the Republic of Bulgaria who occupy any of the positions covered under **Article 389** herein.

- **Election campaign financing**

Under **Article 168(3)** of Bulgaria's Election Code, it shall be prohibited to use public administrative resources gratuitously in connection with the election campaign.

- **Prohibition of canvassing**

Under **Article 182(1)** of Bulgaria's Election Code, no canvassing shall be admissible at State and municipal offices, institutions, State-owned and municipal-owned enterprises and at commercial corporations wherein the State or a municipality holds a participating interest in the capital exceeding 50 per cent.

According to **Article 182(3)**, it shall be prohibited to use State-owned or municipal-owned transport for canvassing.

**Further reading**

- [Elections in Bulgaria](https://www.osce.org/cdd/75070), OSCE
- [The Central Election Commission of the Republic of Bulgaria](https://www.centralkomisia.com), official Internet site.

### 8.3. Czech Republic

In the Czech Republic, there are **no specific rules** stipulating that holders of high political offices shall not use the resources provided to them in their capacity for their re-election/selection procedures in international organisations.

- Existing sources examined:
- Statute of the government
- Law on election for the president of the CR, Act No 275/2012 Coll.
- Under negotiation / in preparation code of conduct for the members of parliament
- the Act on financing of political parties (approved by the Senate, will be dealt with by the Chamber of Deputies).
- the new (anticorruption) version of the Act on Public Prosecutor's Office (submitted to the Parliament).

8.4. Denmark

There is no specific legislation regulating this area in Denmark. However, a 2004 report (Betænkning fra Udvalget om embedsmænds rådgivning og bistand til regeringen/Report of the Committee on officials' advice and assistance to the Government, report nr. 1443, chapter 5.2.3 and 6.2.5.1), as well as the 2013 report nr. 1537 om Ministrene særige rådgivere/Special advisors of the ministers) specify the use of officials by ministers during election campaigns, saying that ministers should refrain from using 'their' officials and advisors for campaign purposes (only for their ministerial duties) during the campaign period. When elections are called, the officials and special advisors are relieved of their duties with immediate effect. This practice is specified in a standardized contract for special advisers (in Danish) of ministers, as published by The Agency for the Modernisation of Public Administration, in accordance with the Agency's 2015 guidelines.

However, it must be noted that these reports and guidelines are not legally binding.

The Parliament's President follows the above mentioned practice. In the case of MPs, their resources are provided by the parties; this means that there are no changes when elections are called.

8.5. Germany

- Principles of neutrality and of equal opportunities according to the case law of the German Federal Constitutional Court

German statutory law does not contain any ban on the possibility for persons vested with the function of state authority to participate in election campaigns, be it for re-election to the same office or for the election or appointment to another political or high public office. This does not mean, however, that persons vested with state authority are free to act without any diligence when taking part in electoral processes while still in office. The German Federal Constitutional Court (Bundesverfassungsgericht) has established in a
long-standing jurisprudence detailed guidelines to be observed by state organs and the persons vested with state authority before and during elections.

The Court had the opportunity to assess both statements and the publication of reports etc. by state authorities in the run up and during electoral campaigns as well as the use of public means for the participation in electoral campaigns. Particularly with regard to financial means, as well as other means at the disposal of any state organ for the fulfilment of their function, the Court noted that these are generally provided by all citizens, regardless of their political ideology. Such means are entrusted to the state authorities for their use for the common interest and welfare. This commitment of the means at disposal to state authorities would be undermined if, especially in a process like the electoral one that relates to the entirety of an entity, they would be used for the advantage or disadvantage of political parties or candidates.¹⁰⁰

Furthermore, with regard to statements and the publication of reports on the activity of the state organ in question and other public communication (Öffentlichkeitsarbeit), the Court held that these may not intervene into the electoral campaign and the elections in favour or to the disadvantage to a political party or candidate. Whilst such public communication regarding the activities and results achieved by a state organ are not only possible but necessary in a democracy where state power is accountable to the citizens, who should be equipped with the necessary information enabling them to hold public authorities accountable in the first place, public communication finds its limits in the campaign advertising. This is because elections should be transmitting the will of the people to the state authorities and not the other way around. This is why, according to the Court, state authorities must not, through the use of particular measures, exert an influence on the formation of the will of the people at the elections and also in their run-up. State organs must as such act neutrally during election campaigns (principle of neutrality of state organs, Neutralitätsgebot).¹⁰¹

If the principle of neutrality of the state organs is violated, then there is also a violation of the principle of equality of opportunities (Chancengleichheit) for political parties and candidates enshrined in the German Constitution (Articles 21(1) Grundgesetz). In the context of elections, the principle of equality of opportunities is closely related to the principle of equality of the vote both in its active and passive (candidates) aspects (Articles 21(1) in conjunction with Article 38 Grundgesetz). These principles imply that every political party and candidate is accorded the same opportunities in the election campaign and in the electoral procedure itself so that they have the same chance in the battle for the votes.¹⁰²

The criteria for the observance of the principle of neutrality is, according to the Bundesverfassungsgericht, to be established separately for each single state authority, taking into account the specific rights and obligations conferred upon them by the Constitution. In this sense, the Court held that the federal president (Bundespräsident) enjoys a wider scope of discretion than, for instance, members of the Federal Government, taking into account particularly the fact that the Federal President does not

¹⁰⁰ Ruling of the German Federal Constitutional Court, Second Senate, 2.03.1977, -2BvE 1/76, BVerfGE 44, 125, para. 53.
¹⁰¹ Ruling of the German Federal Constitutional Court, Second Senate, 16.12.2014, -2 BvE 2/14, para. 33; See also BVerfGE 44, 125, op. cit.
¹⁰² Ibidem, para. 30.
stand in a direct competition with political parties for the winning of political influence. This view has been criticised by some commentators arguing that precisely the representative and integrational function of the Federal President should be seen as requiring higher standards of neutrality, notably during an electoral campaign.

The Court accordingly imposes higher standards of neutrality on the Federal Government and its members than on other state organs, taking into account its intrinsic relation with the political parties as well as the financial and other means and possibilities of their office that could be used, during an electoral campaign, for purposes other than intended. In this sense, criteria such as the authority with which the state organ in question is equipped, as well as the state resources at its disposal, such as personal, technical, media and financial means, should be taken into account to assess the possibility for the state organ in question to exert influence on the will formation of the people and to cause distortion in the competition between political parties and candidates standing for election.

- Action as a state authority, politician or private person

The principle of neutrality and the obligation of state organs not to violate the principle of equality of opportunities of political adversaries does not mean, however, according to the Federal Constitutional Court, that persons vested with state authority cannot take part in electoral campaigns and electoral processes outside their official function. Rather, the impossibility or difficulties for a person vested with state authority to take part in elections, election campaigns and other selection procedures would amount to an unjustified discrimination against that person, as well as against the political party to which s/he belongs, if that is the case. According to the Court, political parties in particular have a legitimate interest in involving leading party personalities, occupying high public offices, in electoral campaigns and elections and so to take profit of their experience in leadership positions. Restricting the participation of persons vested with state authority in electoral processes would lead to an unjustified discrimination against political parties that have come out as a winner of the last elections. Furthermore, the Court highlights that the undertaking of a public office should precisely not lead to a detachment of the person in question from his/her party-political engagements and thus to a de-politicisation of the public authority.

However, in so far as the holder of a public office takes part in the political battle, it must be ensured that s/he does not resort to resources and possibilities related to the office s/he holds. If the office holder makes use of the authority of his office or of the resources connected with it, s/he is subjected to the principle of neutrality of all state organs.

103 Ruling of the Federal Constitutional Court, Second Senate, 10.06.2014, -2 BvE 4/13-, para. 27.
104 S. Tannenberg and H. Nemecek, Neutralitätsgebot für Mitglieder der Bundesregierung-Fall Schwesig, Neue Juristische Wochenschrift 2015, p. 209.
106 Ibidem, para. 45.
107 Ibidem, para. 50.
108 Ibidem, para. 52.
110 Ibidem, para. 53.
According to the Federal Constitutional Court, in assessing if there is a violation of the principle of neutrality, one should take into account that no strict distinction is possible between the spheres of activity of the person in question as public office-holder, party politician and private person. The Court established this not only with regard to members of the Federal Government, but also, for instance, for members of the Bundestag.

In this sense, there is a breach of the principle of equal opportunities in the political competition where the office-holder in question made use of possibilities that are at his/her disposal because of the office s/he holds, and which are therefore unavailable to his/her political adversaries. Whether a public office-holder has acted making use of the authority of his office or of the resources connected to this office needs to be assessed taking into account the circumstances of each particular case.

According to the Court, it should be assumed that a public office-holder invoked the authority of his/her office if s/he made statements referring explicitly to his/her office or where the statement refers exclusively to measures and undertakings belonging to his/her current office. Public communication using the official channels of his/her office, such as official website of the office, press release etc., are also seen as an indication for the use of the authority of the office in question. The same applies to the use of resources conferred upon the office-holder for the exercise of his/her official functions with relation to public communication. The Court also sees an use of the authority of an office where a public office-holder makes statements within the framework of an event organised by the institution to which s/he belongs or where s/he participates in an event only due to his/her current office.

In contrast, according to the Court, a public office-holder merely takes part in the political competition if s/he acts in a party-political context. Statements within the framework of party conventions or similar party events have no such effect on the formulation of the will of the voters as to be regarded as violating the equality of opportunities of political adversaries since in this case the person in question is perceived as acting primarily as a party politician.

The Court held, furthermore, that the participation in debates, talk shows etc. need to be assessed in a differentiated manner. The office-holder can participate in these formats in his/her capacity as an office-holder, as a party politician or as a private person. Such debates, particularly if there is a larger number of speakers, aim at the exchange of political arguments and positions regarding a particular issue so that they can be allocated to the political battle. The fact that the public function owner uses his/her official office title is as such no indication for the use of the office authority and resources since, according to the Court, office-holders are allowed to use their official office designation also privately.

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111 Ibidem, para. 54.
113 Federal Constitutional Court, -2 BvE 2/14-, op. cit. paras. 55, 56.
114 Ibidem, para. 57.
115 Ibidem.
116 Ibidem, para. 58.
As regarding interviews, office-holders may not be required to make statements referring only to their official function, since this would not be compatible with the principle of equality of opportunities of political parties and candidates. Rather, office-holders are also in this context entitled to take part in the political debate. Should an office-holder, however, specifically invoke the authority of his/her office within the interview, then s/he is subjected to the principle of neutrality.\footnote{Ibidem, para. 61.}

- Misuse of state resources for the indirect financing of political parties

Article 50(1) of the \textit{Act on Political Parties} takes up the constitutional principle on equality of opportunities (equal treatment) stating that: 'Where a public authority makes facilities available to political parties or provides them with other public contributions and services, equal treatment shall be accorded to all political parties.'

State resources, other than those specifically allocated for this end to political parties, must not be used for the support of candidates in order to influence voters. Specifically, with regard to the Members of the Bundestag, the Act on the Members of Parliament (\textit{Abgeordnetengesetz}) stipulates in Article 50(4) that political groups may use financial and other benefits that have been attributed to them only for their work according to the Constitution, the Act on Members of Parliament and the Rules of Procedure of the Bundestag. Political groups must not, however, use these financial and in-kind benefits for party-related activities, for instance the financing of electoral campaigns.

\section*{8.6. Estonia}

- Principles governing the mandate of members of the parliament and the government

In Estonia, there are no specific rules governing the case of members of government running for re-election. General rules on elections apply.

§ 60 of the \textit{Constitution of the Republic of Estonia} sets out that: 'The Riigikogu comprises one hundred and one members. Members of the Riigikogu are elected in free elections according to the principle of proportional representation. Elections are general, uniform and direct. Voting is secret. Any citizen of Estonia who has attained twenty-one years of age and is eligible to vote may stand in an election of the Riigikogu.'

The \textit{Commentaries} (2012) to the Constitution of the Republic of Estonia specify regarding § 60 that 'for the passive voting rights, the principle of uniformity requires that all candidates have equal possibilities, for example all parties should be given the same amount of time to introduce their views in national media. The principle of uniformity can also be ensured by setting restrictions on the amount of money spent during the electoral campaign. Restricting the principle of uniformity must have sound constitutional reasons.'

- Principles governing the conduct of persons in civil service

While the conduct of persons in civil service is generally regulated through the \textit{Civil Service Act}, §2 establishes that 'unless otherwise specified by law, this Act shall not apply to:

\begin{itemize}
  \item Misuse of state resources for the indirect financing of political parties
\end{itemize}
1) a member of the Riigikogu;
2) a member of the European Parliament;
3) the President of the Republic;
4) a member of the Government of the Republic;

Commentary by the Estonian Ministry of Justice to the new, 2012 Civil Service Act specified that for the purposes of the Civil Service Act, the term 'official' does not extend to people performing political functions because the procedures for their recruitment and selection differ from the relevant procedures applied to neutral officials and are directly based on political trust. Officials are persons who have a special relationship of trust with the state or local government, in whom public powers have been vested and who are politically neutral. An official serves his/her state and people, not private interests or guidelines of a specific party.

Following this new principle, the Civil Service Act will no longer apply to persons performing assisting or advisory functions for the President or Vice President of Riigikogu, political party, Prime Minister, Minister, President or Member of City Council, local government or Mayor until the end of that person’s mandate. These persons would be employed on the basis of a fixed-term employment contract, not as officials.

The Anti-corruption Act, in contrast, applies to all persons in public service, as § 2(1) establishes that: 'For the purposes of this Act, an official is a natural person who holds an official position for the performance of public duties regardless of whether he or she performs the duties imposed on him or her permanently or temporarily, for a charge or without charge, while in service or engaged in a liberal profession or under a contract, by election or appointment.' This encompasses political positions, as is also illustrated by the following sections:

- Codes of Conduct and Ethics

In 2014, the Board of the Riigikogu approved the Good Practice of Members of the Riigikogu, to be published in the Manual for Members of the Riigikogu. The Anti-Corruption Select Committee published case examples of possible situations where there is a conflict of interest but none of the examples cover the compatibility of members of the parliament and the government running for re-election.

In response to the Compliance Report of the Council of Europe’s GRECO Fourth Evaluation Round, the Chancellery of the Riigikogu published an opinion on the possibility of introducing employment and activity restrictions of the members of Riigikogu, expressing the view that the Constitution does not exclude setting restrictions on future employment of the members of Riigikogu and these could in fact form an important part of the fight against corruption. However, these restrictions should be narrow, limited in time and proportionate.

The Code of Ethics for Officials adopted in 2015 represents a set of principles and values that all officials are expected to hold. Even though the Code is applicable to officials under the Civil Service Act (thus the scope of application does not include the members of the Riigikogu or the Government), the Ethics Council recommends that all employees of public authorities follow the Code as well.

The Ethics Council explain that the Code contains values that are characteristic of the civil service as a whole. This is especially true for the legal rules governing the prevention
of corruption, since these mostly arise from the Anti-corruption Act which applies to all employees of public authorities.

For the purpose of better implementation of the Code, the requirement to follow the Code should be set out in the internal rules of the institution. The implementation of the Code is supported by the Council of Ethics for Officials which is an independent commission located at the Ministry of Finance.

The Code of Ethics contains principles for resolving ethical dilemmas encountered in the work of officials, but at the same time it does not offer legally binding solutions or contain an exhaustive list of all situations relating to the ethics of officials. The Chancellery of the Riigikogu has stated (ECPRD study) in response to an information request in 2010 that if a person holding a public function (like members of Government, heads of local and central authorities) decides to run for election, the common practice is to step down to set up his or her candidacy.

- Obligations regarding the financing of the electoral campaign

The overarching legal framework is set by the Political Parties Act. § 121(3) explicitly asserts that 'A political party is prohibited to use public funds for conducting or organising the election campaign of the political party or a person running in the list of the political party, except for the allocations from the state budget based on this Act. An election coalition, single candidate, person running in the list of a political party and person running in the list of an election coalition is prohibited to use public funds for conducting or organising their election campaign. The provisions of § 124 of this Act apply to such prohibited income. For the purposes of this section, 'public funds' means state budget funds and local authority budget funds.'

Pursuant to subsection 8, a political party is required to draw up a quarterly report on their expenses and submit it to the Political Party Funding Supervision Committee. The Committee was established in 2011 on the basis of the Political Parties Act to verify the legality of how political parties, election coalitions and single candidates receive and spend funding and follow other rules pursuant to the Political Parties Act.

Regarding the usage of administrative resources by candidates in the framework of an electoral campaign, the Chancellery of the Riigikogu has taken note that there are no legislative measures, but it is mostly regulated on the basis of codes of conduct of different public institutions. The Chancellery also refers to public scrutiny and ethics as factors that prevent abuse by state officials. An academic article 'A Comparative Approach towards Public Service Ethics in Estonia, Latvia and Lithuania' from 2007 observes that 'in practice, Estonian and Lithuanian public servants are under greater scrutiny by the media and citizens in comparison to Latvia. This fact means that the media are reflecting ethical problems in public service and influencing opinions and perceptions of the current situation'.

8.7. Ireland

- Parliament and the legal framework governing elections in Ireland

The Irish Parliament (Oireachtas) consists of two chambers: the lower House of Representatives (Dáil Éireann, 158 members), and the upper Senate (Seanad Éireann, 60 members). The members of the Dáil Éireann ('TDs') are directly elected by universal suffrage. The members of the Seanad Éireann ('Senators') are nominated by the Prime
Minister (Taoiseach) or nominated by members of parliament and elected by specific bodies including universities and local authorities. Except for the Prime Minister and the Minister for Finance, who must be members of Dáil Éireann, members of the government may be chosen from both houses. Members of the government are categorised as 'office holders', for whom specific rules and codes of conduct apply."119

The Irish Constitution (Bunreacht na hÉireann) states that the Dáil shall not continue for a period longer than 7 years. It also states that legislation can fix a shorter period for the duration of the Dáil. Under Section 33 of the Electoral Act 1992, the maximum term for the Dáil is currently set at five years from the date of its first meeting following a general election. Following the Westminster model, the Dáil is dissolved automatically before the general election and during an interim period between this date and the beginning of the new Parliament. TDs stand down on dissolution whereas Ministers only stand down when a new Government is elected. The Seanad Éireann is not dissolved and senators continue to serve as public representatives during the pre-election period. Specific rules apply to members of parliament from both houses and office holders during the dissolution period.120

Members of both Houses of Parliament (i.e. outgoing TDs and serving Senators from the upper house) may stand as candidates in a General Election. Article 16.1.1 of the Constitution provides that 'every citizen without distinction of sex who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for Membership of Dáil Éireann.' Article 18.2 of the Constitution provides that 'A person to be eligible for Membership of Seanad Éireann must be eligible to become a Member of Dáil Éireann'.

Disqualifications for Membership of the Dáil are set out in Article 41 of the Electoral Act 1992, which lists a number of public positions that candidates may not hold. Those excluded from standing include members of the Commission of the European Communities, some civil servants and directly elected chairs (Cathaoirleach) of a local authority. Section 43 of the Act also stipulates that no member of the Dáil shall, while holding his seat, be eligible to be a candidate at a bye-election to the Dáil.

