Parliamentary **Assembly**
Assemblée parlementaire

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Distance voting

Report
Political Affairs Committee
Rapporteur: Mr Zoltán SZABÓ, Hungary, Socialist Group

Summary

Distance voting refers to voting outside the premises where voting generally takes place. When speaking about distance voting, we refer to absentee voting, which is a system that allows voters to put into effect their vote at a voting location other than the voting station at which they appear on the normal voters list. There are different methods of absentee ballot: postal voting, proxy voting and internet voting.

Postal voting enables electors who are unable to get to a polling station to cast a vote. A proxy vote may be given where a voter is unable to attend a voting station because of *inter alia* infirmity, employment requirements, or being absent from the area on the voting day.

The Parliamentary Assembly which supports actively distance voting suggests many safeguard to garanty a full respect of distance voting.

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A. Draft resolution

1. For the Parliamentary Assembly, its principal missions have always lain in defending democracy, rule of law and human rights. The right to vote is an essential freedom in every democratic system. The Assembly considers it one of the chief prerogatives of a democratic system for all citizens to have the right to vote. Safeguarding this right is an integral part of the Assembly's mission.

2. Population movements for economic, social or other reasons have been disruptive, both nationally and internationally, to the concept of the national community in the Council of Europe member states. Both on its national territory and abroad, the national community nevertheless retains fundamental democratic rights in respect of its country, like the right to vote. The Assembly considers that distance voting constitutes a significant means for the persons concerned to exercise this right.

3. Moreover, the Assembly is aware that, to remedy phenomena of alienation and abstention, some member states are also resorting increasingly to various forms of distance voting, the most traditional of which remains postal voting.

4. The Assembly therefore considers that distance voting can open up avenues for extending the right to vote and guaranteeing universal suffrage. At the same time, it acknowledges that these voting methods may present challenges in terms of security of the ballot, surveillance and control of the procedures, and results of voting.

5. Voting remains a crucial stage in any democratic process. As the principal means for populations to decide their political future, voting also serves to legitimise institutions and to ground democracy in stability and security by creating a climate of confidence between the people's representatives and the citizens.

6. Voting, a major step in any process of political legitimation, can also be subject to abuses. That is why the Assembly wishes to show the greatest firmness as to the transparent and correct organisation of all voting operations, including those linked with distance voting.

7. It considers that distance voting will be destined to develop and that all Council of Europe member states should commence an examination of this subject in order to promote access for all citizens to the new communication media.

8. Accordingly, the Assembly invites the member states to:

8.1. introduce distance voting if this has not already been done and to bring it into general use for all forms of elections (local, national, referendums);

8.2. develop, for states which authorise distance voting, new possibilities in distance voting that ensure easy access and convenient vote casting for the voters;

8.3. introduce all the necessary measures to make the forwarding by mail of the postal vote or the transfer of the electronic vote, secure;

8.4. ensure the security and development of votes cast in advance;

8.5. intensify security arrangements for voting operations in supervised places abroad (consulates, embassies);

8.6. respect the secrecy of the vote in the context of postal voting, electronic voting and voting by proxy;

8.7. preserve the anonymity of voters and prevent the outcome of the vote from being identified with the voter;

8.8. combat and punish electoral fraud of all kinds, particularly in the case of multiple votes;

8.9. regulate the conditions of voting by proxy in order to establish all possible guarantees of compliance with the voter's choice;

8.10. adapt distance voting to the most vulnerable groups, such as the elderly and disabled;

8.11. allow persons in custody, in accordance with the case-law of the European Court of Human Rights, the full exercise of their right to vote thanks to distance voting.

B. Explanatory memorandum, by Mr Szabó, rapporteur

I. Introduction

1. When speaking about distance voting, we refer to absentee voting, which is a system that allows voters to put into effect their vote at a voting location other than the voting station at which they appear on the normal voters list. There are different methods of absentee ballot: postal voting, proxy voting and internet voting. Absentee voting is applicable when voters are, for a viable reason, away from the area in which they are registered to vote on election day.

2. Distance voting refers to voting outside the premises where voting generally takes place. Two forms of distance voting can be distinguished: distance voting in a designated place, different to the polling station but with supervision by election officials and distance voting without supervision by election officials.

3. Distance voting in a fixed location allows several categories of electors to vote in their country's elections, but they must nevertheless travel to be able to vote. This type of vote mainly concerns citizens living abroad and is therefore simply a foreign "replica" of the national voting system. Denmark, Finland, Austria, Hungary and Belgium are among those that apply this system. Their citizens travel to the embassies of their respective countries to cast their votes..

