



The major loopholes of the legislation for the EP elections

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The major loopholes of the legislation for the EP elections

Abbreviations

CEB - Central Electoral Office

CC - Constitutional Court of Romania

MFA - Ministry of Foreign Affairs

MoI - Ministry of Internal Affairs

OUG - Government Emergency Ordinance

PEA - Permanent Electoral Authority

SIMPV - Information System for Monitoring Turnout and Preventing Illegal Voting

SICPV - Information System for Centralizing Protocols

STS – Special Telecommunication Service

Legislation for the organization of the EP elections

The EP elections are mostly organized according to Law 33/2007¹. Other important provisions can be found in Law 208/2015² - especially regarding the attributions of the Permanent Electoral Authority - as well as in Law 334/2006 on the financing of political parties and electoral campaigns³. In addition, decisions are issued by the Government and the President of the PEA⁴. There is no unified Election Code.

Law 33/2007, republished in 2012, has been amended four times: by two emergency ordinances (OUG [4/2013](#) and OUG [4/2014](#)) and twice by law (L. [187/2012](#) and L. [203/2018](#)). The most significant changes were last made in 2014. Compared with other electoral legislation, very few changes have been made. A special case is **OUG 6/2019**⁵, which was approved before the most recent EP elections introducing legislative changes that were **only** applicable to the 2019 elections. This legislative practice is an exotic one. For example, OUG 29 approved in the same year (2019) made definitive changes to Law 3/2000 on referendum. So today the legislation applicable to the EP elections is outdated, with unclear provisions, and, despite having had five years, Parliament has not taken visible steps to improve the legislation.

A partial solution is offered by art. 120 of Law 208/2015, which establishes that some of the procedures of this normative act apply **accordingly** to the EP elections: "The provisions of this law on the Corps of Electoral Experts, members of electoral commissions, computer operators, the Information System for Monitoring Turnout and Preventing Illegal Voting, polling stations, the electoral register and the permanent electoral lists shall apply accordingly to elections for the President of Romania, elections for local government authorities, elections to the European Parliament, and national and local referendums." **However, regulating key aspects of the electoral process through an article placed in the Transitional and Final Provisions chapter of another law is not good practice.** Moreover, wording it *accordingly* adds an extra dose of legal uncertainty especially when the legislation contains different provisions - the rules governing elections should be clear, not by themselves generate a wide margin of interpretation for the institutions that will be called upon to apply them.

Overall, Law 33/2007 **is very outdated, strongly at odds with modernized legislation**, such as Law 208/2015, **and with the technological innovations or structural changes that have taken place regarding the organization of elections that did not exist in 2007**. The lack of interest in this updated legislation may also reflect the low level of interest of the governing parties in the EP elections in general. **It is impossible to predict at this stage how Law 33/2007 will apply in practice unless changes are made urgently, as the law contains references to other now repealed legislation.**

¹ [Law No 33 of 16 January 2007 on the organization and conduct of elections to the European Parliament](#)

² [Law No 208 of 20 July 2015 on the election of the Senate and the Chamber of Deputies and on the organization and functioning of the Permanent Electoral Authority](#). The law is the most comprising act for elections, as it includes references to many parts of the process which are used in other types of elections.

³ [Law No 334/2006 of 17 July 2006 on the financing of political parties and electoral campaigns](#)

⁴ The full list of regulations applicable to the 2019 elections [is available on the BEC website](#).

⁵ [Emergency Ordinance No. 6/2019 on some measures for the proper organization and conduct of the 2019 elections for members of the European Parliament from Romania](#)

We aim to highlight the key issues that need to be improved as soon as possible to allow for the safe holding of the EP elections while safeguarding voters' rights. We do not intend to analyze each article, **as in our opinion the law should be urgently updated as a whole and republished.** In its report on the organization of the 2019 elections, the PEA also pointed out "the need for a uniform update of the electoral legislation to standardize the procedures applicable to the various types of elections and referendums".⁶ We recall that many of these problems are linked to the lack of a unified Electoral Code, recommended by ODIHR for more than 20 years and to which EFOR and other civil society organizations have constantly drawn attention⁷.

In short, the main issues are the following:

1. The law has not been updated, although many of the problems mentioned in the report were also identified in the 2019 elections. Law 33/2007 refers to legislation that has been repealed or is no longer relevant, which could lead to unclear implementation. It is not sufficiently correlated with the rest of the electoral legislation, does not detail some of the new tools used in the organization of elections, and these differences may create serious difficulties in the organization of elections, but may also affect the public perception of the process. Moreover, the correlation with Law 208/2015 through art. 120 is not a good practice and can create confusion at times, and this mechanism for resolving deficiencies generates more unclarity in practice.
2. Many essential elements of the electoral process, including those related to the publication of results or the election technology, are regulated by secondary or tertiary legislation although they should be regulated by law.
3. The role of the authorities involved in the process is not always clear, and some of the tasks performed by the PEA in recent years are attributed to the Ministry of Interior or the Government. How the organization of elections is financed is not sufficiently detailed.
4. Certain provisions pertaining to the Corps of Electoral Experts⁸ contradict with the procedure for setting up electoral commissions regulated by Law 33/2007. There are also differences between the different types of commissions in the law when it comes to how political parties are represented. For organizing out of country voting, the procedure is deficient.
5. The meetings of the election commissions are not public, which reduces the transparency of the process. The deadlines for publishing the decisions and rulings of the electoral commissions are not clearly specified.
6. The number of supporting signatures for the submission of candidates is very high (1% of the number of voters) and there is no clear and regulated methodology for their verification, which raises questions about the integrity of the process. The verification process cannot be observed.