- Measures to prevent unfair advantage or misuse of a current office
- General codes of conduct and rules for Members of Parliament and government ministers

There is a comprehensive statutory framework for the regulation of conduct in public life. The main laws in place for regulating ethics in the public sector are the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 (together known as 'the Ethics Acts'). The Prevention of Corruption (Amendment) Act 2001, which makes using a public office or position for the purpose of corruptly obtaining consideration or advantage a criminal offence (Section 8), also applies to Members of Parliament.

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119 The term 'office holder' within the meaning of the Ethics in Public Office Act 1995 and Standards in Public Office Act 2001 refers to the Taoiseach, the Tánaiste (Deputy Prime Minister), Ministers, Ministers of State, the Chairpersons and Deputy Chairpersons of Dáil Éireann and of Seanad Éireann, and Chairpersons of a Committee of either House or of a Joint Committee of both Houses.

120 However, unlike in the UK or Northern Ireland, the rules do not appear to refer explicitly to the status of TDs and government ministers during this time (for instance, there are no clear instructions on use of the title 'TD'). There are examples in the press of outgoing TDs continuing to use the title in election campaign literature.
In addition, Article 15.10 of the Constitution provides that, for Members of Parliament in particular, 'Each House shall make its own rules and standing orders, with power to attach penalties for their infringement'. In line with this constitutional provision, and following the Ethics Acts, since 2001 each house of parliament has issued its own code of conduct for members who are not office holders, drawn up by its respective Committee on Members' Interests, in consultation with the Standards in Public Office Commission. Since 2003, there has also been a separate code of conduct and guidelines for office holders.121

1) For Members of Parliament who are not office holders:

With regard to the use of public office, the Code states that, '1. Members must, in good faith, strive to maintain the public trust placed in them, and exercise the influence gained from their membership of Dáil Éireann to advance the public interest. 2. Members must conduct themselves in accordance with the provisions and spirit of the Code of Conduct and ensure that their conduct does not bring the integrity of their office or the Dáil into serious disrepute'.

With regard to the use of public resources, the Code states that, '9. In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended. 10. Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.'

With regard to misuse of public resources, the Guidelines note that, 'the most prevalent complaints received by the Committee relate to the alleged misuse of Oireachtas pre-paid envelopes. In this context Members are advised that free postal facilities are provided to them in their capacity as Members of the Oireachtas and in respect of their duties as public representatives.122


Identical provisions are set out in this code of conduct for senators.

2) For Members of Parliament who are office holders:
   Code of Conduct for Office Holders and the Guidelines for Office Holders (2011) concerning the steps to be taken by them to assist compliance with the provisions of the Ethics in Public Office Act, 1995.

With regard to the use of their public office, the Code of Conduct states that office holders must 'conscientiously and prudently apply the resources of their office in
furtherance of the public interest and observe the highest ethical standards in the performance of their duties'.

With regard to the use of public resources it is stated that, '2.2.3. Office holders are provided with facilities at public expense in order that public business may be conducted effectively. The use of these facilities should be in accordance with this principle. Holders of public office enjoy an enhanced public profile and should be mindful of the need to avoid use of resources in a way that could reasonably be construed as an inappropriate raising of profile in the context of a General Election. Official facilities should be used only for official purposes. Office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which, undoubtedly, are attached to office.'

3) For civil servants, there is also a Civil Service Code of Standards and Behaviour

- General rules governing allowances, costs and expenses

Article 15(15) of the Constitution provides that: 'The Oireachtas may make provision by law for the payment of allowances to the members of each House thereof in respect of their duties as public representatives and for the grant to them of free travelling and such other facilities (if any) in connection with those duties as the Oireachtas may determine.'

Further to this Article, various allowances and facilities are available to Members of the Houses of the Oireachtas under the Allowances to Members Acts 1938-1998, the Ministerial and Parliamentary Offices Act 1938 (as amended) and the Houses of the Oireachtas Commission Act 2003 (as amended). These benefits include the payment of a Parliamentary Standard Allowance (PSA). This comprises two elements:

- a Travel and Accommodation Allowance (TAA); and

- a Public Representation Allowance (PRA), which includes entitlement to staff (secretarial allowance); free postal facilities (through the issuing of pre-paid envelopes up to a monthly limit); free telephone calls from the parliament building; and periodic payments towards the cost of purchasing mobile telephones and accessories.

With the exception of a one-off grant for the establishment and equipping of a constituency office for Members of the Dáil Éireann, both allowances are paid monthly. The TAA is verified through the attendance record whilst the PRA is verified through vouched expenses. The PRA will only be paid where it can be demonstrated that the funds were used for the purposes set out in the Oireachtas. The amounts accorded to Government Ministers may be higher than those allocated to other office holders and ordinary Members of Parliament.123

- Specific rules governing the use of official resources during election periods

Research published in 2006 noted124 that the use of state facilities by incumbent TDs in Ireland contrasts with the situation in the UK, where parliamentarians do not have access to parliamentary facilities during an election campaign. This source also found that the ability to use such facilities had been a major factor in the electoral success of specific political parties.

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123 See the Allowances and Facilities) Regulations 2010 point 10.
- **Rules on Election Expenses**

The [Electoral Act of 1997](#) introduced a new system for controlling and limiting election expenditure by political parties and candidates in Ireland. Since the commencement of the Act, parties and candidates must account for all that they spend on an election, including expenditure on advertising, promoting the party, opposing other candidates and soliciting votes. The election period starts on the date of the dissolution of the Dáil and runs to polling day, including both dates. The Irish Supreme and High Courts have ruled that post-dissolution facilities and services, like all services and facilities provided out of public funds, if used for election purposes, must be accounted for within a candidate’s election expense limit.

- **Guidelines on allowances and facilities**

The [Houses of the Oireachtas Commission](#) is responsible for drawing up guidelines for Members on the use of public resources following dissolution - including a schedule of charges.

The guidelines cover the services and facilities, which continue post dissolution, namely, secretarial staff, use of office and ICT equipment, access to Parliament offices and the use of Parliament telephone, fax and copying facilities. The guidelines also cover the use of facilities which cease to be available on dissolution but which can be retained for use following dissolution, such as material printed in the Parliament printing facility, pre-paid envelopes and stationery/consumables. In addition, the guidelines specify how Members will be required to certify and reimburse the Oireachtas Commission for use of services and facilities provided out of public funds other than in respect of duties as a public representative.

The most recent [Guidelines on Dissolution](#) (2015) for outgoing TDs and serving Senators contesting the Dáil General Election provided as follows:

1) **Allowances**

Payment of the PSA ceases for TDs on the date that Dáil Éireann is dissolved. Regarding office holders, the Ceann Comhairle (chairperson (or speaker) of Dáil Éireann) may continue to be paid the PSA. The Leas Cheann Comhairle (Deputy Chairperson of Dáil Éireann) may continue to be paid the TAA, for which registration of attendance is required.

2) **Office Equipment and Supplies:**

From the day of the dissolution, orders for replacement or purchase of office equipment cannot be processed and any items ordered, but not delivered, prior to the date of dissolution are held in storage until after the General Election.

TDs who are candidates in the Dáil election must declare the use of consumables and stationery for electoral purposes. Such usage must be certified by the Houses of the

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125 Kelly v. Minister for the Environment / Supreme and High Court judgments, IESC 73, 2002. The applicant deposed that it was 'routine and common practice' for the outgoing members of both houses to avail of the facilities and services provided to them out of public funds, such as the provision of an office, secretarial support, printing facilities, photocopying facilities, telephone facilities, free stationery, free postage, and other office services. He also said that it was his understanding that members of the Oireachtas have an allowance of up to 1,750 prepaid envelopes per month and that it was common practice for such envelopes to be stockpiled and used for electoral purposes following the dissolution of the Dáil.

126 An official summary is also available [here](#).
Oireachtas Commission and reimbursed in accordance with the schedule of charges in the Guidelines.

Senators may continue to collect envelopes, stationary and consumables. However, for Senators who are candidates in the Dáil election, any usage of such material for electoral purposes must be declared and certified to the Houses of the Oireachtas Commission and reimbursed in accordance with the schedule of charges in the Guidelines.

3) **Use of data**

Specific actions must be taken and avoided by outgoing Members.

They must ensure that personal data and sensitive personal data, obtained for use in connection with their representational duties as a TD / Senator, is not further processed after they cease to be a TD/Senator. In the absence of explicit consent from the data subject, they may use personal data and sensitive personal data only for the purpose(s) for which it was provided. For example, if a constituent gave their email address, phone number, email address and details of their employment history and social welfare contributions history to assist with a pension query, which has been resolved, the TD/Senator may not then use their contact data to contact them to canvass electoral support. However, if the TD/Senator made it clear at the time of collecting the data that they intended to use contact details in future and the data subject gave their consent to the use of their data for contact purposes in future, the contact data may be used for that purpose.

As Members of the Oireachtas, TDs and Senators may use names and postal addresses if these appear in the current register of electors, to which TDs and Senators have a statutory entitlement under the Electoral Acts. This entitlement applies to TDs in respect of the constituency in which they were elected and to Senators in respect of the constituency in which they resided at the time of their election / nomination.

TDs and Senators must ensure that personal data, and in particular contact data such as mobile phone numbers, landline phone numbers, email addresses and social media contacts, are not used for electoral purposes if they were obtained for the specific purpose of assisting a citizen with a matter of concern to her/him (such as planning permissions, grant applications, housing matters, medical card applications, social welfare benefits, etc.).

4) **Parliamentary and Secretarial Staff**

Where services and facilities provided out of public funds are used by an outgoing TD or Senator candidate, other than in respect of duties as a public representative during the election period, the outgoing TD or Senator Candidate must pay the appropriate charge. Staff employed by Members fall within the definition of 'facilities' and any work carried out by such staff for a Member's general election campaign must be reimbursed to the Commission. Each Member is separately notified of the actual salary of each employee to allow for any such reimbursement.

Staff may choose to take annual leave in the dissolution period in order to work in an unpaid volunteer capacity for a Member’s General Election campaign, but there is no obligation on the employee of any Member to do so. Members are advised to ensure adequate records of holidays are kept.

These provisions only apply to the staff of Members who are not Office Holders. Arrangements for the staff of Office Holders are a matter for the relevant Department.
5) **Library and Research Service (L&RS)**

No proactive research services are provided during the dissolution period. Senators continue to have access to an on-demand information and research service, but these services are not be available to outgoing TDs. All live reference and research requests from outgoing TDs fall at 6 p.m. on the day of dissolution. Information and research queries that have not been completed prior to dissolution must be re-submitted by TDs, if re-elected, after the General Election. Senators and outgoing TDs continue to have access to the print collections via the Reading Room staff and electronic collections via the L&RS intranet pages. Senators continue to have access to loans. There is no loans service for outgoing TDs during the dissolution period.

6) **Section F: Guidelines and charges in relation to the use of services and facilities following dissolution of Dáil Éireann**

Where services and facilities provided out of public funds are used by an outgoing TD or Senator candidate, other than in respect of duties as a public representative, during the General Election period, the outgoing TD or Senator candidate must pay the appropriate charge for such use specified by the Oireachtas Commission. The use of services and facilities for election purposes provided prior to dissolution, such as –

a) printed material funded by the Oireachtas Commission,
b) pre-paid Houses of the Oireachtas envelopes, or
c) stationery or consumables,

must be declared and certified to the Oireachtas Commission and the cost reimbursed in accordance with the [Schedule of Charges](#) set in the Guidelines.

Members should use the statutory definition of ‘election expenses’ set out in section 31 of the Electoral Act 1997, as amended by the 1998 and 2001 Acts, in determining whether usage is electoral in nature or not.

Each individual outgoing TD or Senator candidate must assess the charges payable to the Oireachtas Commission, based on the percentage of his/her use of services/facilities for purposes other than in respect of duties as a public representative in the election period.

The responsibility to make such enquiries and maintain such records as are necessary to enable assessment of the charges payable to the Oireachtas Commission rests with each individual outgoing TD or Senator candidate.

Ministers and Ministers of State must use an official declaration form to declare the use of Oireachtas-provided material and record facilities provided by their Department separately. If they have used facilities from separate allocations, separate declarations should be submitted.

- Monitoring compliance with the rules

The Ethics Acts established an independent 'Standards in Public Office Commission' and a Select Committee on Members' Interests in each House of the Oireachtas, with the aim of monitoring implementation of the requirements and sanctioning members who break the guidelines.

The [Standards in Public Office Commission](#) is an independent body, established in 2001, whose functions include supervising the disclosure of donations and election expenditure, the expenditure of state funding received by political parties and the registration of lobbying and the disclosure of interests and compliance with tax clearance.
requirements. Complaints regarding Members of Parliament who are office holders are also submitted to the Standards in Public Office Commission for investigation.

Complaints about non office holders are submitted to bodies set up within the Parliament structure, the Committee on Members’ Interests of the Dáil Éireann and the Committee on Members' Interests of the Seanad Éireann. As well as investigating and reporting possible contraventions of the Ethics Acts, these Committees are also responsible for drawing up the codes of conduct, publishing guidelines and providing advice to ensure compliance with the Acts.

Examples of reports published following investigations include a case concerning the use of public resources to support candidates in local elections.

An evaluation report on 'Corruption prevention in respect of members of parliament, judges and prosecutors' published in 2014 by GRECO/Council of Europe noted that the conduct of parliamentarians in Ireland is governed by a wide range of standards, including constitutional principles, norms in the Ethics Acts and several codes of conduct and guidelines. However, it also noted that the complexity of this structure is striking and that the various norms are not always fully compatible with each other. It concluded that, as a result, interpretation of the standards can be challenging and a consolidated values-based normative framework - for ethical principles and conduct of MPs in various situations of conflicting interests - would be beneficial. It recommended that the monitoring of MPs' adherence to standards, codes of conduct and other obligations should be consolidated, made more uniform and preferably given a higher degree of independence vis-à-vis Parliament and its members. It identified several specific areas where further steps should be taken, including: 1) making sure that non-pecuniary advantages are included in the definition of conflicting interests; 2) ensuring that all the rules on conflicts of interest also apply to staff of members of parliament.

Further sources


Reports on misuse of resources and clarifies the requirements.

Media Statement - RTE Investigates Standards in Public Office / Standards in Public Office Commission, 8 December 2015

Notes the complexity of the current ethics frameworks and that the Standards Commission has called for the enactment of a single comprehensive piece of legislation applicable across the public service to provide a unified ethics framework setting out common standards of conduct and integrity for all public representatives and public servants.

**8.8. Greece**

The following primary texts have been examined:

The constitution of Greece;

The organisation and operations of the Hellenic Parliament;

The statute of Members of Parliament;

The statute of Members of Government.
Law 3023/2002 on the financing of political parties, as amended by law 4304/2014 law on the financing of political parties.

In none of the above have we found provisions relating to the use of human/other resources for election/re-election. Even the law on the financing of political parties is limited to providing ceilings for the contributions to individuals or political parties before the elections.

However, a recent (2016) deontology code for Members of Parliament provides in Article 2 (6) (our translation) that

'Members of Parliament should ... make prudent use and management of resources and allowances the Parliament makes available to them, solely for the unhindered exercise of their work and the fulfilling of their parliamentary duties'.

8.9. Spain

Relevant articles of the Spanish Constitution:

68.4. 'The Congress is elected for four years. The term of office of Members thereof ends four years after their election or on the day on which the Congress is dissolved.'

Art.68.6: 'Elections shall take place between thirty and sixty days after the end of the previous term of office. The Congress so elected must be convened within twenty-five days following the holding of elections.'

78.3: 'On the expiration of the term or in case of dissolution, the Permanent Deputations shall continue to exercise their functions until the constitution of the new Cortes Generales.'

99.5: 'If within two months of the first vote for investiture no candidate has obtained the confidence of the Congress, the King shall dissolve both Houses and call for new elections, with the countersignature of the Speaker of the Congress.'

Representation of the People Institutional Act, section 50.2, 'From the call to the holding for the election, public authorities are forbidden from directly or indirectly organizing or financing any event that may contain allusions to achievements or accomplishments or use images or expressions identical or similar to those used in their own campaigns by any of the political formations concurring in the election.'

Financing of elections

The legal provisions on direct public funding are developed in both the Representation of the People Institutional Act (RPIA) (arts. 127- 131) and the 2007 Financing of Political Parties Act (FPPA) (arts. 2-3). Funding can take one of the following forms: a) public subsidies for election expenses; b) State annual subsidies for operational activities and security expenses; c) Autonomous Regions and municipal annual subsidies for operational activities; d) extraordinary subsidies for advertising purposes; e) contributions to parliamentary groups at State, regional and municipal levels. In addition to that, political parties participating in municipal elections may receive direct public funding from the budget of local authorities in the form of a flat equal share for all parties and a variable amount in proportion to the number of seats per party (Article 73, Law 11/1999 on Local Authorities).
Subsidies are distributed according to the number of seats/votes gained in the last elections.

The number of seats obtained by each party in the previous elections also serves to determine the free airtime each party will enjoy for advertising in the public media (provisions exist to guarantee that new parties and parties that did not get any seats also get free airtime). In addition to that, public media shall allocate time to political parties in their news and information programmes (the time allocated to each party will vary according to the seats obtained by each party in the previous elections).

As to the Government, it is not allowed to carry out public information campaigns during the election period, unless the campaign aims at informing about the electoral process or at safeguarding the public interest.

Political parties are also entitled to lower postage rates for campaign-related purposes, as well as to free billboards and public meeting rooms, provided by local authorities during the campaigns.

Sections 128 and 129 of the RPIA and sections 4 and 5 of the FPPA deal with the donation of funds. The prohibition to donate funds for elections applies to the public administration agencies, to companies belonging to the State, the Autonomous Regions, the provinces or cities, to semi-public companies, to firms that supply services or goods to the Public Administration, as well as to companies which are working on a contractual basis for the Public Administration.

Sections 130 and 131 of the RPIA are related to election expenses and the limits to such expenses. Election expenses must fall within one of the following categories:

'a) Production of envelopes and ballot papers;
b) Propaganda and advertisements directly or indirectly aimed at promoting vote for their candidates, whatever the manner and the means used;
c) Hiring of premises for holding election campaign events;
d) Payment of remunerations or bonuses to temporary staff in the employment of candidates;
e) Means of transportation and travelling expenses of candidates and leaders of parties, federations, coalitions and groupings and staff in candidates' employment;
f) Correspondence and posting;
g) Interests of loans received for the election campaign and due to be charged up to the date of payment of the relevant subsidy and
h) Whatever election expenses may be necessary for the organization and running of offices and services required for the election.'

There is no Code of Conduct for MPs, hence GRECO’s recommendations to Spain: ' (i) that a code of conduct be developed and adopted with the participation of its members and be made easily accessible to the public (comprising guidance on e.g. prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements); (ii) that it be complemented by practical measures for its implementation, including through an institutionalised source of confidential counselling to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interest, as well as dedicated training activities (paragraph 35);
(ii) the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process (paragraph 51);

(iii) that current disclosure requirements applicable to the members of both Chambers of Parliament be reviewed in order to increase the categories and the level of detail to be reported (paragraph 56); (iv) that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament (paragraph 64)

One of the key acts in that could serve to examine the issue at hand is Act 19/2013, of 9 December, on Transparency, Access to Public Information, and Good Governance.