4. The basic principles of democratic elections (universal and equal suffrage, etc.) are uniformly accepted by all member states. It is necessary to ensure – as far as possible – that every eligible citizen participate in the elections without obstacles.

5. The mobility of citizens is increasing significantly. It is a world trend that more and more people are travelling and moving frequently due to the changing lifestyle (some factors: foreign job possibilities, enlargement of the EU, lower airfares etc.) It can be expected that more people will not be at their town of residence on election day. They may stay either at a different place within the country or abroad. The election system must provide adequate/effective possibility for absentee voting for both cases.

6. In theory the voting act (identification, authorisation of the voter and selecting a choice from a list (i.e. casting a vote) can be exercised anywhere. ICT in our “information age” allows secure transfer of voting data (voter’s list, identification data, ballot data, vote) to virtually all major locations. From the above, it follows that modern democratic election systems should provide the possibility to vote virtually anywhere domestically or abroad.

7. At present the ways CoE member states handle absentee voting is very heterogeneous. It would be adequate to set up common directives, voluntary standards and list best practices on distance voting in order to promote steps forward in a common direction to ensure the universality of democratic elections.

8. E-voting and internet voting can also be considered as distance voting. The Political Affairs Committee works on this question taken as a whole in a future report on e-democracy.

9. In 2004, Albania, Azerbaijan, Bulgaria, Croatia, Cyprus, the Czech Republic, Latvia, Moldova, Poland, San Marino and Turkey did not permit distance voting, either within their country or abroad[1]. Distance voting is here taken to mean voting away from the polling station and not outside the country.

10. Finally a significant majority of Council of Europe member states, including Bosnia and Herzegovina, Greece, Estonia, the Netherlands, Germany, Spain, the United Kingdom, Ireland, Sweden and Switzerland, do allow distance voting in non-supervised locations, which are often the voter's home. A number of countries, notably Estonia, Switzerland and the United Kingdom, are experimenting with electronic distance voting.

[1] Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe, Venice Commission, 12-13 March 2004, CDL-AD(2004)012.

II. The Council of Europe legal instruments governing distance voting

11. The right to vote is naturally one of the basic and essential rights in a democracy. The Council of Europe, which has always been a strong defender of the right to vote, has also given considerable attention to distance voting, which it supports and defends.

i. European Convention on Human Rights

12. Art. 3 of the Protocol refers to the positive obligation on contracting states to organise free elections using a secret ballot, but also guarantees the individual's right to vote and to stand for election. This being so, the right to vote is one of the primary foundations of democracy. It is through the case law of the European Court of Human Rights that some guarantees of Article 3 have been clarified.

13. It should be recalled that the rights from Art. 3 of Protocol 1 are not absolute; they are subject to some limitations. Following the European Court of Human Rights' case-law, although states enjoy discretion in deciding the conditions for universal suffrage and their electoral system, these limitations should not be disproportionate.

ii. Electoral Code of Good Practice

14. Apart from the aforementioned regulations, the Code of Good Practice in Electoral Matters[2] (the Code) completes the legal framework of the Council of Europe. Although this Code is not a binding document, it does set out a European standard which could influence the interpretation of treaty-based rules, in particular Art. 3 of Protocol 1.

15. According to this Code, **postal voting** should be allowed only where the postal service is safe and reliable, being addressed to people in hospital, prisoners, people with reduced mobility or living abroad[3].

16. As far **as electronic voting** is concerned, the Code states that it should only be used where it is safe and reliable[4]. For this to work, voters must be able to obtain confirmation of their votes, with the assurance that they will remain secret. In this particular case, the system's transparency must be guaranteed.

iii. Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004)

17. This report strictly establishes the criterion to respect for the compatibility of remote voting with the standards of the Council of Europe. It underlines that *« remote voting constitutes a common electoral procedure in a great number of Council of Europe member States. ».*

iv. Recent developments

18. Given its commitment to the new opportunities provided by the information society in day-to-day life, the Council of Europe has done extensive work on distance voting initiatives.

v. Election observation

19. The Council of Europe and its Parliamentary Assembly have gained great experience of voting, and more specifically e-voting, from their numerous missions to observe elections in most of the Council of Europe's member states. As the President of the Parliamentary Assembly, René van der Linden, recently told his audience, *"the observation of elections increases public confidence in the process and in democratic institutions. The presence of reliable observers puts pressure on the protagonists in the political process to*

[2] CDL-AD(2002) 23rev, adopted by the Council for Democratic Elections on 16 October 2002 and by the Venice Commission on 18-19 October 2002.
[3] Principle 3.2 iii) of the Code of Good practice in Electoral matters.
[4] Principle 3.2 iv) of the Code of Good practice in Electoral matters.

introduce an appropriate system and to abide by the rules. More generally, the assessment of elections will have an impact on the international reputation of the country concerned and its reputation as a democracy[5]*."*

20. The Parliamentary Assembly of the Council of Europe is therefore particularly well placed to tackle this subject and to adapt its future election observation missions to the new challenges posed by distance voting, including e-voting.