⁶ [Report on the organization and conduct of the elections for the Romanian members of the European Parliament and the national referendum of 26.05.2019.](#)

⁷ Read more about the [Electoral Code Coalition ACUM!](#)

⁸ This is a body meant to hold the permanent record of the persons who can become chairs of the electoral commissions of the polling stations in the country or their deputies, established, managed and updated by the Permanent Electoral Authority.

7. The observation procedures are very cumbersome and bureaucratic - accreditation is approved for each county by the county electoral commissions - and the practice in previous elections of publishing lists of observers with personal data on the websites of these commissions violates data protection legislation. Observers can only monitor election day and not the whole election process, contrary to international standards.
8. Elections abroad are held in one day, as opposed to two in the parliamentary and three in the presidential ones. Postal voting or alternative voting methods are not in place. This lack of measures could limit the voter turnout.
9. The law does not encourage the publication of data regarding the electoral process, and much of the communication is done through offline posting (including on-site) or radio and TV channels. The legislation does not mention the publication of detailed data on candidates or other stages of the process, and this is at the discretion of the CEB.
10. The regulation of the electoral campaign does not strongly sanction extremist behavior or any other type of behavior that may affect the electoral competition.
11. Parties represented in the EP have disproportionate access to radio and TV broadcasts. The provisions on election campaigning are at odds with those of Law 334/2006 regulating election campaign financing. For example, Law 33/2007 refers to methods of outdoor promotion that are prohibited under Law 334.
12. Access for voters with disabilities is not as flexible as in parliamentary elections, where they can also vote in another polling station if the one where they are assigned is not accessible. Registration for voting with a special ballot box can only be done within a very short timeframe and is not provided through electronic means. It is not specified whether those in hospitals can vote with the special ballot box.
13. Voting ends at 21:00, regardless of whether there are still voters in line. This was one of the reasons for major dissatisfaction in previous elections. On the contrary, those voting in the presidential election in 2019 and were in line at 9 PM were allowed to vote.
14. The law does not provide for the publication of financial contributions to the election campaign during the election process but for the publication of income and expenditure reports after election day. Although in practice, in previous elections, the PEA has published this data during the campaign, there is a risk that the information will not be available in time.
15. The lack of transparency regarding the financing of political parties from subsidies will also affect the integrity of the elections, especially since the pre-campaign period is not subject to other rules than the usual ones for party financing. The lack of rules regarding the marking of political promotional materials and their reporting will affect the level playing field and the impact of information on voters.
16. Campaign finance oversight is largely limited to the financial component. The PEA needs to be given more powers to carry out real-time controls, audit campaign activities, on the ground, and not only to perform oversight from a financial perspective.

17. Campaign control reports are published only in summary and not in full, which reduces transparency and access to information on the detection of irregularities in campaign financing by competitors.

Recent legal proposals to amend Law 33/2007

Before the 2019 EP elections, a draft law was proposed to update Law 33/2007 (also referring to Law 370/2004 for the election of the President⁹) and which aimed to take over some legislative innovations that apply to other elections to the EP elections. The most important aspects were the introduction of provisions on the use of SIMPV and regarding the use of electronic tools for tabulation, regulations on the appointment of chairs of the polling stations and bringing them into line with the provisions relating to the Corps of Election Experts, clarification of the role of the different authorities in organizing the process, and clearer rules on the financing of the process. Although the law was approved in Parliament in December 2018, it was subsequently referred to the Constitutional Court following a complaint of unconstitutionality by the President of Romania¹⁰. **The law was declared unconstitutional** on 27 March 2019 by the CC and was subsequently rejected in the Senate review. The provisions did not apply in 2019. Therefore, GEO 6 of 15 February 2019¹¹ was adopted to regulate some key issues.

Although almost 4 years have passed since this unconstitutionality decision, the **legislation has not been updated, and some of the problems faced by electoral authorities in 2019 are the same today**. As mentioned above, some of the issues fall under art 120 of Law 208/2015, but this way of regulating is rather improvised and can create confusion at times. Several legislative proposals have been tabled in Parliament recently, but they have not solved some of the substantive problems. These were rejected in the Senate and most of them are in the Chamber of Deputies. In addition, there are unapproved/rejected bills in Parliament dating back to as early as 2014. The list of bills proposed in 2022 and 2023 is below:

- L429/2023¹² (USR) - rejected by the Senate, reduces the number of signatures to 0.5% of electoral lists and introduces the possibility to sign for more than one candidate;
- L505/2023¹³ (USR) - rejected by the Senate, regulates among other things the use of SIMPV, the extension of OCV, introduces postal voting, introduces regulations to increase transparency, simplifies the accreditation process for observers, etc.;
- L428/2023¹⁴ (USR, unaffiliated) - rejected by the Senate, parties that have collected signatures for the presidential or parliamentary elections in the last year do not have to collect signatures for the EP elections (the rule applies similarly for either of these elections);

⁹ PL-x no. 427/2018, Draft Law for amending and supplementing certain electoral legislation.