**NB: emphasis added throughout the following articles**

The scope of application of the principle of good governance is outlined in article 25, which reads as follows: '1. Within the scope of the Central State Administration, the provisions of this Title shall be applied to members of the Government, to Secretaries of State and other senior officials of the Central State Administration and public- or private-law entities of the central public sector, either linked to or reporting to the Central State Administration.

(...) 2. This Title shall be applied to senior officials or equivalent office-holders who, pursuant to the applicable regulations of the Autonomous Community or Local Entity, are considered as such, including the members of Governing Councils of Local Entities. (...)

Article 26 sets out the **principles of good governance**. The aforementioned officials shall act 'with transparency in the management of public affairs, in accordance with the principles of effectiveness, economy and efficiency, and with the aim of serving the general interest' (art. 26.2 a.1).

A candidate might incur in mismanagement if s/he spends part of her/his working time in lobbying for her/his personal goals/ambitions.

Furthermore, article 26.3 states that 'They shall respect the principle of impartiality, so as to follow independent criteria removed from any personal interest (...)'.

This article also stipulates the principles of action (art.26. b):

'1. They shall carry out their duties with full dedication and respect for the regulations on incompatibility and conflicts of interest.

2. They shall maintain due discretion regarding events or information known to them due to or in the course of fulfilling their responsibilities.'

These two principles could serve as a safeguard against the use of valuable in-house/confidential information and insight when 'promoting a candidature'.

The fourth principle states 'They shall exercise the authority attributed to them by the laws in force exclusively to the ends for which this authority was granted, and avoid any action that could put at risk the public interest or the property of the Public Administrations.' The ends to which the authority was granted, would be stepped over by a 'candidate' if s/he were to use her/his privileged information and contacts, i.e. her/his powers, to pursue her/his personal agenda, her/his ambitions, as opposed to the goals for which s/he was elected in the first place.

As set out in the fifth principle: 'They shall not become involved in situations, activities or interests incompatible with their responsibilities, and shall refrain from intervening in
affairs involving issues that could affect their objectivity. If a politician were to run/lobby for her/his appointment, s/he would probably be involved in activities and situations that are incompatible with her/his responsibilities and this could pose a threat to her/his objectivity.

8.10. France

Under French law, there are no specific rules governing the case of members of government running for re-election. The members of government running for re-election are subject to the general legal framework governing elections in France enshrined in the electoral code ('Code électoral') as recently modified by the 2016 Law on the modernisation of the rules applicable to the election of the President.¹²⁷

The applicable legislation includes rules relating to the financing of the campaigns applicable to all the candidates and rules relating to political propaganda and pluralism. Courts and relevant of administrative bodies have provided some interpretation on how the two set of rules apply to the case of members of government running for re-election.

- Obligations regarding the financing of the electoral campaign
- Main legal provisions applicable

Pursuant to Articles L.52-4 and L.52-12¹²⁸ of the Electoral Code, all funds received within the 12 months prior to the election date for financing the campaign of a candidate must be declared. Resources and spending must be clearly identified in a campaign account ('compte de campagne'). The candidate must estimate and include as resources and spending all advantages direct or indirect and all services and gifts in nature he/she receives. Furthermore, Article L.52-8 of the Electoral Code forbids the participation of legal persons other than political parties or groups to the financing of the electoral campaign of a candidate in whatever form (e.g. gifts, services, and other direct or indirect advantages).

- Jurisprudence, guidelines and political statements providing guidance on how to apply such rules to members of governments running for re-election

The National commission for campaigns ('Commission nationale des comptes de campagne et des financements politiques') is the administrative body in charge of assessing compliance with the electoral code of the candidates' campaign expenditures. The Commission has issued an opinion in 2011 considering how some costs incurred by the State with regard to Mr. Sarkozy who was at the time president in function (and presumably a potential candidate to re-election) should be considered.¹²⁹ The Commission reached the conclusions that:

1) the costs related to travels of the President of the Republic and his staff and as well the cost of the security and protection measures linked to his travel cannot be considered as costs of campaign ('dépenses du compte de campagne')

¹²⁷ Loi ordinaire et loi organique du 25 avril 2016 de modernisation des règles applicables aux élections et à l’élection présidentielle.
¹²⁸ See Article 2 of Act n° 2016-508 of 25 April 2016 modifying Article L. 52-12 of the electoral code.
¹²⁹ CNCCFP, Réponse de la commission à M. Daniel Vaillant, député de Paris, mandataire de François Hollande, 13 décembre 2011.
because they cannot be dissociated from the exercise of the presidential mandate;

2) the costs related to **political events** to which the president takes part - before he officially announces his candidacy - and where he discusses elements which can be considered to be part of a political program of a future candidate, must be re-integrated into the costs of the official campaign after his candidacy has been made official.

The **Conseil constitutionnel**, which oversees the regularity of the legislative and presidential elections in France, has also provided some guidance on this issue. In a 2013 ruling ([Decision n° 2013-156 PDR of 4th July 2013](#)), the Council upheld a decision of the French national commission for campaigns accounts and political financing stating that expenditures in relation to a public meeting held by Mr Sarkozy (then elected President) before he declared his candidacy (for a second presidential mandate) should have been incorporated in the campaign account because of their electoral nature.

- Obligations regarding the propaganda and political communication
- Main legal provisions applicable

Pursuant to [Article 1](#) of the 1986 Act on freedom of communication, the principle of freedom of communication should be implemented in the respect of pluralism by editors of audio-visual services (e.g. TV channels, radio). Pursuant to [Article 13](#), the Audio-visual Council ('Conseil supérieur de l'audiovisuel') must guarantee pluralism in particular with regard to political content. The Council must ensure in particular an equal treatment of speech times reflecting political diversity. Pursuant to [article 16](#), the Audio-visual Council must issue recommendation to the editors of audio-visual services with regard to communication in election time (i.e. 'période électorales').

Two different sets of rules are applicable which **de facto** apply to members of government running for re-election:

1) **Outside election time**, the Audio-visual Council must **distinguish between interventions from the President of the Republic linked to the national political debate and interventions of the President not linked to the national political debate**. The later ones are considered to be political communication subject to the rules on pluralism (i.e. equal treatment of speech time reflecting political diversity) whereas the former ones are not.

2) **During election time**, according to the Council 2011 **guidelines** for ensuring pluralism in election time[^130], the interventions of the President of the Republic, which given their content and their context can be associated to the election debate (including the political backing of a candidate or a list of candidates or a party) should be accounted for separately. The editors of audio-visual services should take into account of this fact to ensure that other candidates, lists and parties have, in return, a fair access to the audio-visual channels.

Furthermore, the 2016 Law on the modernisation of the rules applicable to the election of the President has also introduced some amendments with regard to the **treatment of speech times in election time**[^131]. From now one, during the election time, from the date of publication in the Official journal of the list of candidates to the official date of opening

[^130]: CSA, Délibération du 4 janvier 2011 relative au principe de pluralisme politique dans les services de radio et de télévision en période électorale.

of the campaign (i.e. 15 days before the election), the editors of audio-visual must ensure 'a fair treatment' of speech times allotted to the candidates. During this period the candidate are not subject anymore to the 'same duration' of speech times.

- Jurisprudence, guidelines and political statements providing guidance on how to apply such rules to members of governments running for re-election

In 2012, a question was put by a member of the Parliament to the Minister in charge of communications on how to account for the speech time of President Hollande during an electoral period. The Minister in its reply stressed that, under the applicable legal framework, the TV channels must distinguish the interventions of the President of the Republic according to the topics. Time devolved to interventions on the political debate should therefore account for allotted speaking time of officially declared or presumed candidates.132

8.11. Croatia

- Legal provisions on elections in Croatia

Separate legislative acts regulate different types of elections in Croatia. Basic provisions are laid down in the Constitution, while the most relevant legislative acts in the context of this study include Act on the Election of President of the Republic of Croatia,133 Act on Election of Representatives to the Croatian Parliament134 and Political Activity and Election Campaign Financing Act.135

According to above mentioned legislation, any Croatian citizen with full 18 years of age has the right to stand for the election for the President of the Republic and member of the Parliament. There are no legal provisions that would require a state official or office-holder to reassign from his position before announcing his candidacy for the President or member of the Parliament. Although there are duties that are incompatible with position of parliamentary member136, potential candidates are not obliged by any law to reassign from their duties during the campaign.

- Financing of election campaigns

Political Activity and Election Campaign Financing Act regulates, inter alia, the financing of election campaigns for elections for the President of the Republic of Croatia, for members to the Croatian Parliament, for members to the European Parliament, for heads of municipalities, mayors, county prefects and for the mayor of the City of Zagreb, and members of representative bodies of local and regional self-government units.

Regarding the candidates that are already serving as public officials and office holders at the time of election, there are no restrictions to their candidacy, but there are provisions preventing them from using resources on their disposal as an office holders during the campaign. More precisely, Article 16(3) of the above mentioned act prohibits state

132 Question d’actualité au gouvernement n° 0768G de M. David Assouline (Paris - SOC) publiée dans le JO Sénat du 27/01/2012.
136 Article 9 of the Act on Election of Representatives to the Croatian Parliament.
officials from using the resources at their disposal for performance of their regular duties for financing election campaigns. Article 16(3) of the Political Activity and Election Campaign Financing Act states: 'Funds from the state budget or from the budgets of local or regional self-government units which are otherwise used by candidates as officials of the Republic of Croatia or authorized local officials in the performance of their duties shall not be used for the purposes of election campaigns. Business premises, company vehicles and office equipment of governmental bodies and local and regional self-government units shall not be used for the purposes of election campaigns, save for individuals subject to special regulations on protected persons.'

Protected persons in the Republic of Croatia are defined by Ordinance on the determination of protected persons, objects and space and the implementation of their protection and security\textsuperscript{137} and they include highest state officials like President of the Republic and of the Parliament, Prime Minister and vice presidents of the Government, President of the Constitutional Court, and of the Supreme Court, certain ministers and some other high state officials.\textsuperscript{138}

In the context of the Article 16(3) of the Political Activity and Election Campaign Financing Act it is worth noting that although Croatian Parliament is dissolved at the time of parliamentary elections\textsuperscript{139}, the term of office of a Member of Parliament ends only on the date of the constitution of the new term of Parliament.\textsuperscript{140}

8.12 Italy

Although there are no specific rules concerning the case of candidates (public office-holders) running for re-election, relevant applicable norms may be found in different pieces of legislation, mainly related to the elections system, to the political propaganda, to transparency in the PA.

The applicable legislation includes rules related to the funding of electoral campaigns as well as rules related to institutional communication and information.

- Main legal framework

General provisions on public office-holders in the exercise of their functions

In the Constitution, some general provisions can be found, first of all, in the Italian Constitution\textsuperscript{148} (1948) which states that:

(Art 51): ‘All citizens of either sex are eligible for public office and for elected positions on equal terms, according to the requirements established by law. [...] Who is elected to a public function is entitled to the time needed to perform that function and to maintain his job’.\textsuperscript{141}


\textsuperscript{138} Articles 11-13 of the Ordinance on the determination of protected persons, objects and space and the implementation of their protection and security (available only in Croatian).

\textsuperscript{139} Article 74 of the Constitution of the Republic of Croatia.

The election of deputies to the Croatian Parliament shall be held not later than 60 days after the expiry of the term of office or the dissolution of the Croatian Parliament.

\textsuperscript{140} In accordance with Article 10 of the Standing Orders of the Croatian Parliament.

\textsuperscript{141} The rationale of this provision on equal access to the public functions is the expression of the equality principle (art 3 Const.). Moreover, the aim of this norm is to ensure an effective equal access to everyone, without the obligation to resign from a current job (and therefore to renounce to a certain retribution). The instrument of the suspension of the working relationship serves this aim, as clarified
(Art 61): 'Elections for the new Chambers take place within seventy days from the end of the previous ones. The first meeting shall take place no later than twenty days after the elections. The powers of the previous ones are extended until the new Chambers are met.

(Art 68), 'Members of Parliament may not be called to answer for opinions expressed or votes cast in the exercise of their functions. Without authorization from the Chamber to which they belong, no member of Parliament may be submitted to personal or home search, nor may they be arrested or otherwise deprived of personal freedom, or kept in detention\(^{142}\), except to enforce a final conviction, or if caught in the act of committing a crime for which there is mandatory arrest in flagrante delicto. Similar authorization is also required before members of Parliament to interceptions, in any form, of conversations or communications and seizure of correspondence'.

(Art. 98) 'Civil servants are exclusively at the service of the Nation. If they are members of Parliament, they may not be promoted except through seniority. The law may set limitations on the right to become members of political parties in the case of magistrates, career military in active duty, police officials and officers, diplomatic and consular representatives abroad'.

While we cannot find any specific information in the Statute ('Regolamento') on the functioning of the Chamber of Deputies, some general norms are contained in its Preliminary Provisions or in the provisions related to the Presidency Office:

Art 1: 'Deputies enter the full exercise of their functions at the time of the proclamation.

Art 12 (3): The Presidency Office shall adopt the regulations and other rules concerning: […]

d) the legal status, remuneration and pension and discipline of employees of the Chamber, including obligations related to professional secrecy;

e) the criteria for conferring to persons outside the Chamber activities not directly related to the exercise of parliamentary functions, and the obligations of confidentiality and other obligations these subjects are required to comply with, even in respect of bodies unrelated to the Chamber';

The compliance with the Statute of the Chamber is overseen by the ad hoc Committee ('Giunta per il regolamento') which has also the task to adopt a Code of Conduct for Deputies (last one approved in April 2016). The latter contains relevant provisions such as basic rules on deputies' behaviours and statements during their function as well as on transparency obligations. The provisions are, however, of general application (not only during the election campaign) and for all deputies.

- 'Art I (General Principles): In exercising their duties, Members shall act with discipline and honour, representing the nation and observing the principles of integrity, transparency, diligence, honesty, accountability and protection of the good name of

\(^{142}\) This provision has been modified with the Law n.3/1993, according to which it is now possible for the judicial authority to carry out investigations on a MEP without the authorization of the related Chamber (unless it is necessary to proceed with the arrest.
Provisions governing the activity of high political office-holders in election or selection processes

Chamber of Deputies. They do not get or seek to obtain any direct or indirect financial benefit or other advantages.

In case of conflict of interest, that is, when a specific private interest could influence unduly the exercise of his duties, each Member shall immediately take all measures necessary to remove it, in accordance with the principles and provisions of this Code of Conduct. In case of doubt, the Member may seek the opinion of the Committee on the conduct of Members referred to in Art VI.

- Art II (Obligations): MEPs observe scrupulously and rigorously the obligations, provided for by law and by the regulations of the Chamber, on transparency and declaration of their assets and financial activities, of the funds received as well as the positions they hold in any institution or company of public or private nature.

- Art III (Declarations of Members):

Within thirty days of the first sitting of the Chamber, or the date of the proclamation and in any time that is required by the Election Committee, for procedures of its competence, or by the Committee Advisory on the conduct of Members referred to in Article VI, for the issues related to the application of this Code, each deputy declares to the President of the Chamber the offices and the functions of all kinds that he/she covered at the date of submission of the candidature and those currently covered in public or private entities, including international, as well as the functions and commercial activities anyway carried out. Where a Member takes up a function or a task after the proclamation [of deputy], he/she must render the declaration within a period of thirty days. Members must also make declarations of any other occupation or self-employment or private work.

Within 3 months from the proclamation, the deputies must file with the Office of Presidency: - a declaration regarding their ownerships and assets; a declaration of revenues; a declaration of the costs incurred and obligations assumed for election propaganda or the declaration that they made use exclusively of materials and media propaganda prepared and made available by their party or by the political group to which they have been related, with the endorsement of the formula 'on my honour I say that the statement is true.'

Moreover, 'this declaration must be accompanied by the copies of the statements relating to any funding or grants received by Law No 659 of 1981 [on State funding of political parties]. The deputies shall accompany the same statements with indication of what has been received, either directly or by means of the committees in their support, however called, by way of donation for any amount greater than the sum of 5 000 euro per year.

The stated requirements also affect the incomes statements of not separated spouse and their children and relatives to the second degree of kinship, if the same will allow [...].

Data relating to the patrimonial situation and incomes of Members are published in the Official website of the Parliament giving specific evidence of the contributions received, directly or by means of committees set up to support them, superior to 5 000 euro per year'.

- The Code of conduct also requires Members not to accept gifts or similar benefits (except those worth of less than 250 euro received for reasons of courtesy habits Art IV (Gift). 'This prescription does not apply to the reimbursement of travel expenses, accommodation and subsistence of deputies or to direct payments of such expenses by third parties when the deputies participate on the basis of an invitation and in the exercise
of their functions in events organized by third parties. For such cases the Bureau take all appropriate steps to ensure transparency.'

- Regarding transparency declarations: 'Declarations, relating to the financial positions and interests of Members, to the funding received and to the positions they hold, as required by the current legal system, are published on the website of the Chamber' (Art V).

Finally, the Code establishes (Art VI) that the Office of Presidency shall set up, at the beginning of each term, an Advisory Committee on the conduct of Deputies, with the task of examining the alleged violations of the Code of Conduct, and inform of the results the President also in view of the possible submission to the competent bodies. The failure to observe the provisions of the code of conduct, as determined by the Advisory Committee, is announced to the Assembly and made public on the website of the Chamber.

Worth to notice that, within the Chamber of Deputies, the Committee for the Elections (‘Giunta delle elezioni’) assesses the qualifications for admission of each deputy: that is, it has the task of verifying the regularity of the election of each deputy, cases of ineligibility and incompatibility.

The Statute on the functioning and responsibilities of this Committee (‘Regolamento della Giunta delle Elezioni’), alike the Code of conduct, states that:

(Art 15) 'Within thirty days of the first sitting of the Chamber, or the date of the proclamation when it occurs later, and whenever it is required by the Committee for the elections, each Member of Parliament declares to the President of the Chamber the functions and the positions of all kinds covered at the date of submission of the candidature and those covered at the present time in public or private entities, including international, as well as the functions and business or professional activities still carried out. Where a Member takes up a function or a task after the proclamation [of deputy], he/she must render the declaration within a period of thirty days or from the effective exercise of their functions, if it is earlier than the formal designation or it is not provided'.

Moreover:

2. 'The Committee may in any case require additional declarations or additional certifications and can, also ex officio, at the initiative of each component and on the basis of the documents in its possession or otherwise acquired, ascertain the causes of incompatibility, ineligibility and invalidation/termination ('decadenza').'.

As the Committee is responsible to ascertain the absence of causes of incompatibility, ineligibility or invalidation, it carries out the investigation on the Members' functions, positions and subjective conditions relevant to this assessment (Art 16), also with the support of sub-committees, such as the permanent one 'responsible for the cases of incompatibility, ineligibility or invalidation' or other sub-committees that may be set up ad hoc for the analysis of specific issues, with investigative functions in support to the Committee for the Elections (art 3).