III. Postal voting

i. General principle

21. Postal voting, which entails voting without the presence of electoral officials, is a good example of the second type of distance voting, As such, it satisfies a further objective, that of enabling electors who are unable to get to a polling station to cast a vote. Unlike distance voting in a supervised setting, which tries to compensate for voters' geographical remoteness, unsupervised distance voting is more a response to incapacity. It naturally encompasses all those who are prevented from going to a polling station, including the disabled and those who are unable to vote for professional/occupational reasons, as well as voters who are geographically isolated. For this reason, it is often authorised abroad, as well as within the country concerned. The main countries that allow this form of distance voting are Spain, the United Kingdom, Ireland, Switzerland and Germany. Germany even considers this form of voting as the equivalent of the traditional method. France and Italy also use it, but it is not generally available.

22. The Scandinavian countries are so committed to allowing all their citizens to vote in elections that they authorise voting in hospitals and retirement homes, so that elderly and disabled persons can also take part in the electoral process. This is fully consistent with the main objective of distance voting, which is to adapt the voting system to citizens' needs and not the reverse, by enabling everyone to cast their vote at elections.

ii. Different types of postal vote

23. Conceived as a means of distance voting, postal voting consists of transmitting the vote by ordinary mail.

24. Some Council of Europe member states do not allow distance voting, whether within their national territory or from abroad. In others the distinction is between whether or not the vote must be cast in a supervised environment.

25. As far as states permitting distance voting in a supervised environment are concerned, it is worth recalling that this form of distance voting is comparable to traditional voting in polling stations. In some Council of Europe member states this is the general rule for voting in the country, although in Austria, Sweden and Estonia exceptions exists for voting from abroad[6]. In this particular case voting is simply "decentralised", and more or less identical to its traditional form.

26. On the other hand, distance voting in a non-supervised environment is less common in Council of Europe member states[7] and it is subject to many national peculiarities and traditions of voting systems.

27. Within this voting context, special attention should be given to distance voting being made possible abroad under certain conditions. In some Council of Europe member states[8], persons voting in another country are allowed access to this form of distance voting. However, conditions and arrangements for distance voting differ from one country to another.

28. As an example, in the Netherlands, citizens abroad may vote by postal ballot for elections to the lower chamber of Parliament and to the European Parliament.

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[5] *Conference on the parliamentary dimension of election observation:* applying common standards, Strasbourg, 15-16 February 2007.

[6] IP1(2003) 54, Multidisciplinary ad hoc Group of Specialist on the legal, operational and technical standards for e-enabled voting (IP1-S-EE).

[7] Only permitted in five countries without restrictions: Germany, Ireland, Spain, Switzerland, United Kingdom.

[8] Austria, Belgium, Greece, Italy, the Netherlands, Norway and Sweden.

29. Distance voting procedures have some advantages compared with some other procedures: they are more convenient and flexible insofar as voters are not obliged to vote on a specific day and they give the citizen more time to make his/her choice. These two aspects tend to generate higher participation (turnout) in electoral processes.

30. Three particular categories of postal voting may be identified[9]:

- **Multiple request postal voting:** voters request the voting ballot by mail for each election. Once received, they return the ballot by mail. This form of postal voting is suited for electoral systems that require voter registration for each election.
- **Single request postal voting:** voters need only request that their voting ballot be sent to them once. Citizens will automatically receive ballots and the possibility of voting by mail. This arrangement applies to electoral systems where voters are required to register only once for all elections.
- **Automatic postal voting:** systems where the electoral roll is produced from census and/or housing registration without any need for prior action by citizens. All voting materials are sent automatically to all voters who can cast their ballots by mail.

31. Finally, reference should be made to the system of early voting, which mainly applies in the Scandinavian countries. Early voting allows electors to cast their votes during several days before an election. There is thus no fixed voting day, the only limit being the final date for early voting, which is often the day before national polling day. Early voting is more like distance voting in a supervised setting because it must take place in a polling station within the country or abroad, and the presence of electoral officials and other witnesses is obligatory.