¹⁰ <https://www.cdep.ro/proiecte/2018/400/20/7/dec146.pdf>

¹¹ [Emergency Ordinance No. 6/2019 on some measures for the proper organization and conduct of the 2019 elections for members of the European Parliament from Romania](#)

¹² https://www.senat.ro/legis/lista.aspx?nr_cls=L429&an_cls=2023

¹³ https://www.senat.ro/legis/lista.aspx?nr_cls=L505&an_cls=2023

¹⁴ https://www.senat.ro/legis/lista.aspx?nr_cls=L428&an_cls=2023

- L801/2022¹⁵ (AUR) - rejected by the Senate, amends regulations related to the formation of electoral commissions;
- L741/2022¹⁶ (USR, unaffiliated) - rejected by the Senate, imposes additional limitations on candidacy for persons who have convictions for crimes committed with intent, for which there has been no rehabilitation, post-conviction amnesty, or decriminalisation;
- L338/2022¹⁷ (multi-party) - rejected by Senate, lowers minimum voting age to 16.

Can the legislation be amended less than a year before the elections?

Ideally, the legislation should not be changed so close to the elections, not to influence the organization of the elections or to affect the equal opportunities of the competitors. Even if the intentions are good, there is a risk that the changes could be interpreted in the public space as an attempt to influence the electoral process. Moreover, there may be a risk that provisions that are not appropriate or that influence the elections in a negative manner may be introduced into a hastily drawn up process.

The principle of legislative predictability is underlined by the Venice Commission in the Code of Good Practice in Electoral Matters¹⁸. Furthermore, the Report on the timeline and inventory of political criteria for assessing an election adopted by the Council for Democratic Elections in 2010 states that "any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election".¹⁹ Moreover, the legislation should be amended in Parliament and not by a GEO, as also stated in CC Decision 51/2012²⁰.

At the same time, CC Decision 150/2020 notes that **exceptions to the one-year rule may be accepted if it is necessary to remedy unforeseen problems or rectify national legislation, so as not to prejudice internationally recognized rights**²¹. The same decision notes that CC Decisions 51/2012 and 682/2012 uphold the principle of not amending laws "for the purpose of restricting and limiting in any way citizens' right to vote." Last but not least, the CC states that **"if amending the electoral legislation in question brings about an improvement in citizens' right to vote, this may be done even less than a year before the elections, because this principle *does not take precedence over the other principles and cannot be invoked to maintain a situation contrary to European standards in this field*".**

¹⁵ https://www.senat.ro/legis/lista.aspx?nr_cls=L801&an_cls=2022

¹⁶ https://www.senat.ro/legis/lista.aspx?nr_cls=L741&an_cls=2022

¹⁷ https://www.senat.ro/legis/lista.aspx?nr_cls=L338&an_cls=2022

¹⁸ Paragraph II.2.b. of the Guidelines states that "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law".

¹⁹ [Report on the timeline and inventory of political criteria for assessing an election adopted by the Council for Democratic Elections in 2010](#), para. IV.19

²⁰ [The Court holds that](#) "regulations on electoral matters should be debated in Parliament and not adopted by way of an exceptional procedure, whereby Parliament is bypassed but obliged to take a tacit vote on a legislative content which is almost exclusively at the discretion of the Government".

²¹ CC [Decision 150/2020](#), paragraph 10.

CC Decision 51/2012 stresses that a law could be unconstitutional if it causes "additional difficulties for the authorities responsible for its application, in terms of adapting to the newly established procedure and the technical operations that this entails." The same logic applies if it creates difficulties in exercising the right to vote. The CC states that "the stability of these rules is an expression of the principle of legal certainty, implicitly established by Article 1 (5) of the Constitution, a principle which essentially expresses the fact that citizens must be protected against an insecurity which comes from the law itself, against an insecurity which the law has created or which it risks creating, requiring that the law be accessible and predictable".

But even though there are only six months left until the elections, we believe that some improvements need to be made and are absolutely necessary. The standards in the Code of Good Practice in Electoral Matters relate to substantive changes, such as the electoral system, constituency boundaries, or the composition of electoral commissions. The changes we are discussing in this report are not such as to limit electoral rights but to extend them and ensure that they are exercised without issues and are more of a technical nature. As far as Romanian case law is concerned, we note that such amendments may be constitutional and can be accepted as long as they don't change essential aspects and do not restrict electoral rights. Moreover, in this case, the **lack of amendments may lead exactly to the impossibility of organizing elections efficiently and coherently and may bring serious integrity risks and trust prejudice.**

What are the main issues with the current legislation?

The issues mentioned below are only part of a list of amendments that should be included in the legislation as soon as possible. As already mentioned, the law should be republished, starting from the applicable regulations of Law 208/2015, the bill voted in 2018 (declared unconstitutional), and from GEO 6/2019.

EFOR's analysis of the 2019 electoral process and recommendations on this topic can also be found in the Monitoring Report of the EP Elections and Referendum of 26 May 2019 (FiecareVot report)²². All our recommendations related to the EP elections can be consulted in the Election Recommendations platform developed by EFOR - <https://expertforum.ro/recomandari-electorale>.