In its investigative tasks on the validity of the elections, the Committee for the Elections, if in the course of its activity finds facts/conducts that could constitute a criminal offense, shall inform the judicial authorities through the President of the Chamber. If the Committee considers that these facts can affect the validity of the elections, suspend the validation of the election of the Members concerned.

Similar rules exist for the Senate so they are not reported here.
• Rules on electoral procedures and funding system

Besides the provisions contained in the Statute for the functioning of the Chambers mentioned above, norms on the election procedures and on the rules governing the election campaign are contained in several laws that have been conveyed in a consolidated law (T.U. D.P.R. 361/1957 and modifications) as well as in other specific laws (e.g. on the *par-condicio* conditions of access to media during the election campaign).

A useful 'Electoral Handbook' has been published in 2013 by the Research Service of the Chamber of Deputies and contains all relevant provisions regarding the elections of the two Chambers of the Italian Republic. The first part is devoted to the essential elements of the electoral system as well as to the criteria for eligibility and compatibility, to the electoral campaign, to the funding of political parties and candidates and to the reimbursements of electoral expenses.

a) Rules about the election campaign: limits to and disclosure of electoral campaign expenses.

a1) Summary of the regulation of private funding to the candidates.

- **Law No 515/1993** on electoral campaigns allows those who want to run for elections to gather funding in support of their own electoral campaign only through an electoral agent (*mandatario elettorale*), who is responsible to register, under his own name, all the funding operations and collection of money in one bank account on behalf of the candidate.
- natural persons, entities and associations and private companies can make contributions to candidates;
- funding to individual candidates and to political parties from bodies of public administration, government agencies, companies with participation of public capital exceeding 20% are prohibited;
- contributions received and expenses incurred for the electoral campaign must be declared (Declarations as provided by the Law n. 659 of 1981 must also be attached).
- for all individual contributions that exceed the sum of 5,000 euro per year there is the obligation to make a joint declaration (a disclosure) with the donor to the President of the Chamber (Law 659/1981, which is the main legislative reference on the State funding of political parties, art. 4, third comma);
- the political parties also have the obligation of reporting all contributions received for the election campaign to the President of the Chamber;

a2) Limits to the electoral campaign expenses

- **Law No 515/1993** sets a limit to sustainable spending by both individual candidates and political parties or groups participating in the election campaign (the ceiling has to be determined according to the rules indicated by the law). Also, the same law defines the type of election expenses, that is, the various items that must be taken into account by parties and candidates for the total calculation of the ceiling. For instance, election expenses are those relating to production, purchase or rental of materials and means of propaganda and its distribution and dissemination (including
the purchase of advertising space in the media) as well as staff and equipment used in the electoral campaign.\textsuperscript{143}

- Members of both Chambers are required, within three months of proclamation, to present at the Office of Presidency of the Chamber (and to the relevant Regional Board for electoral guarantee) a declaration of expenses incurred or the evidence that they have used only propaganda means provided by their own party.

- It must be stressed that this disclosure obligation is borne both by the recipient and those who provide the funding and can be cleared, only for contributions made to the election campaign, also by self-certification of candidates.

- Representatives of political parties, movements, lists and groups of candidates which contribute to the general election must submit to Presidents of the respective Chambers, within 45 days of setting up, a final statement (‘rendiconto’) of the expenses held in the election campaign and the related sources of funding. Checks over these statements are carried out by the Court of Auditors.

- Within 120 days before the election, any elector may submit to the Board of guarantee (‘Collegio di Garanzia’) a complaint on the regularity of the declarations and statements provided (Art 14 Law n. 515/1993).

- In case of irregularities, administrative sanctions (up to the removal from the office) can be applied.

\textbf{a3) public funding to the candidates and reimbursements for electoral campaign.}

Since Law 195/1974 (as modified mainly by Law n. 157/1999), a public contribution in favour of political parties and individual candidates exists, in the form of: a) a state subsidy for normal functioning of political parties and b) a further form of contribution as reimbursement for election expenses incurred by them for the parliamentary elections (as well as for the European and regional ones). Refunds are paid by sharing, between movements or political parties entitled, four funds corresponding to the organs to be renewed: the Senate; national Parliament; European Parliament; Regional Councils. The determination of a fixed sum per fund (around 16.000.000 euro each) has been introduced by Law 96/2012, which has reformed the public contribution to politics, mainly paid out as reimbursement, and has strengthened transparency and control systems over expenses statements. To be noted that a very recent reform has abolished the public funding to political parties, at least in its direct form (although it is possible to devote to them the 2x1000 of the annual incomes declaration): the abolition is being applied progressively and will be completed only in 2017.

- Framework on the election campaign in the media - Political communications and information

Some ordinary laws contain specific rules on the modalities and limits of the election campaign made on the media, including rules on political communication and information (news).

\textbf{Law 28/2000} (‘par condicio’ Law) on ‘equal access to the media during election and referendum campaigns and for political communication’, i.e. on the transmission of political communication on audio-visual media, states that during the electoral campaign (that is, from the day when elections are called to the second last day before the election)

\textsuperscript{143} To be noticed that the travel and living expenses, telephone and postage, are calculated on a flat rate of 30\% of the amount of eligible expenses (L. 515/93, art. 11).
Propaganda messages and other political communications should respect specific conditions and limits indicated in the same law.

Political communication is defined as the broadcasting of programs containing political opinions and assessments.

According to this law, broadcasters must ensure to all political subjects fairness and equal access to means of political information and communication. This also means equal slots offered to each 'political subject' for their political messages (called 'self-managed messages', of max 3 minutes in TV and max 90 seconds in radio), assigned through drawing lots.

Specific criteria are established (art 4) for the allocation of slots among the 'political subjects': a) in the time frame between the call for elections and the presentation of the candidatures, slots are shared among the subjects present in the Assemblies to be renewed or present in one of the national Chambers; b) between the date of submission of candidature and the closing date of the election campaign, spaces are shared according to the principle of equal opportunities among coalitions and among the competing lists who submitted nominations.

The Authority for the Communication (AGCOM) also defines the criteria to be respected by public and private broadcasters in the news programs, in order to ensure equal treatment, completeness and impartiality of information (political pluralism). In particular, from the date when elections are called until the end of voting, in any broadcasting it is prohibited to provide, even indirectly, voting instructions or express their voting preferences. The directors and TV anchor are also required to keep a correct and impartial behaviour in managing the program, so not to exercise, even in surreptitious way, influence on the free choices of voters.

It is worth noting that during the period of electoral campaign, it applies a 'strengthened political pluralism'\textsuperscript{144} as the presence of candidates, representatives of parties and of political movements, members of the Government or of the Regional assemblies and executive bodies in TV/radio programs must be limited exclusively to what is necessary in order to ensure the thoroughness and impartiality of information. Their presence is prohibited in all other broadcasts (Art 1 (5) of Law 515/1993).

Moreover, all election propaganda publications (newspapers, TV and any other media) should indicate the name of the responsible client (art 2 of Law 515/1993).

To be noted that who uses fax, SMS or MMS, pre-recorded telephone calls, e-mails, as a form of communication for the electoral campaign, has the obligation to obtain the prior and informed consent of subscribers to services of electronic communications, including subscribers to services of mobile telephony and the users of pre-paid cards.

Propaganda and communications on newspapers and magazines are only permitted as electoral political messages in the ways provided for by Law 28/2000, i.e., as announcements of debates and conferences; description of electoral programs; comparison among several candidates. The provision does not apply to official press entities of political parties and movements (i.e. their message does not have to respect the conditions of the law).

\textsuperscript{144} See Zaccaria- Valastro, Diritto dell'informazione e della comunicazione, Cedam, 2010 (and subsequent editions).
Any form of propaganda, including that one carried out through newspapers and broadcast media is prohibited the second last day before the election.

A relevant provision is contained in Art 9 of the Law 28/2000, where limits to the institutional communication are set for all the duration of the electoral campaign: it is forbidden to all public administrations to carry out communication activities other than those carried out in an *impersonal way and essential* for the effective performance of their functions. 'Institutional communication' is defined by Law 150/2000; with this law, the 'institutional communication has raised to the role of a function at the service of citizens', in compliance with constitutional principles of impartiality and good functioning of the administration (art. 97 of the Constitution)\(^\text{145}\). The norm has been interpreted in the sense that: 'individual public office-holders, even if playing a 'double role' as administrators and electoral political subjects, can do engage in political communication activities, but only outside the performance of their official duties. There must be a clear distinction of references, rites, means, resources, staffing and structures used\(^\text{146}\).

### 8.13. Cyprus

The following primary texts have been examined:

- national constitution of Cyprus
- statute of Members of Parliament
- electoral legislation, legislation relating to political parties, as well as two reports from the Office for Democratic Institutions and Human Rights of the OSCE
  
  - for the 22 May 2016 [parliamentary elections](#)
  - for the 17 February 2013 [presidential elections](#)

As well as the 2015 [Interim Compliance Report](#) on Cyprus of the Group of States against corruption ([GRECO](#)).

The following were not found (it may be that they do not exist in the public domain):

- Code of Conduct for members of government, parliament, etc.

No rules providing that current political office holders cannot use the resources (staff and others) provided to them in their current capacity for their re-election/selection were found.

### 8.14. Latvia

According to the Section 4 of the Law On Prevention of Conflict of Interest in Activities of Public Officials: President, Prime Minister and Speaker of the Parliament are considered Public and/or State officials together with holders of other political and state offices.

- The Law on Pre-election Campaign, Section 33 and 34 provides general overview:

\(^\text{145}\) See the clarification given by CORECOM - FVG (the regional regulatory Authority for communications in Friuli Venezia Giulia), [Guidelines on the rules on communications in election period: the level playing field at local level](#), Udine February 22, 2008, (p.2-25).

\(^\text{146}\) *Ib.* p. 27, where it is reported the statement of a former Director of AGCOM, prof. Mazzella.
Section 33. Prohibition of the Use of Administrative Resources

(1) Use of administrative resources in pre-election campaign is prohibited.

(2) Within the meaning of this Section the use of administrative resources shall be considered use of financial resources, movable and immovable property or provision of services of a State authority and an authority of derived public persons and capital companies, in which the capital shares (stocks) belong to the State or derived public persons, as well as of the capital companies, in which capital shares (stocks) owned by one or more State capital companies or capital companies of derived public persons individually or in aggregate exceed 50 per cent, for conduction of pre-election campaign, as well as advertising of these authorities for payment within the period of 30 days before the elections, if the relevant advertisement with regard to its content is related to reflecting of a deputy candidate, political party, association of political parties, as well as candidates for the post of the Prime Minister or a Minister nominated by a administrative bodies of a political party or association political parties, or reflecting a person related to a political party or an association of political parties or reflecting of activities by such a candidate or person.

(3) As the use of administrative resources is not considered the granting of premises for conduction of pre-election campaign, if the provisions of Chapter VII of this Law are complied with, as well as the use of the resources which are used to provide the State protection (security) to senior State officials to whom it shall be provided in accordance with laws and regulations in so far as the use of resources is needed to provide protection (security) for the relevant State officials.

(4) Within the meaning of Paragraph two of this Section a person related to a political party or association of political parties shall be an official, a member of the political party or association of political parties, or such person who during the last 18 months before the elections has had business relations with the relevant political party or association of political parties in relation to the provision of services to that political party or association of political parties, by planning, preparing or organising the election campaign, or such person who within the last 18 months before the elections has been an employee, official or a member of the political party or political association.

(5) Placement of materials of pre-election campaign is prohibited in publications issued by a State authority or an authority of derived public persons or capital companies in which capital shares (stocks) belong to the State or derived public persons, as well as the capital companies, in which capital shares (stocks) owned by one or more State capital companies or capital companies of derived public persons individually or in aggregate exceed 50 per cent.

(6) Placement of interviews with deputy candidates or candidates for the post of the Prime Minister or a Minister, nominated by administrative bodies of a political party or association political parties, as well as to place such articles in which it is indicated that the person mentioned in it is a deputy candidate for the post of the Prime Minister or a Minister nominated by administrative bodies of a political party or association of political parties, is prohibited on election day, as well as 30 days prior to the election day in publications issued by a State authority or an authority of derived public persons or capital companies, in which the capital shares (stocks) owned by one or more State capital companies or capital companies of derived public persons individually or in aggregate exceed 50 per cent.

(7) The execution of restrictions referred to in this Section shall be controlled by the Corruption Prevention and Combating Bureau.
Section 34. Liability for Non-compliance with the Restrictions on the Use of Administrative Resources

(1) Officials or employees of State authorities or authorities of derived public persons or capital companies, in which capital shares (stocks) belong to the State or a derived public person, as well as of capital companies in which capital shares (stocks), owned by one or more State capital companies or capital companies of derived public persons individually or in aggregate exceed 50 per cent, who have used the financial resources or property of the relevant authorities unlawfully, by violating the restrictions on the use of administrative resources laid down in this Law, shall bear liability laid down by the law for the non-compliance with the restrictions on the use administrative resources in pre-election campaign.

(2) The financial resources and property used unlawfully by violating the restrictions on the use of administrative resources in pre-election campaign laid down in this Law shall be under the jurisdiction of the State, by presuming that by violating the restrictions on the use of administrative resources determined by the State, the official or employee has caused such harm to the State administrative order as is to be evaluated in financial terms and corresponds to the value of financial resources or property used in a prohibited manner.

(3) In accordance with the provisions of this Section officials or employees referred to in this Section have an obligation to reimburse the losses incurred.

(4) The Corruption Prevention and Combating Bureau shall demand the reimbursement of the losses in accordance with the Administrative Procedure Law by issuing administrative act on reimbursement of losses incurred and conducting activities for the execution of the administrative act as set out in the laws and regulations. The execution thereof shall be ensured through the bailiff.

(5) The recovery of losses from officials or employees shall be carried out irrespective of whether the relevant officials or employees are brought to administrative liability for the infringement of the provisions of this Law.

- The Law On Prevention of Conflict of Interest in Activities of Public Officials, Section 22 provides brief ethical rules for all Public Officials, which are also relevant to President, Prime Minister and Speaker of the Parliament:

Section 22. Behavioural (Ethical) Rules of Public Officials

(1) Public officials shall act in conformity with the behavioural (ethical) codes approved in the relevant profession, field or sector.

(2) A public official shall refuse the performance of the duties of office or the combining the office of the public official in all cases where due to ethical reasons the impartiality and neutrality of his or her actions might be doubted.

- The Saeima Election Law (Parliament) in article 6 specifies following restrictions for President:

6. (1) If the President of Latvia, the Auditor General, a member of the Council of the State Audit Office, an ambassador extraordinary and plenipotentiary, a judge of the Constitutional Court, a prosecutor, a police officer or a professional soldier has been nominated as a candidate for the Saeima elections, he/she must resign from office (service) after the list of candidates for the Saeima elections (hereinafter – list of candidates) has been registered and must submit documents certifying his/her resignation to the Central Election Commission within one month.
In the Constitution of the Republic of Latvia, Rules of Procedure of the Saeima (Parliament) and Code of Ethics for Members of the Saeima (Parliament) of the Republic of Latvia (at the end of Rules of Procedure) there are no references to any legal rules and/or practices relating to the participation of holders of high political offices (President of Parliament, government members, etc.) in election campaigns.

Only in the Article 9 of the Code of Ethics are made indirect references and since those rules are also applicable to Speaker of the Parliament, it could be relevant:

9. A Member of Parliament does not allow a conflict of personal or national interests and tries to avoid situations that may create the appearance that such a conflict exists. A Member of Parliament refuses an invitation, does not participate in an event and tries to avoid any other situations that may give grounds for suspecting the presence of a conflict of interest or that may impair the prestige of the Saeima.

Also the Law On Prevention of Squandering of the Financial Resources and Property of a Public Person describes how and when public official can use state property, for example on the use of cars:

### Section 5.2 Provisions Regarding the Use of Road Transport

1. In addition to the provisions included in this Law and other legal acts regarding the action with a public person property, the provisions regarding the use of road transport of a public person shall be observed also in accordance with this Section.
2. The road transport owned, possessed or used by a public person, including operational transport, shall be used only for the performance of official duties job responsibilities, duties of office (hereinafter – job responsibilities).

Use of road transport for work needs shall be such use of road transport which is necessary for the performance of the job responsibilities of an official or employee, ensuring the performance of the functions of a public person or public person authority.

4. Use of road transport shall be considered as use of road transport for work needs also in the following cases:

1) the job responsibilities of the relevant official or employee are related to the necessity to provide him or her with a possibility to return to the performance of the job responsibilities at any time or it is necessary to ensure the performance of the job responsibilities as a matter of special urgency, also in order to prevent emergency situations and their consequences, a threat to public health or safety;
2) the specific character of the job responsibilities of an official or employee provides for their performance in such territory which is impossible to reach by public transport or without the use of public transport due to objective reasons;
3) the safety of public officials is protected;
4) an official or employee is taken from the work place to the place of residence or from the place of residence to the work place, if due to objective reasons it is not possible to use public transport services or its use hampers efficient performance of the job responsibilities.

5. In order to ensure the conformity with the provisions of this Section, a public person or public person authority shall issue a law or regulation regarding the procedures for the use of road transport, also determining the range of such persons who are allowed to use the relevant road transport in accordance with the provisions of this Section.
For further information, please also see the regulation Procedure for Completion, Submission, Registration and Keeping of Declarations of Public Officials and for Drawing up and Submission of Lists of Persons Holding the Office of a Public Official.

The Corruption Prevention and Combating Bureau for many years is trying to get passed without success the Code of Conduct of Government Ministers, where Prohibition of the Use of Administrative Resources would be mentioned.

8.15. Lithuania

The most important provisions governing elections, political advertising, political campaigns & their financing are to be found in the:

- Law on Elections to the Seimas of the Republic of Lithuania,
- Law on Presidential Elections,
- Law on Government,
- Law on Funding (and Control over Funding) of Political Campaigns and the corresponding Recommendations regarding political advertising during political campaign, established by the Central Electoral Commission.

Other relevant laws are also addressed below.\textsuperscript{147}

The most important rules relevant in this context discussed below relate to the prohibition to take advantage of one’s official position in an election campaign (in order to, for example, create exclusive conditions for campaigning for oneself or one’s party), rules applicable to public officials regarding communication with the media, the right to be relieved from one's official duties for a certain period of time, the general principle of equality with the view of avoiding creating exclusive conditions to any of the political parties or candidates, and rules and conditions applicable to political advertising (including by electronic means & in social networks) and its funding.

**Lithuanian Parliament (Seimas): General**

General provisions regarding the role and the functioning of the Lithuanian Parliament (Seimas) are laid down in the Lithuanian Constitution (Arts. 55-76) and in the Parliament’s Statute. According to both Article 59 of the Constitution and Article 18 of the Statute, the mandate of Parliament Members starts on the day on which the newly elected Parliament assembles to the first sitting. This is also the date on which the mandate of the previous members ends.