32. Although postal voting is possible in most western European countries, it is only permitted in those countries where the postal service is safe and reliable.

iii. Postal voting concerns

33. From a legal point of view, the introduction in some countries of distance voting[10] would require an amendment to the Election Act of the country concerned. Remote electronic voting would mean a re-interpretation of some of the principles enshrined in the internal Act in cases where a distance voting system is already in place. Such a change to the legislation carries risks, in that it could open a breach in the electoral code and encourage fraud or manipulation.

34. Some concerns should be mentioned, such as the risk of "family voting" and election fraud. An additional disadvantage of postal voting (unlike electronic voting) is that the voter has no confirmation that his vote has been cast and placed in the ballot box.

35. The question of the financial scope for experimenting with these new voting methods should also be raised. Since new procedures, including some experimental tests, need to be settled before the establishment of these new systems, financial resources should be made available to the authorities concerned to cover the general cost of implementation. It is by no means certain that states will wish to invest in these new voting procedures, and economising on such investment might be detrimental to security.

36. Unless it is well organised and fully secure, early voting may also raise certain concerns. This was perfectly illustrated by the presidential election in Belarus on 19 March 2006. Under pressure from the authorities, employers and universities, 31% of the electorate cast their votes five days before polling day. There were no regulations governing the sealing and storage of ballot boxes, which made all sorts of fraud possible. The international observers of the election severely criticised this particular use of early voting[11].

37. Equally, postal voting offers no guarantees of a secret ballot unless it is carried out in a location that is supervised by electoral officials.

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[9] Philippe C. Shmitter and Alexander H. Trechsel, *The future of democracy in Europe*, Integrated project "Making democratic institutions work", Council of Europe Publishing, 2005.

[10] Internet, telephone and postal voting.

[11] Report *Belarus in the aftermath of the Presidential election of 19 March 2006,* Political Affairs Committee, Rapporteur: Mr Andres Herkel, Estonia, EPP, (Doc. 10890, 12 April 2006).

38. The diversity of systems in Council of Europe member states demonstrates the impossibility of identifying a single form of distance voting as a “European rule”. It would therefore be very helpful, in the interests of democracy and its values and above all to foster a shared sense of unity, for Europe to establish common standards on this subject.

39. It should be remembered that distance voting is compatible with Council of Europe standards, provided that certain measures are observed in the procedures. The compatibility will depend on the prescribed conditions in national legislation. Nevertheless, the various electoral traditions and constitutional systems of the Council of Europe member states mean that there can be no single form of distance voting.

IV. Proxy voting

i. Confidence: the key element

40. In a few systems, voters may appoint a proxy to vote on their behalf. A proxy vote may be given where a voter is unable to attend a voting station because of *inter alia* infirmity, employment requirements, or being absent from the area on the voting day. France offers a good illustration of proxy voting, which is governed by Article L71 of the electoral code. A proxy vote may be assigned to a proxy voter for up to one year. The latter must have full civic rights and be enrolled in the same municipality as the voter. Voters who wish to cast their own vote must do so before their proxy has done so, otherwise they are not allowed to do so. It should also be noted that in France the right of persons who are absent from their constituency to vote by proxy also extends to those who are on holiday.

41. Proxy voting allows registered voters to appoint another person to vote in their name. Thus voting by proxy by definition contradicts to the basic principle of the secrecy of the vote. Unlike assisted voting in voting stations, there can be no controls to ensure that the instructions of the voter, who is registered on the electoral list, have been followed by the appointed person (proxy). Therefore, proxy voting is a method that may affect the integrity of voting practice insofar as it may be subject to abuse. The proxy must be trusted by the voter. Everything is therefore reliant on confidence, which in the context of elections may well be very limited. There is nothing to ensure, with certainty, that the nominated person will abide faithfully by the voter's decision in the secrecy of the polling booth. The procedure also highlights another problem linked to voting, that of secrecy. By requiring the disclosure of a voter's choice to another person, proxy voting is an infringement of the secret ballot. The Political Affairs Committee is currently preparing a report on the question of secret voting.

42. Of particular concern, are those cases where the system allows a proxy to cast votes for more than one registered voter. I strongly believe that proxy voting should be further regulated to avoid fraud.

ii. Measures to counter fraud

43. For the most transparent voting procedure possible, proxy voting requires certain elements: 1) an application from the voter declaring the reasons for appointing a proxy, naming the person as proxy and containing the signature of both the voter and the proxy; 2) checks by the electoral management body to determine whether the reasons are sufficient and the person named is qualified to act as proxy (the proxy should at least be qualified to vote); 3) approved proxy applications to be provided to polling station managers; 4) verification by the polling station manager that the proxy is actually the person appointed by the voter; 5) polling station managers should also maintain lists of proxy voters who have voted, as well as the voters for whom they have acted as proxy.