A. Legislation on the organization of elections

Legislative remarks

- The regulation of key elements of the law such as polling stations, electoral commissions, the Electoral Register or the SIMPV is done through an article in Law 208/2015 (which refers to other chapters of this law), which can lead to generating more confusion and uneven execution of the law. The law must be

²² [Monitoring report of the EP elections and referendum of 26 May 2019 - FiecareVot](#), July 2019.

very clear from the beginning of the electoral process to avoid situations where the CEB issues interpretative decisions that could exceed its powers.

- Moreover, there are contradictions between several regulations in Law 33/2007 and what Law 208/2015 requires.
- The law refers to legislation that is no longer in place or is outdated and to institutions whose names have changed. All these names and references should be updated.
- The text is not properly and logically structured by sections. Various definitions are scattered throughout the law or regulations related to a subject are found in different parts of the law and are difficult to follow.
- The law includes articles with long formulations - such as Article 3 - or which are no longer topical - Article 11.
- The law should include an introductory section defining the main terms.

Unclear roles of the institutions involved

The current version of the law does not clearly define the powers of the institutions involved in the organisation of elections. Moreover, it is unclear how some of the powers in Law 208/2015 are adopted for the EU elections by a number of institutions. Neither is the way in which the organisation of elections is budgeted is sufficiently detailed.

Some tasks that traditionally fall within the competence of the PEA under Law 208/2015 are exercised for the EP elections by the Ministry of Interior or the Government. For example, the MoI will approve the forms and templates of the various electoral materials and coordinate the printing of ballot papers. The template of the list of supporters and the model of the affidavit are established by Government decision. **All these tasks must be urgently assigned to the PEA,** along with others such as approving methodologies or coordinating the training of members of electoral commissions. The law should also establish that the PEA ensures the secretariat of the CEB and that the PEA is the single contact point for the implementation of the EC Recommendation C (2018) 5949/2018²³.

Regarding the use of IT systems, even if art. 103 and 103¹ of Law 208/2015²⁴ specifies that the PEA coordinates SIMPV and SICPV and certifies the applications used by the CEB, there should be references to their use also in Law 33/2007. SIMPV is not regulated as such by Law 33/2007, but there is reference to its use in the EP in Law 208/2015. Even so, there are certain regulations in Law 33/2007 such as the transmission of voter turnout data by the chairs of the election commissions by other

²³ [Commission recommendation of 12.9.2018 on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament](#). It refers to the establishment of a national election network involving national election authorities and those responsible for monitoring and enforcing rules on online activities relevant to the electoral context. The network also facilitates the exchange of information at EU level. Topics of interest include risks related to disinformation, cyber risks and risks related to the financing of political parties and election campaigns.

²⁴ According to art 103, (1) u, the PEA "shall certify the computer applications to be used by the Central Electoral Bureau for the centralization of the voting results and shall make them available to political parties and organizations of citizens belonging to national minorities participating in the elections, upon their written request".

means (and not through the SIMPV).²⁵ or the verification of electoral lists in certain precincts in case of allegations of fraud, which become meaningless if the rules on the functioning of the SIMPV are applied. The introduction and clear regulation of electronic systems is essential to ensure the integrity and transparency of the electoral process.

Last but not least, we consider that the electoral legislation **does not include provisions on the role that the National Supervisory Authority for Personal Data Processing** should have in providing *guidelines* to the participants in the electoral process.

[Regulations not in line with Law 208/2015 on the formation of commissions, different rules for the formation of the commissions, and lack of measures to increase the transparency of electoral administration](#)

According to the current law, the chairs of the polling station commissions are selected from a list that includes magistrates proposed by the chair of the court or other persons recommended by the prefect, with a "good reputation" (art. 29). Meanwhile, Law 208/2015 provides that the chairs of the electoral commissions and their deputies are selected from the Corps of Electoral Experts, which is an established, consolidated body and this provision is used for all other types of elections. **Law 33/2007 needs to be revised to clarify how these provisions relate.**

There are differences regarding the eligibility of political parties to nominate representatives to electoral commissions. For the commissions organized for out-of-country voting, the wording is restrictive, as it only allows for the appointment of representatives of competitors who participate in the elections and have members in the EP (Art. 30 (1). The law should nominate from all parties taking part in the elections, as is the case for commissions set up in Romania (Art. 29 (1)). The application of both laws can create inconsistencies regarding the numbers of members of commissions, as it is different in certain cases.

The meetings of the election commissions are not public. A minimum requirement for transparency is that the meetings of electoral commissions are public. While we understand that the structure of the commissions is atypical, as it includes magistrates appointed temporarily, the way they operate is contrary to international standards. Ideally, in the long term, this structure should be redesigned to provide maximum transparency and uniformity in the interpretation of the law. The Code of Good Practice emphasizes that "The meetings of the central electoral commission should be open to everyone, including the media [...] Any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection. " (para. II.3.1.81). We also recall that this recommendation has been mentioned in several ODIHR observation reports, including the most recent one from 2020, which further recommends that "To

²⁵ The law stipulates that BESV shall provide, on the reference day, data on the turnout of the population according to a schedule set by the Central Electoral Office.

increase transparency, sessions of the election bureaus should be open to the public, media and election observers."