**Conflict of interest**

Parliament’s Statute lays down a Member of Parliament's duty to avoid conflict of private and public interest and mandates Members to behave in a manner which prevents the emergence of any public doubts regarding the possible presence of such conflict. He/she is obliged to do everything is his power to avoid calling into question of his/her integrity, including the possibility for the public to ascertain the absence of a conflict of interest (Article 18, Parliament's Statute). Compliance with this provision is monitored by the Seimas Committee on Ethics and Procedures or a special (ad-hoc) Committee.

\textsuperscript{147} The hyperlinks mostly refer to the Lithuanian language version when the English version is not available.
inquiry committee. The former committee is to receive Members' annual declarations regarding (absence of) conflict of interest (Article 18(4) Statute).

1. **Prohibition to take advantage of one's official position**

*Parliament Elections*

Elections to the Lithuanian *Parliament* (*Seimas*) are governed by the *Law on Elections to the Seimas of the Republic of Lithuania* (Electoral Law).\(^{148}\) Among other things, this law sets out conditions applicable for activities of the election campaign, which are aimed at influencing voters' behaviour. Most importantly, **Article 54** prohibits taking advantage of one's official position while engaging in such activities:

> '1. **Anyone shall be prohibited from taking advantage of his official position** in state or municipal institutions, establishments or organisations, as well as in the state or municipal mass media for any form of election campaign, *or from instructing other persons to do so*, or from trying to *exert influence upon the will of voters in any other manner taking advantage of one's official position*. State or municipal officials, public servants shall be prohibited from taking advantage of their official position in order to create exclusive conditions for campaigning for themselves or for their party. A person who violates the provisions of this Article may be held administratively or criminally liable in accordance with the procedure laid down by law.'

Legally, this prohibition applies to Members of Parliament too. However, according to available information, given the fact that Members' political activities are difficult to dissociate from political agitation/electoral campaign activities, the scope of this prohibition is narrow in practice. A Member of Parliament may not use resources aimed at financing their parliamentary activities for purposes of their political agitation/campaign, and assistants of an MP may not participate in the Member's electoral campaign.

Administrative liability in these cases is governed by Article 207\(^2\) *et seq* of the *Administrative Offences Code*, which foresees administrative penalties for infringement of the above rules.

A provision analogous to Article 54(1) laying down the prohibition to take advantage of one's official position is also to be found in the Law governing *presidential* elections (*Law on Presidential Elections*, Article 47).

2. **Political advertising: requirements and conditions**

*Principle of equality*

Besides the prohibition to take advantage of one’s official position, the Electoral law and other acts lay down further conditions and requirements applicable to any form of political advertising. They need to be seen in the context of the principle of equality to be ensured for candidates and political parties. The principle is laid down in numerous documents, including Article 46 of the Electoral Law, which provides that:

> 'after the announcement of the names of candidates and lists of candidates by the Central Electoral Commission, the candidates for Seimas member in constituencies shall have equal rights to speak at voters' meetings or any other'
meetings, gatherings, conferences as well as through the state mass media, and to announce their respective election programmes.'

Par 2, however, also adds that 'heads of state and municipal institutions and establishments, also municipality mayors or persons authorised by them must help candidates for Seimas Member to organise meetings with voters, to obtain necessary information, with the exception of the information which is considered confidential.'

The Law on Political Parties equally stipulates that all political parties enjoy equal rights to participate in (European) parliamentary, presidential and municipal elections (Article 13) and that their candidates shall have equal conditions in using public media according to applicable laws.

Use of media during election campaign

Article 54(2) of Electoral Law provides:

2. If a person is a candidate for Seimas Member, he can use the state media only according to the procedure set forth in Article 51 of this Law [below]. If the fulfilment of their duties requires releasing important news to the mass media, they can do so only at a press conference. State mass media or publicly financed programmes of the mass media may broadcast only a recording of the conference or a part thereof which contains no elements of election campaign.

A provision analogous to the above provision is to be found in the Law governing presidential elections (Law on Presidential Elections, Article 47).

Article 51 of Electoral Law, to which the above article (Art. 54(2)) refers, reaffirms the principle of equality and lays down further rules and conditions regarding the use by candidates of state media:

Article 51. Conditions and Procedure of Election Campaign

1. After the announcement of the names of candidates and lists of candidates by the Central Electoral Commission, the candidates shall be granted the right to use the Lithuanian national radio and television free of charge. The rules for preparing programs for election campaign shall be approved and the actual duration and time of the Lithuanian national radio and television programs shall be established by the Central Electoral Commission after consultation with the head of the Lithuanian national radio and television. The Central Electoral Commission shall also distribute the time of the programs in such a manner that the following principles of equality are preserved: among the lists of candidates in the multi-member constituency; among single-member constituencies; among candidates in a single-member constituency.

External political advertising

Article 51 of Electoral Law further stipulates conditions/prohibitions regarding so-called external political advertising (defined below):

8. Under this Law external political advertising shall be political advertising communicated to the public by video or audio means. External political advertising shall also be political advertising which is announced in public areas, buildings, vehicles.

9. It shall be prohibited to install and communicate external political advertising:
1) on the buildings occupied by state administration, law-enforcement and other state and municipal institutions and establishments;

2) inside or outside the vehicles belonging to state or municipal enterprises;

(A long list of other places where political advertising is prohibited follows).

Further rules regarding political advertising in general as well as its financing are laid down in the Law on Funding (and Control over Funding) of Political Campaigns (in the following Law on Funding) and the accompanying guidelines established by the Central Electoral Commission (Vyriausioji Rinkimų Komisija, VRK). It should be added that the Law on Funding (and Control of Funding) of Political Campaigns applies not only to the elections to Seimas but more generally, including the elections of the Republic’s President, European Parliament elections, municipal councils elections and referendums.

Duty to mark and clearly distinguish political advertisement

Article 2(8) of the Law on Funding defines political advertising as information which is 'disseminated by a state politician, political party, its member, political campaign participant, on its/his/her behalf and/or in its/his/her interest, in any form and by any means, with or without payment, during the political campaign period or between political campaigns, where such information is intended to influence the motivation of voters when voting in elections or referendums, or where such information is disseminated with the purpose of campaigning for a state politician, a political party, its member or political campaign participant as well as their ideas, objectives or programme.' According to Article 15 of the same law, during a political campaign, 'political advertising must be marked in accordance with the procedure laid down by the law by indicating the source of funding and clearly distinguished from other disseminated information.' Political advertising which is not marked according to the above provision shall be regarded as 'hidden' political advertising and is herewith prohibited; dissemination of such advertising entails liability established by law (Article 2 Law on Funding).

General principles

Besides the special requirements regarding political advertising laid down in the above mentioned Law on Funding, the general principles and provisions set out in the Law on the Provision of Information to the Public equally apply to (political) advertising. These principles include, inter alia, principles of humanism, equality, tolerance, freedoms of speech, religion, and conscience, variety of opinion, adhere to the norms of professional ethics of journalists, support the development of democracy and public openness, promote civil society and state progress, and others (Article 3).

Further guidance regarding the above mentioned rules applicable to political advertising (e.g. duty to mark and clearly distinguish political advertising) is laid down by the Central Electoral Commission (Vyriausioji Rinkimų Komisija). In a decision adopting 'Recommendations regarding political advertising during political campaign', adopted on 4 May 2016, the Commission, inter alia, clarifies, what does and what does not constitute political advertising (Chapter I) and reaffirms the principle of equality (par. 17) as well as the general principles mentioned above (par.10). Accordingly, public information providers are advised not to create exclusive conditions to any of the political parties or candidates. The recommendation confirms the rule (to be found in Article 54(2) of the Electoral Law regarding Parliament Elections) that, if a public official is a candidate who,
Provisions governing the activity of high political office-holders in election or selection processes

in the fulfilment of his/her duties has to release important news to the mass media, he/she can do so only at a press conference. Further, state mass media or publicly financed programmes of the mass media may broadcast only a recording of the conference or a part thereof which contains no elements of election campaign (par 19).

It should be added that this recommendation, as it explicitly states, presents the Electoral Commission’s opinion regarding political advertisement which does not enjoy the same legal status as a legal act.

Definition of political advertising

Article 2(8) of the Law on Funding defines political advertising as information which is:

'...disseminated by a state politician, political party, its member, political campaign participant, on its/his/her behalf and/or in its/his/her interest, in any form and by any means, with or without payment, during the political campaign period or between political campaigns, where such information is intended to influence the motivation of voters when voting in elections or referendums, or where such information is disseminated with the purpose of campaigning for a state politician, a political party, its member or political campaign participant as well as their ideas, objectives or programme.'

The mentioned recommendation gives further detail what the Central Electoral Commission shall or shall not consider as political advertising. While, for example, 'regular' announcements of informative nature which are done in the course of performing one's work duties and which regard politicians'/parties'/candidates' activities, shall not be regarded political advertisement, such announcements will be regarded political advertising when they become exceptionally frequent or systematic (own translation). The following shall also be considered political advertising: announcing information, pictures or statements of party leaders, party members or other persons performing public (trust) functions, which are not related to the said persons' activities in state institutions of such institutions' competence (par. 4.6 of Recommendations regarding political advertising during political campaign – in Lithuanian).

Political advertising by electronic means/in social networks

The recommendations explicitly address the issue of political advertising via means of electronic communication, by stating that the requirements regarding such advertising are analogous to the requirements regarding any other means of political advertising. As mentioned above, these requirements include the duty to mark political advertising (including reference to its funding source) and to clearly distinguish it (as well as prohibition of external political advertisement in the specified places/locations, including, for example, buildings of public administration?). According to par. 21&22, the mark of political advertisement in social networks etc. needs to be an inseparable part of the advertisement (so the mark remains attached to the advertisement whenever other network participants share the link). Par. 23 recommends to political parties, candidates and other political campaign participants on their own social pages, aimed at political (referendum) campaign, refer to the fact that this is the (social network) page of the party, candidate or political campaign respectively.

3. Right to be relieved from work/official duties

The above sections addressed the prohibition to take advantage of one's official position and the requirements applicable to political advertising. Regarding parliamentary
Elections, Article 48 of the Electoral Law further lays down the right of a candidate for Seimas’ Member to be relieved from work or official duties. While 'ordinary' candidates, at their written request, are entitled to such a relief for maximum 30 days, this provision does not apply to persons (already) Members of the Parliament and to the President of the Republic, who are not entitled to any relieve from work. This is different with regard to a candidate who is a Member of Government, who is, according to Article 13(10) of the Law on Government, entitled to relieve from his official duties for a period of maximum 10 days. However, such Government member shall not be relieved from his duties, or, if relieved, shall be recalled, if it will not be possible to ensure at a Government sitting the majority of the Government members necessary to take a decision. During this period, no salary or other payments will be paid to the Government member. The same rule regarding relieve of maximum 10 days applies if the Member of Government stands as a candidate for the President of the Republic, Member of the European Parliament or member of municipal council.

4. Political campaign funding

According to Article 7 of the Law on Funding (above, last amended on 26-11-2013), political campaigns of political parties shall be financed exclusively from the following sources:

1) funds of the political party received from the sources of funding of the political party and used to finance political campaigns of the party, candidates and lists of candidates of the party;

2) donations for political campaign to the political party during the political campaign period, given by natural persons who under this Law have the right to donate [regulated in Article 10];

3) during the political campaign, loans received by a political party from banks registered in the Republic of Lithuania or another European Union Member State or a branch of a bank registered in the European Economic Area and operating in the Republic of Lithuania;

4) interest on the funds kept in the political campaign account.

2. Political parties must keep funds designated to finance a political campaign in the political campaign account. The political campaign account shall not be subject to any interim measures.

3. It shall be prohibited to finance political campaigns of political parties with the funds which are not specified in this Article.

As it is clear from the wording, it lists the permissible sources of financing political campaigns exhaustively and no other financial resources may be used for this purpose.

Regarding independent political campaign participants, Article 8 provides as follows:

1. Political campaigns of other independent political campaign participants shall be financed from:

1) donations of natural persons who under this Law have the right to donate and donations of political parties to candidates, lists of candidates or referendum initiators, or referendum opponents;

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2) own (personal) funds;
3) interest on the funds kept in the political campaign account.

2. Funds designated to a finance political campaign must be kept in the political campaign account. The political campaign account shall not be subject to any interim measures.

3. It shall be prohibited to finance political campaigns of other independent political campaign participants with other funds which are not specified in this Article.

Article 14(1) provides that, after the start of political campaign, all its expenses are to be covered from the campaign's account only. The Article (par. 4) further specifies what exactly does and does not qualify as campaign expenses translation available on the internet):

4. Expenditure and assumed liabilities of a political campaign participant during a political campaign shall be recognised as political campaign expenditure, where such liabilities and expenditure are designated for:
   1) production or distribution of political advertising or any other campaigning material through any means of the mass media or in any other public mode;
   2) remuneration of the political campaign treasurer and performance of his functions;
   3) payment for the services of a political campaign audit firm or auditors;
   4) rent of movable or immovable property necessary during the political campaign;
   5) rent, exploitation of vehicles used for the political campaign;
   6) communications, meals, provision of accommodation and transport of political campaign volunteers, political party's or candidate's representatives for the election or election (referendum) observers;
   7) other needs related to the political campaign as prescribed by this Law.

5. Expenditure satisfying the purpose indicated in paragraph 4 of this Article but incurred not during a political campaign, if the property and other assets specified in the said paragraph are intended for the political campaign or if the services are received during the political campaign, shall be recognized as political campaign expenditure. In this case political campaign participants must inform the Central Electoral Commission about this, attaching copies of the documents confirming the expenditure. Where necessary, the Central Electoral Commission may request additional information.

6. The amount of every political campaign participant's expenditure referred to in paragraphs 4 and 5 of this Article may not exceed the maximum amounts of political campaign expenditure set in paragraph 2 or 3 of this Article. In the cases where a run-off voting is conducted under the election law, the maximum amount of political campaign expenditure of a candidate participating in the run-off voting shall be increased by 25 per cent.

7. The following shall not be regarded as political campaign expenditure:
1) the expenditure incurred by political parties, potential candidates, candidates, referendum initiators, referendum opponents or public election committees under contracts for legal services;

2) expenditure designated for the payment of an election deposit;

3) expenditure designated for potential candidate's, candidate's travelling (transport and provision of accommodation) to a constituency;

4) expenditure for the payment of the rent and maintenance of the facilities of the political party and for activities of the staff, where such expenditure is incidental to this political party not during the political campaign.

8.16. Luxembourg

Le Statut des fonctionnaires de la Chambre (14.3.2012) prévoit dans son article 14,1 (voir p. 542):

‘Le fonctionnaire est tenu aux devoirs de disponibilité, d'indépendance et de neutralité.’

Dans le Code de déontologie des membres du Gouvernement du 28.02.2014 (abrogé) les articles suivants peuvent être d'un certain intérêt:

- Art. 3,1 'Les membres du Gouvernement doivent respecter l'impartialité politique de la Fonction publique et ne pas demander aux fonctionnaires d'agir d'une manière incompatible avec le statut général des fonctionnaires de l'État.'

- Art. 6,1

'Les moyens mis à la disposition des membres du Gouvernement par l'État (p. ex. ressources humaines, téléphone fixe, téléphone portable, fax, ordinateur) sont réservés à l'accomplissement de leur mission.

Compte tenu de la nature de leur fonction, les membres du Gouvernement peuvent utiliser les moyens en question accessoirement à des fins privées.'


Autres sources d'information:

Constitution du Grand-Duché de Luxembourg
Statut général des fonctionnaires de l'Etat, 31.03.2015
Élections
Site officiel Élections.public.lu
Étre candidat aux élections législatives
Loi électorale du 18 février 2003 (+ liens vers les lois modifiant) - pour la dernière version consolidé voir Recueil de la législation relative aux élections législative, communale et européenne.

Le financement des campagnes électorales est traité au Chapitre IX, Art. 91. ff
Parlement
8.17. Hungary

In the Hungarian laws is no mention of the participation of holders of high political offices (President of the Parliament, government members, etc.) in election campaigns or other selection procedures.

- **Legal status of public office holders**

The following laws regulate the status of public office holders:

- **Members of the Parliament:** Law XXXVI/2012 on the Parliament - The law mentions only cases of conflict of interest (Members of the Parliament cannot accept other state, local government and business offices or mandates). Election campaigns are not mentioned.

- **Members of the Government:** Law XLIII/2010 on the central state administration bodies, as well as the status of members of the Government and state secretaries - The law mentions cases of conflict of interest (Members of the Government and state secretaries cannot accept supervisory board membership, a company or a cooperative leadership, a foundation management organization membership, membership in an advocacy organization). Election campaigns are not mentioned.

- **President of the Republic:** Law CX/2011 on the President’s legal status and remuneration

  Article 14/A. § stipulates the following: The President of the Republic disposes on resources for public offerings and donations. These resources, however, cannot be attributed to political parties, organizations providing financial support to parties and organization exercising direct political activities. Election campaigns are not mentioned.

The laws have no restrictions or regulations regarding the use of the benefits associated with high political office holders’ function to campaign purposes.

- **Regulation on the financing of election campaigns**

The laws on election do not regulate the election campaigns.

- **Law CCIII/2011** on the election of the Members of the Parliament

- **Law L/2010** on the election of local government representatives and mayors

- **Law CXIII/2003** on the election of the Members of the European Parliament

The law on the election procedure deals with the circumstances of the campaign, but not with the financing:

- **Law XXXVI/2013 on the election procedure**

There is a separate law dealing with campaign costs:

- **Law LXXXVII/2013 on the transparency of the campaign costs related to the election of the Members of the Parliament**
This law does not mention how holders of high political offices can use the resources provided to them because of their mandate during the campaign. Because of this regulatory gap, there is a lot of political and professional criticism concerning the campaign financing regulation, e.g. a study of the Hungarian organization of Transparency International from 2013 states (in Hungarian):

'Even if ministries, state agencies or state-owned companies publish pro-government-party advertisements, it is still not considered as a violation of the campaign finance law. Nor is the fact that opposition-led local governments publish advertisements supporting opposition parties.'

The report of the Office for Democratic Institutions and Human Rights on the 2014 Hungarian elections deals with campaign financing, however the question of the financial participation of political office holders is not raised.

### 8.18. Malta

**Maltese constitution**

**Chapter VI Parliament, Part 1 Composition of Parliament, Article 55 Tenure of office of members.**

55. (1) The seat of a member of Parliament shall become vacant-(ff) if the Constitutional Court decides that an elected candidate has given information which is false in the return of election expenses or that an elected candidate has incurred election expenses in an amount exceeding the amount permissible by law;

(g) subject to the provisions of sub-article (2) of this article, if any circumstances arise that if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto.

(2) (a) If circumstances such as are referred to in paragraph (g) of sub-article (1) of this article arise because any member of the House of Representatives is under sentence of death or imprisonment, interdicted or incapacitated or adjudged to be of unsound mind, adjudged or otherwise declared bankrupt or convicted of an offence connected with elections and if it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the House but, subject to the provisions of this article, he shall not vacate his seat until the expiration of a period of thirty days thereafter: Provided that the Speaker may, from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so however that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

(b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.
Provisions governing the activity of high political office-holders in election or selection processes

(c) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this sub-article and he may resume the performance of his functions as a member of the House of Representatives.