44. In certain Council of Europe member states, subject to specific and defined reasons, a person may be appointed as agent to collect voting material and documentation.

V. Conclusions

45. Distance voting will encourage other forms of political involvement and interaction by giving voters new means of access. However, these new voting techniques are not a solution to the crisis of representative democracy that many countries are experiencing, particularly that of abstention.

46. Ensuring security is the key to credible Distance voting. This security have to be apply on all types of distance voting : postal voting (mail), electronic distance voting (internet) or proxy voting (secrecy of the vote).

47. Together with the management advantages already mentioned linked to the introduction of distance voting (immediate analysis, lower cost, etc.), there are also certain sociological and positive issues for voters, such as simplicity and comfort. However, some concerns related to security and confidentiality still remain to be resolved.

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Members of the Committee **:** Mr Abdülkadir **Ateş** (Chairman), Mr Konstantion Kosachev (Vice-Chairman), Mr Zsolt **Németh** (Vice-Chairman), Mr Giorgi Bokeria (Vice-Chairman), Mr Miloš **Aligrudić**, Mr Claudio **Azzolini**, Mr Denis Badré (alternate: Mr François **Loncle**), Mr Radu Mircea Berceanu, Mr Andris **Bērzinš**, Mr Alexandër **Biberaj**, Mrs Gudfinna Bjarnadottir, Ms Raisa Bohatyryova, Mr Pedrag Boškovic, Mr Luc **Van den Brande**, Mr Lorenzo Cesa (alternate: Mario **Zacchera**), M. Muro Chiaruzzi, Ms Elvira Cortajarena, Ms Anna Čurdová, Mr Noel Davern, Mr Dumitru Diacov (alternate: Arcadii **Pasecinic**), Mr Michel **Dreyfus-Schmidt**, Ms Josette **Durrieu**, Mr Joan Albert **Farré Santuré**, Mr Pietro Fassino, Mr Per-Kristian Foss, Ms Doris **Frommelt,** Mr Jean-Charles Gardetto, Mr Charles Goerens, Mr Andreas Gross, Mr Davit **Harutiunyan**, Mr Jean-Pol Henry, Mr Serhiy Holovaty, Mr Joachim **Hörster**, Mrs Sinikka **Hurskainen**, Mr Tadeusz Iwiński, Mr Bakir Izetbegović, Mrs Corien W.A. Jonker, Ms Darja Lavtižar-Bebler, Mr Göran **Lindblad**, Mr Younal Loutfi, Mr Mikhail Margelov, Mr Tomasz **Markowski**, Mr Dick Marty, Mr Frano Matušić, Mr Murat **Mercan**, Mr Mircea Mereută, Mr Dragoljub Mićunović, Mr Jean-Claude Mignon, Ms Nadezhda Mikhailova, Mr Aydin Mirzazada (alternate: Sabir **Hajiyev**), Mr João Bosco **Mota Amaral**, Ms Natalia Narochnitskaya, Mrs Miroslava **Nemcova**, Mr Grygoriy Nemyrya, Mr Fritz **Neugebauer**, Mrs Kristina **Ojuland,** Mr Theodoros Pangalos, Ms Elsa **Papadimitriou,** Mr Christos Pourgourides, Mr John **Prescott**, Mr Gabino Puche (alternate: Pedro **Agramunt**), Mr Lluís Maria **de Puig**, Mr Jeffrey Pullicino Orlando, Mr Andrea Rigoni, Lord Russell-Johnston, Mr Oliver Sambevski, Mr Ingo **Schmitt**, Ms Hanne Severinsen, Mr Samad Seyidov, Mr Leonid **Slutsky**, Mr Rainder Steenblock (alternate: Mr Eduard **Lintner**), Mr Zoltán **Szabó**, Baroness Taylor of Bolton (alternate: Mr Denis **MacShane**), Mr Mehmet Tekelioğlu, Mr Mihai Tudose, Mr José **Vera Jardim**, Ms Biruté **Vesaité**, Mr Björn **Von Sydow**, Mr Harm Evert Waalkens, Mr David **Wilshire**, Mr Wolgang **Wodarg**, Ms Gisela Wurm, Mr Boris Zala, Mr Krzysztof Zaremba.

Ex-officio: MM. Mátyás **Eörsi**, **Tiny Kox**

N.B. : The names of the members who took part in the meeting are printed in **bold**

Head of the Secretariat : Mr Perin

Secretaries to the Committee: Mrs Nachilo, Mr Chevtchenko, Mrs Sirtori-Milner, Mr Pfaadt