Although the law stipulates that the decisions and rulings of the electoral commissions shall be published, no deadlines for publication are included.

While decisions have generally been published in past elections very close to the time of approval, the legislation should be specific in this respect to prevent abuse.

The law does not stipulate that the CEB shall draw up and approve a set of organizational and operational regulations. Although this has been the practice, including in other elections, such rules should be laid down in a permanent legal act, as the rules can be very different from one CEB to another.

[Significant limits on signature gathering, restrictions on the possibility to endorse candidates, lack of clear verification procedures, and lack of personal data protection provisions](#)

The thresholds for the number of signatures required for the filing of candidacies remain high²⁶, above the threshold of 1% (which means some 180,000 voters) of the total number of voters recommended by the Venice Commission²⁷. Parties must collect 200,000 signatures and independent candidates 100,000 signatures (Art. 16-17). If large parties are able to collect these signatures, the possibilities for smaller parties to enter the competition are restricted. For independents the limit is excessively high and makes it almost impossible to stand as a candidate (under legal conditions). In order to encourage political participation, the number of supporting signatures required by law should be reduced for both candidate lists and independent candidates. This number should under no circumstances exceed 1% of the total number of voters on the permanent lists and can be reduced, for example, to 0.5%.

According to the law, **a citizen can support only one competitor, this rule is restrictive** and contrary to international standards²⁸. The law needs to be amended so that any citizen can support one or more competitors.

Last but not least, the **procedure for verifying signatures (Art. 19) is not detailed and does not ensure the integrity of the process**. If the CEB verifies a sample, it should be stated what is the sample and what the verification procedure is. Moreover, the mechanism of collecting signatures by electronic means, which was used during the 2020 elections, could be reactivated.

²⁶ Romanian legislation is one of the most restrictive in the EU in terms of the number of signatures. See also AMPER, [Comparative study on the conditions for registering candidates for the European Parliament elections](#)

²⁷ Paragraph I.1.3. ii. [states](#) that "The law should not require collection of the signatures of more than 1% of voters in the constituency concerned".

²⁸ ODIHR and Venice Commission, "[Guidelines on Political Party Regulation Second Edition \(2020\)](#)", paragraph 96 - "It should be possible to support the registration of more than one party, and legislation should not limit a citizen or other individual to signing a supporting list for only one party".

EFOR has asked the 2019 elections to observe the signature verification procedure. This request was rejected by the CEB. It should be recalled that eight criminal complaints were submitted to prosecutors during the 2019 presidential elections about possible offenses related to the collection of signatures, which raises serious questions about how signatures are collected. We believe that **the procedure for verifying lists of supporters should be made transparent and accredited organizations should be allowed access for observation.** We recall that the regulation of a methodology for the verification of signatures was also recommended by the ODIHR in its most recent report on the parliamentary elections²⁹.

The law does not stipulate what kind of data is published on candidates and in what formats. The only regulations are those concerning the publication of lists of candidates (art. 20) and declarations of assets and interests. The law does not specify whether the declarations on being/not being an employee/collaborator of the former Securitate services are published or not. The law does not specify which data related to candidates are published, which may lead to arbitrary decisions. In the 2019 elections, scanned PDFs of low quality were published³⁰. In the 2020 parliamentary and local elections, the CEB did not publish detailed information such as gender, age, or profession. **Candidacy information should be published in as much detail as possible on the CEB website, and what information is published should be determined by law and not by arbitrary decisions in each election round.**

As the data is collected at the time of application, **it could be published in open formats (xls, csv, etc.) and detailed, including information on gender, age, professional profile.** The publication of this data does not conflict with the provisions on personal data. Furthermore, the CEB will be subject to Law 179/2022 on open data and re-use of public sector information, which means that it must also carry out an analysis of the data it produces and pass it on to interested parties. We also recall that EFOR published analysis on women's participation in the 2020 elections by developing a computer script that combined several datasets, as the data in this format was not made public – this involved a great effort due to the lack of transparency. Additionally, The National Agency for Equal Opportunities for Women and Men gathers data for these analyses by manually, which is an unjustified and incomprehensible consumption of resources for a public institution, given that the data exists and can be easily processed.

Concerning the protection of personal data, the law does not impose any obligations on political parties or independent candidates collecting signatures. Although there are general obligations in the legislation on the protection of personal data, as for any other data controller, we consider that specific obligations should be included in the law on informing voters who support the party about the conditions of the application and some requirements should be imposed on the retention of these documents.

²⁹ [Final Report of the ODIHR Special Election Assessment Mission, Parliamentary Elections, 6 December 2020](#) - "

"To ensure full implementation of legal requirements, consideration should be given to developing specific procedures for verifying supporting signatures of candidate lists."