(d) For the purposes of this sub-article 'appeal' means, in the case of an order by a court of voluntary jurisdiction for the interdiction or incapacitation of a member of the House of Representatives, the taking of any action for the review of that order before the Civil Court, First Hall.

Part 3 Summoning, Prorogation and Dissolution, Article 76 Prorogation and dissolution of Parliament.

Article 76 (2) Subject to the provisions of sub-article (3) of this article, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

Article 77 General elections

77. A general election of members of the House of Representatives shall be held at such time within three months after every dissolution of Parliament as the President acting in accordance with the advice of the Prime Minister, shall by proclamation appoint.

Chapter VII The Executive, Article 80 Appointment of ministers

80. Wherever there shall be occasion for the appointment of a Prime Minister, the President shall appoint as Prime Minister the member of the House of Representatives who, in his judgment, is best able to command the support of a majority of the members of that House and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the House of Representatives: Provided that if occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, a person who was a member of the House of Representatives immediately before the dissolution may be appointed as Prime Minister or any other Minister as if, in each case, such person were still a member of the House of Representatives, but any person so appointed shall vacate office at the beginning of the next session of Parliament if he is not then a member thereof.

Parliamentary codes of conduct in Europe: an Overview: Overview for MT does not give any information regarding use of office resources during the electoral campaign of MPs in high office (Speaker, deputy speaker, Prime Minister, Ministers and Parliamentary Secretaries).

Code of Ethics of Ministers, Parliamentary Secretaries and Parliamentary Assistants

Ministers are required to assertain that there is not conflict of interest regarding their public duties and their personal interests. They are also required to separate their role as ministers, members of parliament and their role as members of a political party.

Standing orders Chapter XXII,

197. In all cases not provided for by these Standing Orders, resort shall be had to the rules, forms, usages and practice of the Commons' House of Parliament of the United Kingdom, which shall be followed as far as they can be applied to the proceedings of the House, with due regard to the special nature of the Constitution.

No relevant provisions could be identified in the following legal norms:

Chapter 9 Criminal Code
8.19. The Netherlands

- Principles

Under Dutch law, there are no specific rules governing the case of high public office-holders (president of Parliament, members of government, etc.) running for re-election.

Election campaigns are run by the political parties or by individuals standing for election with their own candidate list. Ministers and state secretaries don't campaign on their own account, but as leading politicians they are actively engaged in the electoral campaign of the political party or association they belong to.

Members of government or a President of Parliament running for re-election are subject to the general legal framework governing elections in The Netherlands. The primary legislation governing elections in the Netherlands is the Election Act of 1989 (Kieswet), most recently amended in 2010. Key legislation also includes the Charter for the Kingdom of the Netherlands and the Constitution of the Netherlands. Further legislation relating to elections includes, *inter alia*, the General Administrative Law Act, the Act on financing of political parties, and the Criminal Code.

Besides rules relating to the election procedures the applicable legislation includes rules relating to the public and private funding of political parties and parliamentary groups and rules relating to party political broadcasting.

High public office-holders running for re-election are furthermore bound by an oath of office, and by the statutes and conduct rules established by the political body and the political party they are member of.

- Rules relating to the funding of political parties and parliamentary groups and free broadcasting time for political parties in time of elections

For the funding of their activities political parties in The Netherlands rely chiefly on membership fees (or as practiced by one party, salaries of affiliated elected) and an annual public subsidy. The subsidy may be used for a broad range of activities, including campaign purposes (Afpp, Article 7). The Act on financing of political parties (Wet financiering politieke partijen - Afpp) of 2013 allows for some administrative control by requiring the filing of an activities plan, a budget, and a specification of their membership figures to the Ministry of Interior and Kingdom Relations when applying for the annual public subsidy. The political parties must also report how the subsidy was used (financial statement) (Afpp, Article 11 and 12).

With the new Act of 2013, which replaced the 1999 Political Parties Subsidization Act, also more stringent rules relating to donations were introduced. Political parties participating in a general election are now obliged to register gifts (including foreign gifts), starting at €1 000 and at €4 500 they are obliged to disclose the name and address of the donor (in case of a natural person, only his place of residence will be published). Similar report and disclosure obligations apply to gifts donated to candidates on a party list for the House of Representatives, when these gifts amount to €4 500 or more within a calendar year (Afpp, Article 29). Direct provision of services and facilities to political parties is also regulated (Afpp, Article 21) and further elaborated in the concerning Policy rules (Beleidsregels Wet financiering politieke partijen), citing, *inter alia*, the
provision of meeting rooms, the transport of persons, and the distribution of information pamphlets etc. for election campaign purposes as examples of in-kind services and facilities to political parties to be reported when amounting to a financial value of €1,000 or more.

With regard to a possible improper use of resources (personal and material) provided to Members of Parliament, the Regulation Financial Support Groups (Regeling financiële ondersteuning fracties Tweede Kamer 2014) is also applicable. The Regulation, which provides parliamentary groups (factions) with financial support to cover their personal and materials costs with a view to promoting their functioning, forbids by its Article 3 explicitly to use these resources to cover expenses for which the MP’s or the political parties may subsequently receive funding pursuant to the Act indemnities Members of the House of Representatives (Wet schadeloosstelling leden Tweede Kamer) and the Act on financing of political parties (see link above).

As members and representatives of a political party with one or more seats in one of the Houses of Parliament (referred to as the States-General in the Constitution of the Netherlands) high public office-holders running for re-election also have the right to free airtime in public media. Article 6.1 of the 2008 Media Act (Mediawet 2008) requires that political parties already represented in the States General be allotted time on the national broadcasting stations during the parliamentary term, provided that they participate in nationwide elections. Broadcasting time is denied only to parties that have been fined for breaches of Dutch anti-discrimination legislation.

Apart from timeslots for political party broadcasting, regular news and current affairs programmes, as well as special elections programmes and debates allow high public office-holders running for re-election to express their views. However individual media outlets decide themselves how much attention to pay to political parties and candidates. This is not regulated by any legal provision.

- **Conduct and integrity rules**

Ministers, state-secretaries and Members of Parliament are bound by an oath of office not to accept or promise any gifts or presents whatsoever in relation to their appointment, and to faithfully perform all the duties which the office lays upon them (Charter of The Kingdom of The Netherlands, Article 9 and 47, Constitution of The Netherlands, Article 49 and 60 (link to official English translation), and Law on the swearing in of ministers, state secretaries and members of the States General (Wet beëdiging ministers en leden Staten-Generaal), Article 1 and 2).

More elaborated integrity rules for members of government are contained in the ‘Handbook for upcoming Ministers and State Secretaries’ (Handboek voor aantredende bewindspersonen). It includes clear rules concerning the acceptance of gifts and actions relating to financial businesses and well-defined requirements to report and resign from any ancillary position for the duration of the term of office.

Chapter 5 of the Handbook is dedicated to aspects related to the legal position of ministers and state-secretaries and the facilities they are provided with to enable them to carry out their official duties, as laid down in the Act on the legal position of members of government (Wet rechtspositie ministers en staatssecretarissen) and further elaborated in the Decree on facilities for members of government (Voorzieningenbesluit ministers en staatssecretarissen).

Principally, these facilities fall to the public purse and must be made visible and accounted for in the budget of the relevant ministry. When paid by the minister or state-secretary at their own account, the ‘functionality’ of the expenses must be explicitly justified in order to be reimbursable. Since 2013, ministers’ and state secretaries’ expense claims are published online for transparency reasons150 (Freedom of Information Act - Wet openbaarheid van bestuur).

Furthermore, the rules as set out in the two following parliamentary papers can be considered relevant for public office holders running for re-election or participating in a selection procedure. In a letter to the House of Representatives, dated 13 October 1978 (Parliamentary paper 15300, Chapter III, no. 9), the Prime Minister stipulates that any intention a minister or state secretary in office may have to accept an ancillary function or to have talks on a future post should be submitted to the Prime Minister. A similar letter, dated 30 March 1983, adds that the aforementioned regulation should be reviewed in such a way that 'with regard to the acceptance of functions after resignation no arrangements are allowed to be made during the term of office. Only in exceptional circumstances and with the approbation of the Prime Minister a derogation of this behavioural line can be allowed' (Parliamentary paper 1755, no. 52).

As regards the weekly press conference and t.v.- and radio-interview of the Prime Minister on the decisions of the cabinet and current affairs the handbook states that as a rule both the conference and the interviews are suspended in the weeks prior to a general election and during the time after the dissolution of parliament and before the appointment of a new cabinet time when the outgoing cabinet is taking care of current affairs.

For members of the House of Representatives and the Senate, there are also statutory provisions concerning certain incompatible positions, interest conflicts and disclosure of their ancillary positions. The Rules of Procedure of both Houses of Parliament require members of Parliament to report gifts and trips offered (Reglement van Orde van de Eerste Kamer der Staten-Generaal; Reglement van Orde van de Tweede Kamer der Staten-Generaal).

Last, but not least, high public office-holders running for re-election are bound by the integrity rules of their own political party, as laid down in its rules of procedure and code of conduct. In 2013, the governing coalition partners (the conservative liberal party VVD and the social-democrats PvdA) decided to strengthen their integrity rules by establishing both a standing committee Integrity, charged, inter alia, with a more scrupulous screening of candidate-ministers and members of parliament with regard to possible interest conflicts and other integrity issues.

8.20. Austria

The participation of holders of high political offices in election campaigns or other selection procedures is influenced by different elements.

A basic principle is the freedom of elections. This is topic of the article 'Beeinflussung der Wahlwerbung' (Daniela Urban, RFG 2011/17, 2/2011, S. 72). Examples of interference in the freedom of elections by candidates and therefore cases for the courts of law were instances of influencing election advertising by public institutions, e.g. a mayor running for re-election using the resources of his office. The article explains how the freedom of elections is anchored in Austrian legislation:

Der Grundsatz der Freiheit der Wahlen

Österreich ist aufgrund des im Verfassungsrang stehenden Art 8 des Staatsvertrages von Wien völkerrechtlich zur Einräumung der in dieser Bestimmung enthaltenen Rechte (FN 1) verpflichtet, wobei der Gewährleistung eines allgemeinen, gleichen, freien und geheimen Wahlrechts vor allem durch die einschlägigen Bestimmungen der Art 26, 95 und 117 B-VG entsprochen worden ist. (FN 2) Dass der Nationalrat vom Bundesvolk (auch) aufgrund des freien
8.21. Poland

1. Principles

Under Polish law, there are no specific rules governing the case of members of government or the speakers of the houses of parliament (Marszałek Sejmu, Marszałek Senatu) regarding running for re-election as Member of Parliament.

Therefore, the members of government and speakers of the houses of parliament running for re-election are subject to the general legal framework governing elections in Poland enshrined in the Electoral Code (Ustawa z dnia 31 stycznia 2011 r. – Kodeks wyborczy [Dz.U. nr 21 poz. 112 z późn. zm.] = Act of 31 January 2011 – the Electoral Code). The electoral code was recently amended, and the current text has been in force as from 31 August 2016.

The Electoral Code sets out the rules and principles applicable to election campaigns in Chapter 12, to election campaigns in the TV and radio in Chapter 13, the financing of electoral campaigns in Chapters 14-15.

2. Obligations regarding the financing of the electoral campaign

2.1. Main legal provisions applicable

According to Article 125 of the Electoral Code [Kodeks wyborczy – k.wyb.], the financing of an electoral campaign must be transparent and open ('jawne'). Article 126 of that Code states that the electoral committees must cover the costs of the campaign from their own funds. Each committee must have a Financial Plenipotentiary ('pełniomocnik finansowy') (art. 127 k.wyb.). That person may not be a candidate himself (Art. 127 § 2 k.wyb.). Also Article 128 k.wyb. regulates the accounting of the electoral campaign. In that respect they are obliged to follow the general rules for non-economic actors, as set out in the Accounting Act 1994 (ustawa z dnia 29 września 1994 r. o rachunkowości (Dz. U. z 2009 r. Nr 152, poz. 1223, Nr 157, poz. 1241 i Nr 165, poz. 1316 oraz z 2010 r. Nr 47, poz. 278)).

Under Article 129 k.wyb., an electoral committee may acquire and use funding only for the purposes of the elections.

The only source of financing an electoral committee of a political party may resort to is – under Article 132 k.wyb. – the financial means of that party. Other types of electoral committees (of an organisation which is not a party or of electors) may resort only to payments made by Polish nationals residing permanently in Poland and from bank credits (Art. 132 § 3 k.wyb.).
Importantly, under Article 132 § 5 k.wyb. electoral committees may not receive any non-pecuniary gifts, save for unpaid labour of individuals distributing posters and leaflets, as well as office work performed without remuneration by natural persons.

An electoral committee of a political party may use the party premises for free, including office equipment (Art. 133 § 1 k.wyb.).

An electoral committee of electors may use the premises of individuals who are members of that committee for free, including office equipment (Art. 133 § 2 k.wyb.).

An electoral committee of an organisation may use the premises of that organisation for free, including office equipment (Art. 133 § 3 k.wyb.).

Article 134 k.wyb. stipulates that all financial resources of an electoral committee must be kept on one single bank account. One citizen may pay no more than 15 times the minimum national salary. The candidate himself may pay no more that 45 times the minimum national salary. Any payments in excess are confiscated by the State Treasury.

The Electoral Code provides for specific limits regarding the amount of money spent on an electoral campaign (Art. 135 et seq k.wyb.).

After the elections, the Financial Plenipotentiary must present, within 3 months, a report regarding the finances of the electoral committee to the appropriate electoral authority (Art. 142 k.wyb.). The report is analysed and may be rejected if there were violations of the electoral law (Art. 144 k.wyb.). There are detailed procedural rules regarding appeals against such a rejection (Art. 145 k.wyb.)

2.2. Jurisprudence, guidelines and political statements providing guidance on how to apply such rules to members of governments or speakers of the houses of parliament running for re-election

There seems to be no specific case-law or guidelines regarding the participation of members of government or speakers of the houses of parliament running for re-election. It is a common and well-established practice that such persons regularly run for re-election, especially that the vast majority of members of government (often – all) are recruited from deputies to the parliament, and also the speakers of the houses of parliament are MPs as well.

3. Obligations regarding the propaganda and political communication

3.1. Main legal provisions applicable

The rules regarding electoral propaganda (campaigning) are to be found in Chapter 12 of the Electoral Code. Article 104 defines the period of electoral campaign (from the ordering of elections up to 24 hours before the elections). During the last 24 hours there is the period of 'electoral silence' (Article 107).

Article 105 § 1 defines 'electoral propaganda’ (agitacja wyborcza) as public campaigning to vote in a particular way or to support a given electoral committee. Such propaganda may take place only once the electoral committee has been submitted to the appropriate authority (Article 105 § 2).

Under Article 106, any elector has the right to perform electoral propaganda.

Electoral propaganda is forbidden (Article 108):

1) in the offices of public authorities, including local government and courts;
Provisions governing the activity of high political office-holders in election or selection processes

2) at the workplace, if it would adversely affect its normal functioning;
3) in military bases and other premises subject to the Minister of Defence;
4) at school – towards pupils.

There are detailed rules on 'electoral materials' and the methods of placing them in public spaces (Art. 109-110). There are also detailed rules on the protection of candidates against false information (Art. 111), including accelerated judicial proceedings against a person who is disseminating such information during the electoral campaign.

Chapter 13 of the Electoral Code regulates the electoral campaign in Radio and TV.

Under Article 116, electoral committees may conduct such a campaign in the form of 'electoral broadcasts' which must be clearly separated from normal broadcasts (Article 116a). The public Radio and TV has a duty to broadcast electoral broadcasts for free (Art. 117). The details are laid down by the National Council of Radio and Television (Krajowa Rada Radiofonii i Televizji).

Article 120 obliges the company Telewizja Polska Spółka Akcyjna (Polish Television) to organise a debate between candidates. Details are laid down by the National Council of Radio and Television.

3.2. Jurisprudence, guidelines and political statements providing guidance on how to apply such rules to members of governments running for re-election

The Civil Service Act 2008 (Ustawa z dnia 21 listopada 2008 r. o służbie cywilnej – tekst jednolity: Dz.U.2016 poz. 1345) draws clear lines regarding the participation of civil servants in political life.

Art. 78 of the Civil Service Act contains the following relevant rules:
1) a civil servant may not guide himself by 'individual or group interest';
2) he may not publicly manifest his political views;
3) an official (urzędnik) as opposed to contractual agents, may not participate in the creation of political parties nor be a member of such a party.

According to the decision of the Court of Appeal in Warsaw of 22 November 2012 (Case III APo 14/12), a civil servant may, without joining a party, run for election on a list of a given party. The person concerned in that case was only a candidate, but did not take an active role in the campaign, as found in the relevant disciplinary proceedings.

There are no specific rules addressing the issues at stake in the internal rules of the Government and houses of parliament, specifically these issues are not addressed in:

- the Council of Ministers Act 1996 (Ustawa z dnia 8 sierpnia 1996 r. o Radzie Ministrów);
- the Statute of the Chancellery of the President of the Council of Ministers (Zarządzenie Nr 2 Prezesa Rady Ministrów z dnia 5 stycznia 2016 r. w sprawie nadania statutu Kancelarii Prezesa Rady Ministrów);
- the Rules of the Sejm (Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 30 lipca 1992 r. – Regulamin Sejmu Rzeczypospolitej Polskiej);
- the Rules of the Senate (Uchwała Senatu Rzeczypospolitej Polskiej z dnia 23 listopada 1990 r. – Regulamin Senatu).
8.22. Portugal

The following legislation was examined (texts only available in Portuguese):
- The Portuguese Constitution, last amended version from 12 August 2005;
- Estatuto dos Deputados, Law 16/2009, from 1 April: only mentions conflict of interests and incompatibilities.
- Crimes da Responsabilidade de Titulares de Cargos Políticos, Law 30/2015, from 22 April: articles 17 and 18 on Corruption; and articles 20 and 21 on Peculation (wrongful appropriation or embezzlement of shared or public property) could apply to the question, although the Law does not specifically mentions electoral campaigns or other selection procedures;
- Financiamento dos Partidos Políticos e Campanhas Eleitorais, Law 19/2003, 20 June: Chapter III - Financing of the Electoral Campaign legislates on the use of donations and money, but there is no mention of the use of public property or resources to favour a campaign.

8.23. Romania

- General framework

The legal framework governing the fight against corruption, integrity and transparency in the exercise of the public function is made up of several pieces of legislation, but the most important are:
- Law No 161/2003 on certain measures to ensure transparency in the exercise of public dignity, of public office and in the business environment, and to prevent and punish corruption,
- Law no. 176/2010 - dated 1 September 2010 - Regarding the integrity in exercising the public officials and dignities, in order to modify and complete law no 144/2007 regarding the establishment, organization and operation of the national integrity agency as well as for the modification and completion of other normative acts.