³⁰ <https://europarlamentare2019.bec.ro/candidati-partide/>

Insufficient regulations on the organization of OCV

There are several issues with the procedures for out of country voting. **The procedure for setting up polling stations and commissions abroad is rather vague** (Art. 34 (7-11) and often in contradiction with the provisions of Law 208/2015. For example, in parliamentary elections, the commissions are composed of a chair, a deputy and a maximum of 8 representatives of political parties, whereas Law 33/2007 specifies that they are composed of "a chair, appointed by the head of the diplomatic mission, usually from within the diplomatic mission, and a number between 2 and 6 members determined by the chair of the electoral commission for polling stations abroad". It is not clear whether Law 33/2007 adopts the regulations allowing the establishment of polling stations at the request of a certain number of voters.³¹

For the EP elections, voting takes place in a single day, compared to the parliamentary or presidential elections, where it takes two days in the parliamentary elections and three days in the presidential elections. The provisions on postal voting also do not apply to the EP elections. Given the low voter turnout in the EP elections, extending the voting period to two days could increase turnout. Furthermore, as the number of out-of-country voters has increased significantly, extending the voting period may also facilitate better voting conditions without putting a lot of pressure on polling station commissions or voters. In this respect, regulations on the management of election materials for Saturday should also be introduced.

Bureaucratic, intrusive and limiting observation procedures

Article 73 stipulates that **national observers are accredited at the level of county electoral commissions, which is a very cumbersome and bureaucratic procedure**. This means that an organization wishing to accredit at national level has to submit applications to each county commission. If an observer wants to be accredited in several counties (in the case of mobile observers, for example), the organization has to submit the same documents in each county. Based on previous experiences, the provisions are interpreted differently at county level, which means that we may have different decisions on similar cases (including for the same observer). Therefore, the **accreditation procedure in Law 208/2015, Chapter IX, should be adopted**, according to which AEP grants the right to an organization to accredit observers at the national level, which in turn issues credentials.

Another important aspect of this issue is that it **does not take into account the provisions of the legislation on the protection of personal data**. The data of all observers in a county/organization are put on the same accreditation document and published, which we consider to be a violation of the legislation. The process may be a factor that may reduce the interest of observers to participate in the electoral

³¹ Art. 42 para. (2) and 23 (3) of Law 208/2015 establish that "Outside the polling stations referred to in para. (1) and (2), polling stations may be organized, with the consent of the authorities of the country concerned, for the localities or groups of localities in which at least 100 voters have opted to vote, in accordance with Art. 42 para. (2)".

process. This vulnerability was vehemently pointed out to us by accredited observers in the 2019 elections.

Observers' access should not be limited to election day, but that they must be able to follow all election procedures, including election office meetings, the work of the election commissions in centralizing the results, the verification of supporting signatures, preparatory activities, the testing of electronic applications used in the election process, etc. Observers must also be able to appoint experts to test the electronic applications used in the election process, as electoral contestants have. The ODIHR report for the 2020 parliamentary elections recommends "To enhance transparency, legislation should include explicit provisions on the right of observers to access all stages of the electoral process".

Unjustified limitations on the publication of data

We have already mentioned some of these problems in the section on candidates. According to Article 20, information about candidates is available at the headquarters of the electoral commissions or broadcast on radio and TV. Candidate data must be published first and foremost on the CEB website, in open and detailed formats. Nor is the policy on publication of results clear, especially in the absence of electronic systems used in other elections. The law needs to clarify which categories of data are published at different stages of the electoral process and encourage the publication of data in open formats.

EFOR has already prepared a list of recommendations on the publication of data in electoral processes, which can be consulted on our website³².

Legal deadlines must be correlated with the rest of the electoral legislation

Although we will not dwell on all the deadlines in the law, the general note is that they should be correlated with the deadlines in other laws, especially those in Law 208/2015. This recommendation is especially important in the context of adopting regulations related to the formation and functioning of electoral commissions or the use of electoral technologies.

Some examples:

- Art 9 (2) the time limit for resignation of elected officials in case of incompatibility is 30 days - should be reduced;
- art 12 (1) reduction of the time limits for the registration of voters from other EU countries from 60 days to 45 days;
- Art 19 (2) rejection of candidate applications is done within ten days - the deadline could be reduced to 3-5 days;
- Art 23 (3) - the request for the annulment of the elections for fraud can be filed within 24 hours after the end of voting. Given that it must be justified, evidence gathered, the deadline is very short and can be extended to at least 48 - 72 hours. There must also be a time-limited appeal against the CEB decision;

³² See the list [here](#).

- Art 31 (1) - Election materials are received by polling station commissions two days before the elections. They should be handed in the day before, to avoid risks related to their storage;
- Art 34 - There is no clear deadline for establishing the list of polling stations abroad;
- Art 42 (3) - The deadline for submission and approval of the ballot paper layout is too short - 15 days and should be extended, taking into account also the deadline for establishing the candidates.

The registration procedure for EU citizens is not correlated with the regulations on the Electoral Register

The procedure regarding the registration of citizens of other EU countries to vote in EP elections is not correlated with the regulations related to the Electoral Register, which applies to the EP elections according to art. 120 of Law 208/2015. The preparation and printing of special lists are not correlated with the Electoral Register, especially as these lists are specific to the EP elections – therefore the law should provide more synchronized regulations. Thus, registration should be done in municipalities or directly at the PEA, including in electronic format, and the registration methodology should be developed by the PEA. The deadline for registration should be reduced from 60 days to 45 days.

Although the provisions on electoral lists and the Electoral Register of Law 208/2015 apply, there are terminological and practical inconsistencies regarding the preparation, printing, and use of electoral lists, which should be resolved.

Gender equality measures must be strengthened

The law states that the lists of candidates shall be drawn up in such a way as to ensure that both genders are represented (art 16 (8)), and failure to comply with these regulations renders the list of candidates null and void (art 16 (11)). The law may go further to **include a minimum percentage for candidates of each gender, or it may include a zipper system**, which provides for alternating candidates, to avoid having only male candidates at the top of the lists in eligible seats.

Access for voters with disabilities and registration for the special ballot box voting must be improved

The law includes only minimal provisions on access for people with disabilities or voting with a special ballot box (Art. 47 (1)). Voters with disabilities must vote only in the precinct where they are registered according to the Electoral Register if they are in their place of residence or domicile and may request a special ballot box if they are not mobile. However, if they are allocated to a polling station on the first or second floor of a building that is not accessible, they cannot vote at another accessible polling station situated on the ground floor. A regulation allowing voting at any precinct based on this criterion was introduced in Law 370/2004 and can

also adopted for the EP elections³³. The map of polling stations maintained by the PEA (www.registrulelectoral.ro) should also include the list of accessible polling stations.

Moreover, the registration procedure for the special ballot box is restrictive. Registration can only be done in person (through a representative) one day before the vote, in a very short timeframe. There is no possibility to register electronically or during the election day. To facilitate the participation of voters with disabilities, the deadline for registration should be extended until the election day, at a certain time (e.g., by noon). Electronic registration should also be introduced (e-mail or a dedicated platform). The experience of the 2020 parliamentary elections has shown that this is possible - registration can be done at the county election commissions, as the polling station commission members are not constantly working and electronic applications are sent by the first to the latter³⁴. ODIHR report for the 2020 parliamentary elections included a recommendation suggesting that "The extended deadline for homebound voting should be maintained for future elections and regulated through the law"³⁵.

Article 47 **does not regulate the possibility of voting with a special ballot box if the voter is in hospital**, which may be a violation of electoral rights.

Poor and contradictory campaign regulation

The regulation of the campaign is deficient in several respects. For example, **there are no specific regulations to combat hate speech, extremist or discriminatory speech against other electoral competitors** (art. 35)³⁶. Although there are various regulations in other laws, these situations must be also included in Law 33/2007, monitored and sanctioned as such.

Airtime (Art 39 (4)) is disproportionately allocated in favor of parties already represented in the EP, i.e. 4/5 versus 1/5. **There are discrepancies in the size of posters that can be used in the election campaign** (Art. 40 (6) in relation to the provisions of Art. 39 of GD 10/2016. Art. 40 (11) refers to the use of some promotional means, such as digital screens, which are prohibited by Law 334/2006.

³³ Article 9 states that "(1) Supplementary electoral lists shall be drawn up during voting by the chair of the polling station election commission and/or by the members of the polling station's electoral commission designated by its chair, to record the turnout of the following categories of voters: [...] d) voters with reduced mobility who are not on the permanent electoral list of the polling station concerned".

³⁴ See CEB Decisions [40/2020](#) and [91/2020](#). According to Decision 90, registration for quarantined persons took place between 27.11 and 4.12, and applications were sent via the prefects to the polling station closest to the applicant's place of residence by 12 noon on 6.12.

³⁵ [Final Report of the ODIHR Special Election Assessment Mission, Parliamentary Elections, 6 December 2020](#),

³⁶ See Article 65 of Law 208/2015: "5) In the electoral campaign it is prohibited to use messages or slogans of a discriminatory nature or messages inciting hatred and intolerance. For the purposes of this law, speech inciting hatred and discrimination means both speech and election propaganda messages that incite, promote or justify racial hatred, xenophobia, anti-Semitism, other forms of hatred based on intolerance or any other form of discrimination referred to in Article 2 of Government Ordinance No 137/2000 on the prevention and punishment of all forms of discrimination, republished.

(6) Any form, means, acts or actions of defamation and religious or ethnic enmity, as well as public offence to religious symbols, are prohibited in the electoral campaign."

During the election campaign, the intermediary-level electoral commissions are the first instance of dealing with complaints about the conduct of the campaign. According to Article 41 (2) the deadline for dealing with complaints and appeals is 3 days, which may be too long for a dynamic or online election campaign. The rule that appealing such decisions to the CEB suspends enforcement should be removed.

Voting day/rules procedures

According to art. 45 (5) the authority of the chair of the election commission extends 500 meters around the polling station, which has proved unrealistic in previous elections. The distance could be reduced to 100-200 meters. The law should prohibit campaigning in or around the polling station.

Voting closes at 21:00 (art. 46(1), regardless of whether there are people in the queue at that time. We recall that this has been one of the main criticisms towards the government on numerous occasions, as it has meant blocking access to voting and thus restricting electoral rights. The system adopted for the presidential elections could be adopted (Article 46 of Law 370/2004), where at 21:00 two members of the election commission are placed behind the last voter, so that all those queuing at 21:00 can vote until 23:59 the latest.