Title IV (articles 68 to 117) of Law 161/2003 constitutes the general legal framework regulating the situations of conflict of interests and incompatibilities for persons being public dignitaries or public officials/civil servants. Article 69 defines the scope of Title IV and expressly enumerates the public dignities and functions to which these provisions apply - including the President of Romania, Members of the Parliament, Members of the Government, magistrates, locally elected officials, and public officials/civil servants.

Article 70 defines the conflict of interests, while Article 71 emphasises the principles of impartiality, integrity, transparency in decision-making and supremacy of the public interest as the basis for the prevention of the conflict of interests in the exercise of public dignity and public office.

Law 176/2010 contains the obligation of the enumerated categories of public dignitaries and of civil servants (elected and appointed) to declare their wealth and interests and establishes the National Agency for Integrity (ANI), with the mandate to monitor and assess the compulsory declarations of wealth and the declarations of interests across all branches of power - parliament, executive and judiciary:
'The role of the Agency is to verify wealth and interest statements, control the filling-in on time of the statements, assess the failure to follow legal provisions regarding conflicts of interest, incompatibilities and wealth and act according to the law if necessary and formulate complaints to the criminal investigation bodies if there is evidence or solid clues regarding the existence of such activity.'

Law 176/2010 includes the provisions on the sanctioning of dignitaries/public officials found in incompatibility/conflict of interests:

Article 25

(1) The act on the person who it was found that issued an administrative act, a legal act or has taken a decision or participated in a decision contrary to legal requirements on conflict of interest or incompatibility is considered disciplinary and is punished according to applicable rules of dignity, position or activity in question, insofar as this law does not derogate from it and if the action does not meet the elements of an offense.

(2) The person removed from office under the provisions of paragraph (1) or towards which it was found the existence of a conflict of interests or incompatibility loses its right to exercise a public position or dignity that is the subject of this law, except for election, for a period of three years after removal from office or that public dignity or from the date of the termination of the mandate. If the person has occupied an eligible position, it cannot occupy the same position for a period of three years of mandate termination. If the person no longer has a public office or a dignity when it is found the state of incompatibility or conflict of interest, the three years prohibition according to the law, remains valid from the date of the final assessment report, respectively from the date of the court final and irrevocable decision confirming the existence of a conflict of interests or a state of incompatibility.

Also, Romania included the 'conflict of interests' in the Criminal Code. 151


Nevertheless, many issues are still contentious with respect to this general framework and subject to evolution - e.g. concerning the definitions (administrative and criminal) of the conflict of interests, the role and powers of ANI, the relationship/tension between the specific provisions contained in other pieces of legislation (e.g. the Statute of Senators and Deputies) and the general law, as well as ambiguous definitions of dignitaries, public officials/civil servants, functions of public authority etc. present in various pieces of legislation.

It is worth underlining in this respect that a project for the adoption of an Administrative Code is underway, with the purpose of unifying/harmonising the legislation in the field of public administration - also supported by the EU. In the Government Decision exposing the premisses and necessity for the adoption of such a Code, it is mentioned inter alia:

- remedying some dysfunctions relating to the rights and obligations of civil servants and the rules concerning ethics and integrity in the exercise of the public function: e.g. the lack of a unitary framework as concerns the definition of 'conflict of interests'.
- as concerns the Central Public Administration, the Code proposes to develop a unitary legal framework applicable to some categories of public authority currently regulated

151 Regulated as an infraction since 1969, it was introduced in the current Criminal Code through Law 278/2006.
Provisions governing the activity of high political office-holders in election or selection processes

only by the Constitution (the President and the autonomous administrative authorities); and to clarify the role, competences and functions of the Government, ministries and other specialised agencies. For this, the Code will attempt to i) define clearly concepts such as: public office, public power, civil servant/public official, position of public dignity/dignitaries, conflict of interests etc.; ii) clarify the role and responsibilities of each category and achieve a better delimitation of competences between the political and administrative levels; iii) establishing clear general rules/ harmonising the existing ones applicable to civil servants, including with respect to ethics in the exercise of the function etc.

- Specific institutional provisions

**The Parliament: Senators and Deputies (Members of the Chamber of Deputies)**

Title III, Chapter I of the Constitution contains provisions on the Parliament (Section 1), the statute of Senators and Deputies (Section 2, Articles 69-72) and on legislation.

- **ARTICLE 69:** (1) In the exercise of their mandate Deputies and Senators shall be in the service of the people. (2) Any imperative mandate shall be null.

- **ARTICLE 70:** (1) Deputies and Senators shall begin the exercise of their office on the day the Chamber whose members they are has lawfully met, on condition the election is validated and the oath is taken. The form of the oath shall be regulated by an organic law.

(2) The capacity as a Deputy or Senator shall cease on the same day the newly elected Chambers shall legally meet, or in case of resignation, disenfranchisement, incompatibility, or death.

Law no 96/2006 on the Statute of Deputies and Senators contains specific provisions on their mandate, conduct, incompatibilities and conflicts of interests, rights and obligations, sanctions etc.

Article 8 establishes that (1) the mandate of Senator or Deputy falls under the legal regime established by the Constitution and the present law, completed by the Rules of the two Chambers of Parliament. (2) The mandate of Senator or Deputy cannot be interrupted, suspended or revoked.

Articles 10-14 establish the principles and rules of parliamentary conduct: the principle of acting in the national interest; of acting in legality and in good-faith; of transparency; of fidelity towards Romania and the Romanian people; and respect for the rules of the Chambers, including parliamentary discipline, and for the norms of civilized, non-discriminatory, non-injurious conduct.

Articles 15-19 deal with incompatibilities, interdictions and conflicts of interests.

Moreover, article 14 contains provisions on a Code of Conduct for Deputies and Senators, to be adopted at a joint meeting of both Chambers, by a majority of members.

The deputy or senator finding him/herself in a situation of conflict of interests is sanctioned disciplinarily by the Standing Bureau of the Chamber of which he/she is a member. To note that the Statute does not foresee sanctions in a situation of incompatibility, because the Rules of procedure of the Chamber of Deputies and of the Senate, respectively, foresee the choice between the function raising the incompatibility and the elected position in the parliament and/or the resignation of the Deputy/Senator in situation of incompatibility.
Law no 208/2015 - dated 20 July 2015 on the election of the Senate and the Chamber of Deputies, as well as on the organisation and functioning of the Permanent Electoral Authority. The law foresees in article 70 (3) that candidates who already have a public office may appear in 'informative media shows' (i.e. those providing information on the electoral system, on the voting rules etc.) only to the extent of dealing with issues in relation to the exercise of their function.

The Code of Conduct mentioned above is still at the stage of project (draft law). The draft law to modify article 14 (3) of the Law 96/2006 containing the text of a Code of Conduct proposed in 2013 is still under consideration in the Romanian Parliament. Although the adoption of a code of conduct for parliamentarians has been advocated by many, including by the European Commission (e.g. in recent MCV reports), the draft law has been contested by others, including by the National Agency for Integrity (ANI). Contesters argue that through the new draft law on the Code of Conduct, sanctions against parliamentarians in a situation of incompatibility or conflict of interests would be regulated exclusively by the Statute (Law 96/2006) - which only imposes a 10% reduction of the parliamentary salary for a period of three months and does not contain any provision on sanctions in event of incompatibility, avoiding thus the interdiction of occupying any public office (functie si demnitate publica) for three years foreseen by Law 176/2010. Moreover, besides arguing that the draft law breaches the principle of separation of powers by encroaching on the powers of the National Integrity Agency (ANI), opponents of the draft law maintain that it would create a situation of discrimination in relation with the other 'public offices' - in accordance with a recent Decision of the Constitutional Court (Decision 2/2014 CCR concerning some provisions regarding the Criminal Code) whereby the Court decided unanimously that excluding from the category of public officials (functionari publici) of the President of Romania and of Deputies and Senators is unconstitutional, by breaching the rule of law and the principle of equality and non-discrimination.

The President

The normative framework governing the role of President of Romania is defined exclusively in the Romanian Constitution, republished: Title III, Chapter II, Articles 80-101.

- Article 81 (4): (4) No one may hold the office of President of Romania but for two terms of office at the most, that can also be consecutive.

- Article 83: (1) The term of office of the President of Romania is five years, being exercised from the date the oath was taken. (2) The President of Romania shall exercise his office until the new President-elect takes the oath.

- Article 84: (1) During his term of office, the President of Romania may not be a member of any political party, nor may he perform any other public or private office.

Law no 370/2004 (ENG here) constitutes the legal framework regarding the election of the President of Romania.

There is no restriction on a President-in office to run for re-election, within the limit of two terms of office.

152 The definitions of public official/civil servant (functionar public) in the Criminal Code and in Administrative law differ, with the definition of the Criminal Code being more extensive/comprehensive.
Law 370/2004 foresees that accepted candidates for Presidential elections are those proposed by political parties, alliances of political parties, as well as independent candidates, who have gathered at least 200,000 signatures of support. Article 27 (8) mentions that the candidate is not obliged, in order to run for election, to be a member of the political party, the alliance of political parties or the organisation of minorities that proposed him/her. This provision should be seen in connexion with Article 84 (1) of the Constitution stating that, while in office, the President cannot be member of any political party. Moreover, Law 370/2004 contains in Article 35 (2) a provision allowing the President in office to take part in the presidential campaign of the political party/political alliance that proposed him or supports his candidacy.

The Government: Prime-Minister and Ministers

Title III, Chapters IV, V and VI deal with the Government and its ministers, with the relations between the government and parliament and the organisation of public administration.

Law no. 90/2001, on the organisation and functioning of the Romanian Government and ministries and Law no. 115/1999 - of 28 June 1999 - regarding the responsibility of ministers, including criminal sanctions in respect to acts committed during the exercise of their mandate, contain specific provisions.

According to article 31 of Law 90/2001, the Government is politically responsible only to the Parliament, and each member of the Government is responsible politically in solidarity with the other members for the activity and acts of the Government. Article 1 of Law 115/1999 obliges the Government, in its entirety, and each of its members to fulfil their mandate in accordance with the Constitution and the other laws of Romania, and with the Government’s programme accepted by the Parliament. Article 4 of Law 90/2001 also enumerates the incompatibilities of the function of minister. No other provision refers to the ministers’ and PM’s conduct.

Law 90/2001 foresees that the personnel within the Government who has the statute of public official benefits from all the rights and has all the obligations included in the Law concerning the statute of the public officials/civil servants (Law 188/1999). However, some categories of personnel are expressly excluded from the Law 188/1999, including the cabinet of the Prime-Minister, the chancellery, the advisers of the PM and others (articles 21, and 40(2) of Law 90/2001). It is not clear, but it is probably to be assumed that these categories of personnel fall under the incidence of the general framework established by Law 176/2010.

Some ministries have adopted Codes of conduct applying to the entirety of their personnel - public officials and dignitaries (e.g. the Ministry for Economy, the Ministry for Labour and Social Protection), emphasising several principles, such as the principle of responsibility, integrity, professionalism, transparency etc.

8.24. Slovenia

Legal framework

Elections and Referendum Campaign Act adopted on 26 April 2007 and last amended on 29 November 2013 regulates electoral campaign for the election of Members of National Assembly, of the Slovenian deputies in the European Parliament, of the President of the
Republic, of the members in the representative and individually elected local government bodies as well as issues relating to the referendum campaigns.

Article 4 of the Elections and Referendum Campaign Act states the following: 'Pre-election meetings shall not be allowed in the premises of state authorities, authorities of self-governing local communities, public institutions and other entities of public law, nor in the premises of religious communities, except when a religious community is the organizer of referendum campaign. It shall be exceptionally allowed to organize pre-election meetings in the above premises when no other building with a hall which can accommodate a large number of people is available in the place concerned. The Act further stipulates certain restrictions and prohibitions as regards the financing of election campaign from public funds. The election campaign shall not be financed by budgetary funds and funds of companies with invested public capital that exceeds 25 %, and of companies in which they have a majority holding, except by the funds provided to the political parties from the budget in compliance with the Political Parties Act.153

Due to the transparency of financial resources and their supervision, the candidates shall be obliged to inform the National Electoral Commission of the organizer of election campaign responsible for the implementation of the election campaign, for legality of transactions and financing the entire election campaign. The Act also lays down the time limits within which the organiser of election campaign opens and closes a transaction account on which transactions with all the financial funds for the election campaign must be made. At the latest 45 days before the voting day, the organiser shall open a special transaction account for the election campaign. On such transaction account, the organizer shall collect all the financial funds, either his own funds earmarked for the election campaign or the funds obtained for that purpose by other legal or natural entities. All the election campaign expenses shall be paid by the organiser only from that transaction account which shall be closed within four months from the voting day at the latest.

Within six months after the date set for the closing of the transaction account, the Court of Audit, an independent state body, shall carry out a financial audit at those organizers of election campaign who are entitled to partial reimbursement of election campaign expenses on the basis of the Act. The Act provides for partial reimbursement of expenses from the state budget in relation to the election results achieved by the candidate or the list of candidates at the election. In order for the organizer of election campaign to obtain the right to reimbursement of expenses, he shall submit a report which is also revised by the Court of Audit supervising the use of public finance.

Article 14 of the Elections and Referendum Campaign Act states: 'Public authorities, local authorities, legal persons of public and private law and sole proprietors and individuals engaged in an activity should not fund the election campaign, unless otherwise provided by law [...].'

Article 5 of the Deputies Act154 states: 'No one may be prevented from being a candidate for a deputy. The existing employment relationship of a candidate cannot be ended against his will, nor can the fact that he is running as a candidate influence his existing employment relationship. The candidate for deputy who is employed has the right to take unpaid leave to prepare for elections for a maximum duration of eighteen working

153 Political Parties Act was adopted on 28 September 1994 and last amended in June 2014.
154 Deputies Act was adopted on 29 September 1992 and last amended on 26 June 2012.
days from the date of candidature.' According to the Article 40 of that Act the provisions of Article 5 apply also to the candidate for the president of the Republic of Slovenia.

**Code of professional ethics for officials in the government and in ministries** of the Republic of Slovenia was adopted on 10 December 2015. The sixth rule of the code 'Public interest before private' says that officials shall not use inside information received in connection with exercising their function for their own benefit or for the benefit of their family members. The code applies to officials, such as the prime minister, ministers and state secretaries.

Article 8 of the **Code of conduct for civil servants** that was adopted on 18 January 2001 and applies mutatis mutandis also to ministers and other officials states that civil servants shall not make use of their position for private interests.

Slovenia has not yet adopted a Code of Ethical Conduct for Members of parliament despite calls for it being made by Council of Europe GRECO. On 7 November 2014 a group of deputies submitted a proposal for a recommendation of the code of ethical conduct for the Members of Parliament. The Article 6 of the proposed recommendation states ‘A deputy cannot use information received in connection with exercising his/her function for his/her own material benefit or material benefit of related persons. When implementing his/her own private interest he/she may not benefit from any additional rights or benefits compared to other citizens of the Republic of Slovenia.’ The proposal for a recommendation was on 24 December 2014 rejected by the Legal Service of the Parliament as well as on 13 January 2015 by the Government of the Republic of Slovenia. The proposal was supported by Transparency International Slovenia though.

Article 257 of the **Criminal Code of the Republic of Slovenia** states:

> An official or civil servant who, in order to gain for himself/herself or someone else any non-pecuniary benefit [...], exploits his/her official position or crosses the boundaries of official duties or fails to carry out his official duties, shall be punished with imprisonment of up to one year.'

Article 99(1) of the Code defines an official as: Member of Parliament, Member of National Council and member of local or regional representative authority.

### 8.25. Slovakia

In Slovakia, there are no specific rules / specific legislation which would regulate that holders of high political offices do not use the resources provided to them in their capacity for their re-election/selection procedures in international organisations.

However, in **Constitutional Act on the Protection of Public Interest in the Performance of Offices by Public Officials No 357/2004, as amended by Constitutional Act No 545/2005** (English translation of the following Act 357/2004 Coll, provided at the webpage of the National Council of the Slovak Republic by Committee of the National Council of the Slovak Republic for Incompatibility of Functions), the following article states:

Article 4, General duties and restrictions,

(1) A public official shall seek and protect public interest by the performance of his office. A public official may not prefer personal interest over public interest in the performance of his office.
(2) In the performance of his office, public official shall refrain from any actions that could be in contradiction with this constitutional act. For this purpose public officials may not:

a) use their office, powers appertaining to their office and information acquired by the performance of their office or in relation therewith to their benefit, to the benefit of their close relatives or other natural persons or legal persons; this shall not apply to activities or tasks resulting from the performance of the office of a public official,

In Act of the National Council of the Slovak Republic 350/1996 (English translation provided at the National Council website) on Rules of Procedure of the National Council of the Slovak Republic as amended, there is a reference to the ethical code for members of parliament but the ethical code as such has to be approved by resolution of the National Council of the Slovak Republic. The voting on this resolution is expected to be in the program of the National Council of the SR in September 2016 and can be adopted by simple majority.

8.26. Finland

There is no written code of conduct in the Finnish Parliament. A working group was set in the Parliament in 2014 to consider whether it was needed (taking example of the European Parliament and Council of Europe, as well as Sweden and Island, who were in the process of drafting ethical codes of conduct). The working group concluded, however, that the existing legislation and internal guidelines of the Parliament have been working well, so there is no need for a specific code of conduct. Yet the working group did propose new internal guidelines concerning the declaration of private interests and declaring of gifts.

Members of the Parliament are now required to declare their private interests (before it was done voluntarily). Under the amendment to Parliament’s Rules of Procedure enacted on 21 January 2015, the declaration of private interests was made mandatory. The amendment entered into force on 22 April 2015.

Instructions of the speaker's council on the declaration of private interests by members and other corresponding practices related to the position of members, 9 March 2015.

The instructions also concern the declaration of gifts, tickets and third-party funded trips that exceed a certain limit, in the register maintained by the Central Office. The register is publicly available. These instructions do not apply to gifts and other benefits accepted in the course of the duties of a minister. In regard to accepting gifts and benefits, ministers are subject to the rules and legal provisions concerning state civil servants.

The Act on a Candidate’s Election Funding (273/2009) lays down provisions on election funding and provides for its disclosure in parliamentary, presidential, municipal and European Parliamentary elections. Each individual campaign contribution and its donor must be disclosed separately.

The Act on Political Parties (10/1969) lays down provisions concerning the funding of political parties.

The Election Act (714/1998) lays down provisions on how to carry out parliamentary, presidential, municipal and European Parliamentary elections. Provisions regarding eligibility in parliamentary elections and eligibility for the President of the Republic are laid down in the Constitution and eligibility in municipal elections in the Municipalities

The report of the European Commission for Democracy Through Law (Venice Commission) on 'The misuse of administrative resources during electoral processes' (December 2013) indicates that 'In a number of states, there are no explicit provisions on the misuse of administrative resources during electoral processes but implicit rules, which may be intended at dealing with this issue.'

The report mentions that 'the Elections Act of Finland does not cover explicitly the misuse of administrative resources during electoral processes but sanctions breaches of their official duties by members of electoral commissions:

Section 185 — Criminal responsibility of an election official

If a member of an election district committee, central election committee of a municipality, election committee or an electoral commission or an election assistant or any other person functioning as an election official as defined in this Act, neglects his or her duties, he or she is punished as if he or she had committed an offence in office.'

The same report notes that 'In practice, the OSCE/ODIHR did not recommend deploying an election-related activity for the last presidential election (22 January 2012) as 'all interlocutors met by the OSCE/ODIHR NAM [Needs Assessment Mission] expressed a high level of confidence in all aspects of the electoral process.' The remaining recommendations made in previous missions do not refer to the issue of misuse of administrative resources during electoral campaigns' (Report on Finland Presidential Election 2012)

In June 2014 there was a conference organized by the Venice Commission in Helsinki on the theme of combating the misuse of administrative resources during electoral processes.

National Audit Office of Finland oversees election campaign and political party financing.

The Constitution of Finland (731/1999): Section 14 - Electoral and participatory rights; Chapter 3 - The Parliament and the Representatives; Chapter 5 - The President of the Republic and the Government; Section 63 - Ministers' personal interests

The legal status of state officials in Finland is defined in the Civil Servants Act (750/1994) (only available in Finnish and Swedish). According to Section 14 of this Act a state official has to behave in accordance with his/her position and duties. According to the answer provided by the Finnish Parliament to an ECPRD request (internally available only) 'this point has been interpreted so that the state officials are prohibited to use administrative and other state material resources during the election campaign. The minor legal punishment is a written warning. In practice, there have not been any problems in Finland related to this question.'

According to the same answer, 'the members of the Government do not have to suspend their activities during elections. Most of them are MPs and for them it is normal political activity to participate in the election campaign of their party. State officials (civil servants) can participate in their spare time in the election campaign and other political activities as all other citizens. On duty they are required to be politically neutral. Also heads of local and central authorities can participate in the election campaign during their spare time.'
Chapter 40 of the *Criminal Code* regulates cases of bribery of Public officials and Members of the Parliament (Section 4).

*Corruption and the Prevention of Corruption in Finland* (Ministry of Justice (2009)) summarizes the available data on corruption, describing the law and role of authorities in the prevention of corruption.

The **Chancellor of Justice** works in connection with the Government, and supervises the lawfulness of the official acts of the Government, the ministries and the President of the Republic. The Chancellor also endeavours to ensure that the courts of law, other authorities and civil servants, and other persons or bodies assigned to perform public tasks, comply with the law and fulfil their assigned obligations. In an *interview* with the Finnish Broadcast Company YLE in January 2014 the current Chancellor of Justice, Mr. Jaakko Jonkka, and Emeritus professor of Joensuu University, Teuvo Pohjolainen, said that it is difficult to draw the line between when a Minister is doing his/her work as a Minister, and when he/she is campaigning to be for example a Member of the Parliament. In any case, resources or personnel of the Ministry should not be used to do campaign work, they said. Ministers are often candidates in different elections, especially parliamentary elections, but this is not seen as a problem in Finland, they say.

### 8.27. Sweden

No specific rules or legislation have been found indicating that it would be forbidden to use public/administrative resources for election campaigning or other selection procedures.


In this code of conduct, it is emphasised that:

> The Working Group recalls that matters in the Parliament have a general content in the form of horizontal legislation, budgetary decisions, etc. **Decisions are rarely or never so specific that it is meaningful to say that a Member of Parliament in a direct and significant way can make a benefit for themselves.** It is e.g. hard to imagine that a member of the debates and decisions can act to promote themselves professionally or in the context of their status as a Member of Parliament. It may be theoretically possible, but as far as the Working Group can recall, there it does not arise in practice. In any event, there is no indication that this would be a significant problem.

The Code of Conduct for the Members of the Riksdag is the result of a recommendation by GRECO – see *FOURTH EVALUATION ROUND – Corruption prevention in respect of members of parliament, judges and prosecutors – COMPLIANCE REPORT SWEDEN*, Greco, 29 January 2016.

*Offentligt makttmissbruk: Problematik, regelverk, prevention* (Public abuse of Power: Problems, regulations, prevention), Anna-Maria Falk, 2015 (abstract in English)

> According to prominent international organizations, Sweden is one of the least corrupt countries in the world. Whilst this assessment may well be correct, it very much depends on what acts are defined as corrupt.
For years, the media in Sweden has regularly reported on numerous scandals in governmental offices, cases in which public officials, without requesting or accepting a bribe, have abused their functions for their own or someone else’s personal gain. Many of these cases concern key activities, such as public procurement, recruitment and the public disposal of assets.

These particular situations are not considered as the exercise of public power, and are thus not covered by the penal law provision relating to Misuse of office. Consequently, as long as the public official refrains from passive bribery (i.e. the receiving of a bribe), they will usually not face any criminal charges for abusing their function for personal gain.

Considering that, in particular, public procurement is deemed to be one of the greatest risk areas for corrupt behaviour, there may be reasons to reconsider whether or not Abuse of function outside the area of exercise of public power should result in a criminal sanction. In addition to sanctioning the offender, this would, in all likelihood, have an important deterrent effect.

The offence Trading in influence covers the exercise of public power as well as public procurement. This thesis will argue that, the offence Misuse of office should be constructed the same way, in order to cover situations where public officials improperly influence procurement exercises, to favour their own, or someone else’s, personal interests.

By introducing a criminal law provision for Abuse of function in public procurement, Sweden would also in a better position to claim that situations, where public officials abuse their position and power for personal gain, can be criminally investigated and prosecuted.

The Swedish government decided on 19 June 2014 to launch an official investigation into extended and reinforced rules on the transparency concerning financing of parties and candidates, with a deadline set to 31 October 2016.


The purpose of the Act is to ensure control by the general public of how the parties finance their political activities and how election candidates finance their personal electoral campaigns.

EU Anti-Corruption Report, Sweden, European Commission, 2014 (in English)

Legal framework. Sweden has a well-developed system of legislation, law enforcement and judicial authorities to deal with corruption. Swedish criminal legislation covers all forms of corruption offences contained in the Council of Europe Criminal Law Convention on Corruption3 and the Additional Protocol. A new anti-corruption law entered into force in 2012. The new law covers a broader range of public officials and private individuals than the previous legislation. It also introduced two new offences: trading in influence and negligent financing of bribery. More general rules and principles of conduct, including provision on conflicts of interest, are set out in several legislative documents such as the Constitution, the Administrative Act (1986:223), and the Act on Public Employment (1994:260). In 2006 the Swedish Association of Local Authorities and Regions published guidelines on conflicts of interests and corruption for public
employees working in municipalities, counties and regions. These guidelines were updated in 2012. The six principles in the 'Shared Values for Civil Servants' are based on laws and regulations and provide guidelines on how government agencies and employees should conduct their work.

Follow the Money: External Constraints and Party Finance Reform in Sweden (in English)

Election campaigns, such as the one currently taking place in Sweden, are an absolutely essential part of democracy, but they are also expensive. In this context, it is interesting to note that Sweden has had very few legal rules regarding political parties and their finances, a trend that differs from the general West European norm of extensive legislation.

Political Finance data for Sweden (in English)

This site displays Political Finance data for Sweden about Bans and limits on private income, Public funding, Regulations of spending and Reporting, oversight and sanctions. In its question 29 'Is there a ban on vote buying?' the answer given is: Yes, quoting the Swedish Penal Code (English version without official, legal status is quoted below).

Chapter 17
Section 8

A person who, in an election to public office or in connection with some other exercise of suffrage in public matters, attempts to prevent voting or to tamper with its outcome or otherwise improperly influence the vote, shall be sentenced for improper activity at election to a fine or imprisonment for at most six months. (Penal Code, 1999:36).

In its question 30 'Are there bans on state resources being used in favour or against a political party or candidate?' the answer given is: No data.

8.28. United Kingdom

1. The legal framework governing elections in the UK

Under the Fixed-term Parliaments Act 2011, parliamentary elections take place every five years (with provision for early general elections in certain circumstances).

Parliament is dissolved automatically 25 days before the general election and during an interim period between this date and the beginning of the new Parliament. Once this interim pre-election period - referred to as 'purdah' - begins, the situation of MPs and government ministers, as public office holders, is as follows:

- Members of Parliament: When Parliament is dissolved, the role of MP ceases to exist until the election of a new House of Commons at the next general election.

155 The term 'public office holders' has been defined by the Committee on Standards in Public Life (an advisory body of the United Kingdom Government which advises the Prime Minister on ethical standards in public life) as including: ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly funded functions; and elected members and senior officers of local authorities.
Consequently, once Parliament has dissolved, those standing for re-election no longer have the status of MP and may not use the title of MP.

- **Government Ministers**: Parliament and Government are two separate institutions. The Government does not resign when Parliament is dissolved. Government ministers remain in charge of their departments until after the result of the election is announced and a new administration is formed.

In answer to our queries, the UK's Electoral Commission has confirmed that there are no specific rules directed at MPs or members of government running for re-election. All candidates are considered the same, regardless of whether they are a sitting MP or not. In order to run in elections a candidate needs to be **eligible and not disqualified from standing**. The electoral commission’s guidance on the qualifications for running and disqualifications from running is available [here](#).

### 2. Measures to prevent unfair advantage or misuse of a current office

Sitting MPs, government ministers (together with their staff and the civil servants working for them) are subject to general rules of conduct and rules specific to the 'purdah' period, which make a distinction between resources that may be used in performance of parliamentary or ministerial functions and resources relating to private and party political activity, including campaigning.

#### 2.1 General codes of conduct and rules for MPs and government ministers

- **Members of Parliament**: the duties of MPs are set out in a [Code of Conduct and Rules of the House](#).

  The [current version](#) of this code, approved by Parliament in March 2015, states that,

  '7. Members should act on all occasions in accordance with the public trust placed in them. They should always behave with probity and integrity, including in their use of public resources. [...]'

  15. Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters. Members shall ensure that their use of public resources is always in support of their parliamentary duties. It should not confer any undue personal or financial benefit on themselves or anyone else, or confer undue advantage on a political organisation'.

- **Government ministers**: In addition to the above, government ministers are also bound by further rules and conventions, which are set out in a [Cabinet Manual](#). The manual notes (Chapter 3) that the principles underpinning the standards of conduct expected of ministers are set out in a ministerial code, issued by the Prime Minister of the day.

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156 here is no definitive description of MPs' parliamentary functions, but a parliamentary committee in 2007 suggested that MPs had the following responsibilities: supporting their party in votes in Parliament; representing and furthering the interests of their constituency; representing individual constituents and taking up their problems; scrutinising and holding the Government to account; initiating, reviewing and amending legislation; and contributing to the development of policy and promoting public understanding of party policies. (Source: [Summary of the MPs’ Scheme of Business Costs and Expenses](#), IPSA, 2016 p.2).
Under the current Ministerial Code, Ministers 'are expected to behave in a way that upholds the highest standards of propriety, including ensuring that no conflict arises or appears to arise, between their public duties and their private interests'.

Regarding the use of government property and resources, it is noted (section 6) that, 'Ministers are provided with facilities at Government expense to enable them to carry out their official duties. These facilities should not generally be used for Party or constituency activities. [...] Official facilities and resources may not be used for the dissemination of material, which is essentially party political.'

Regarding the use of official communication channels, it is noted (section 8) that, 'Ministers must only use official machinery, including social media, for distributing texts of speeches relating to Government business. Speeches made in a party political context should not be distributed via official machinery.'

Regarding travel, it is stipulated (section 10) that, 'Official transport should not normally be used for travel arrangements arising from Party or private business, except where this is justified on security grounds. [...] Where a visit is a mix of political and official engagements, it is important that the department and the Party each meet a proper proportion of the actual cost. The Prime Minister, and any other Minister for whom the security authorities exceptionally consider it essential, may use their official cars for all journeys by road, including those for private or Party purposes'.

2.2 General rules governing costs and expenses

- MPs receive support from the House of Commons authorities, including an office in Westminster, IT, House of Commons stationery and some insurance and travel expenses. They may also apply for funding from the Independent Parliamentary Standards Authority (IPSA) for a constituency office, meetings with constituents ('surgeries'), staff, accommodation (if their constituency is outside the London area), travel and subsistence and a number of other essential costs. IPSA stresses that all the costs, which are funded publicly are designed to support MPs in carrying out their parliamentary functions. They are not provided for party political purposes (like campaigning), for any government role, or for private gain.

- MPs must apply for reimbursements of expenditure under the MPs’ Scheme of Business Costs and Expenses. The Scheme lists a number of activities, which are not considered necessary for the performance of MPs' parliamentary functions. These are mostly related to party political activity (which should be paid for by the party or MPs themselves), or to ministerial functions (which are paid for by the Government). For example, with regard to staffing costs, 'staff should not undertake party political duties during office hours, when they are being paid from public funds'. With regard to office expenditure, newsletters and material containing a party political logo or emblem cannot be funded.

The Scheme sets MP's budgets for the financial year. Allowances may not be moved from one budget to another and cannot be held on to for other purposes or carried forward to the next year if there are underspends. MPs must provide evidence to support their expenses claims and must make claims for reimbursement within 90 days of the transaction.
Fundamental Principles

2. Members of Parliament have the right to be reimbursed for unavoidable costs where they are incurred wholly, exclusively and necessarily in the performance of their parliamentary functions, but not otherwise.

Chapter 3: General Conditions of the Scheme

3.2 In making any claim under the Scheme, an MP must certify that the expenditure was necessary for performance of his or her parliamentary functions.

3.4 The following are examples of activities that are not considered as necessary for the performance of MPs' parliamentary functions:

b. work which is conducted for or at the behest of a political party;

d. activities which could be construed as campaign expenditure within the scope of the Political Parties, Elections and Referendums Act 2000.

Source: Review of a determination by IPSA to refuse an expense claim, IPSA, February 2016, point 18.

2.3 Specific rules governing the use of official resources during election periods

During the 'purdah' period before elections and referenda, there are further specific rules on election expenditure and specific restrictions on the use of public resources by MPs and their staff.

- The Political Parties, Elections and Referendums Act 2000 sets (Schedule 8) the activities that count as party campaign expenditure when they are incurred for 'election purposes'. The legislation defines 'election purposes' as:

  (a) promoting or procuring electoral success for the party at any relevant election, that is to say, the return at any such election of candidates—

  (i) standing in the name of the party, or

  (ii) included in a list of candidates submitted by the party in connection with the election; or

  (b) otherwise enhancing the standing—

  (i) of the party, or

  (ii) of any such candidates, with the electorate in connection with future relevant elections (whether imminent or otherwise),'

- The Representation of the People Act 1983 sets out (Schedule 4A) the activities that count as candidate campaign expenditure when they are used 'for the purposes of a candidate's election'. The Act provides that 'for the purposes of the candidate's election' means in connection with, promoting or procuring the candidate's election, including by prejudicing the electoral prospects of another candidate at the election.

Further specific rules and guidance include the following:

- The House of Commons Dissolution Guidance provides guidance for MPs following the dissolution of Parliament before a General Election.

  - Access to facilities: From 5pm on the day of dissolution, many of the facilities that the House of Commons provides for Members in Westminster are no longer
available to MPs. From the day of dissolution, MPs and their staff no longer have access to their Westminster offices. Their Parliament intranet and email accounts are suspended from the day of dissolution, and re-enabled on re-election. Access to the library and research services is also suspended. Committee and meeting rooms are not available. Members may not order office or IT equipment from their allowances in the six months leading up to an election. However, they may rent House of Commons ICT equipment to use for non-parliamentary purposes during an election campaign. MPs may continue to deal with constituency casework during a dissolution period, but may not use official stationary or pre-paid envelopes to do so.

- **Disclaimer**: An MP's official website or social media account must have a disclaimer throughout the dissolution period, which makes it clear that it was established whilst s/he was a Member of Parliament and that, until re-elected, s/he is no longer a Member of Parliament.

- The IPSA guidelines, [How to stay within the IPSA rules during the election period: A guide for MPs](#) and [Campaign activities: further guidance for MPs on claims, repayments for office costs and adjustments to staff pay](#) set out the rules on use of public funds during the purdah period. Essentially, MPs may not use any IPSA-funded resources - people, office space, utilities, or office supplies and equipment - for electoral purposes, and to do so would be illegal.

**Staff**: may continue to work on casework and other activities that are not connected with the election but may not campaign for their MP, the party or any other candidate on paid IPSA time. If they wish to do any campaigning activities (canvassing, writing party political speeches, stuffing envelopes etc.) they must either take annual leave; take unpaid leave; take time off in lieu; or do it outside of their normal working hours. MPs are strongly advised to keep a record of any such arrangements.

**Office costs**: MPs may not use any IPSA funds (including equipment, stationery or other supplies) on any campaigning activities whatsoever. For example, it is prohibited to use IPSA-funded printer cartridges to print campaign material or to write speeches or other campaigning material on an IPSA-funded computer or iPad. It is also prohibited to use IPSA-funded office space for political purposes, such as holding campaign-planning meetings, during normal working hours. If office space is used for any political activity, a proportionate amount of rent must be repaid to IPSA.

**Travel and subsistence**: no claims may be made for any travel or subsistence costs incurred on election work.

- The Cabinet Office issues [guidance for civil servants](#) in UK departments on their role and conduct during election campaigns. In general, civil servants are under an obligation to ensure that public resources are not used for party political purposes, and not to undertake any activity, which could call into question their political impartiality. Rules set for previous elections include:

- special care must be taken to ensure that publicity is not open to the criticism that it is being undertaken for party political purposes;

- official support must not be given to visits and events with a party political or campaigning purpose;
- officials should not be asked to provide new arguments for use in election campaign debates;
- advisers who wish to accompany their Ministers in the General Election campaign or help in a party headquarters or research unit must first resign their appointments.

3. Monitoring and compliance with the rules

The Committee on Standards and the Parliamentary Commissioner for Standards are responsible for monitoring compliance with the Code of Conduct for MPs, in accordance with Standing Orders Numbers 149 and 150 of the House of Commons, respectively.

Since the Parliamentary Standards Act 2009, the administration of MPs' salaries and allowances has been controlled by the Independent Parliamentary Standards Authority (IPSA), which has a general duty 'to have regard to the principle that members of the House of Commons should be supported in efficiently, cost-effectively and transparently carrying out their Parliamentary functions'. IPSA is responsible for the system of allowances for MPs, which includes regular and routine publication of MPs' costs and expenses. The Compliance Officer is responsible for investigating allegations of impropriety in relation to allowances, for example, the use of public resources for political campaigning purposes. IPSA has reported that, overall, there has been a high degree of compliance by MPs with the Scheme rules, with only a small number of investigations undertaken by the Compliance Officer.

The Electoral Commission is an independent body, which reports directly to the UK Parliament. Its duties include regulating political party and election finance and setting standards for well-run elections. It also has a statutory responsibility to keep the electoral system under review and report to the Government on any changes it feels may be necessary.

Further sources

Briefing Paper on 'Purdah' before elections and referendums / Isobel White, House of Commons Library, May 2016


Standing for election in the UK: Consultation Paper, Electoral Commission, September 2013