Results and vote recount

Although provisions on SIMPV and SICPV are included in Law 208/2015 and in decisions issued by the PEA and the CEB, **the fact that these two systems are used in the electoral process should also be prescribed in Law 33/2007.** The regulation of important aspects such as the recording of vote counting procedures, the electronic tabulation of results or the manner of publishing the information from the protocols on the PEA/CEB website should also be mentioned in the law for the EP elections.

The format of the protocols is not adapted to the regulations related to the Electoral Register and the permanent lists and should be adapted accordingly.

Although there are established powers for the CEB (art 25 (1)) to request a recount of votes, such powers should also be introduced for the intermediary-level commissions. These should have the possibility of requesting a recount in case of major errors, to make the process more efficient and increase its integrity. On the opposite, the law keeps some of the inefficient manners of sanctioning multiple voting: in case of allegations of fraud by contestants, according to art. 52 (5), the PEA should check the electoral lists in the polling stations where fraud has been indicated, within six months of receiving the lists. This procedure is redundant in the context of SIMPV implementation and is both time-consuming and costly.

Copies of the protocols of the results are provided only to members of the electoral commissions. These should also be provided to observers on request.

According to Article 71, ballot papers, protocols, and other materials that are transferred from the electoral commission to the court are kept for three months. Given that the time limit is very short, it should be extended to at least six months from the date of publication of the results.

Given that many CEB webpages are no longer functioning and there is no centralized database of election results, the law should stipulate that the **PEA is mandated to develop a platform including detailed results of all elections.**

Sanctions

The list of penalties should be revised in line with other amendments, and their amount should be increased to be a deterrent - it could be doubled from the current law.

B. Legislation on campaign financing and the functioning of the AEP

Campaign financing is regulated by Law 334/2006 and Government Decision 10/2016. Although we will not dwell on the regulations in detail, as we have done so in many other reports available at www.banipartide.ro/rapoarte, we mention some key recommendations to ensure transparency in campaign financing:

- **There is no legal obligation for PEA to publish contributions received by competitors during the campaign, but in practice they were published weekly during previous elections, in various formats and level of detail.** According to Art. 47 (3) only income and expenditure reports are to be published within 60 days of the election. The PEA should publish campaign contributions, in detail, in a short timeframe and not just after the election. A draft law under parliamentary debate in the Chamber of Deputies proposes to publish these contributions only 30 days after the elections, which reduces transparency and access to information significantly.³⁷ The manner and format of publication of this information should be decided before the elections and should be similar for all elections.
- **Lack of transparency on party funding from state subsidies may affect the pre-campaign period - which is not regulated and the general regulations of political finance apply.** As there are no regulations on the marking of political promotional materials outside the campaign, voters' ability to understand which messages are being promoted by parties is gravely affected. Therefore, all political propaganda materials must be marked and parties' contracts with entities promoting them should be transparently reported.
- **The law does not give the PEA sufficient oversight powers to encourage intervention to identify abuse of public resources or other problems related to political financing in real-time.** The PEA does not have sufficient mechanisms to control breaches of the law in real-time, as the institution's work is focused on post-event document verification. The PEA should have the capacity to carry out on-the-spot checks and verify the veracity of statements in reports at any time. The legislation is also unclear

³⁷ See also [EFOR's comments](#) on [Plx 516/2023](#).

on the real sources of contributions, as it allows money to be received in the election campaign without proper verification of the source of some funds. For example, EFOR discovered donors who could not justify the size of their contribution (loans) reported to their income, according to income statements (the loans were much higher in value) - in this case, the PEA has no powers to verify the source of the money³⁸. This situation is also noted in the ODIHR report for the 2020 parliamentary elections: " Overall, the campaign finance regulatory framework does not ensure transparency of campaign finance and the effectiveness of oversight due to lack of interim reporting and limited powers of the PEA to identify unreported income and expenditure." Also, " Sanctions for abuse of public resources can only be applied for irregularities identified after the PEA conducts its audit after the elections. The PEA has limited auditing powers over campaign income and expenditure and mostly verifies the financial documents submitted by the contestants."

- **Campaign finance control reports are not published in full, but only a minimal summary.** According to Law 334/2006 - art. 44 (6) the deadline is 45 days after the report is prepared. The PEA should publish the full reports on its website www.finantarepartide.ro. ODIHR recommended in its report for the 2020 parliamentary elections: "To further enhance transparency and accountability, the PEA could publish detailed campaign finance reports submitted by election contestants, as well as the results and conclusions of its investigations in a timely manner. "
- **The methods of promotion that can be used in the election campaign remain restrictive** (posters, online, radio, TV, meetings with voters) **and disadvantage smaller competitors.** The range of tools that can be used for promotion should be broadened, especially as regards street advertising. See also the ODIHR recommendation from the 2020 parliamentary elections: " Legislation should be amended to remove undue restrictions during the campaign period to sufficiently ensure freedom of contestants to campaign."
- In practical terms, the PEA **should develop the application for reporting party and campaign financing** (Thales) in such a way as to allow open data export and access to data as detailed and in a timely manner.

³⁸ [Political party funding in 2020: transparency and irregularities](#)

Pe BaniPartide.ro poți urmări evoluția finanțării [campaniilor electorale](#), sursele de venit și cheltuielile [partidelor politice](#). Caută în lista donatorilor, [companii](#) / [persoane fizice](#).

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